

34

EXHIBIT 34

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1 Q. When will they decide on the completeness of what you said?
 2 A. I don't know that.
 3 Q. When will they decide on the accuracy of what you said?
 4 A. I don't know that.
 5 Q. But it is only they that make those decisions according to
 6 your plea agreement; is that right?
 7 MR. PELLETIER: Objection, asked and answered.
 8 THE COURT: Sustained.
 9 Q. You don't want to go to jail?
 10 A. Obviously not.
 11 THE COURT: You are now going far afield from the area
 12 I allowed you to question.
 13 BY MR. RODRIGUEZ:
 14 Q. Your plea agreement requires you to be truthful?
 15 A. Yes.
 16 Q. And it requires you to be truthful prior to entering into
 17 your agreement?
 18 A. Yes.
 19 Q. And you lied?
 20 A. I did.
 21 Q. If you would tell one more lie, would you go to jail?
 22 A. I don't know.
 23 MR. RODRIGUEZ: No further questions.
 24 MR. PELLETIER: Can I publish 377?
 25 THE COURT: Let's wait to publish 377 until we resolve

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1 Havana in 1970 and I have a master in science in chemistry and
 2 a Ph.D. in Chemistry from the University of Havana. Now I am a
 3 licensed pharmacist with the State of Florida.
 4 Q. Did you say 1970 was your degree?
 5 A. 1970.
 6 Q. What was the terminal degree you received?
 7 A. Pharmaceutical by chemistry. At that time it was a
 8 combination of biochemistry and pharmacy in Cuba.
 9 Q. When did you come to the United States?
 10 A. In May of 1994.
 11 Q. You said you were a licensed pharmacist. When did you
 12 become a licensed pharmacist?
 13 A. December 1998.
 14 Q. Where do you work now, sir?
 15 A. I am working with Walgreen's.
 16 Q. How long have you been working with Walgreen's?
 17 A. About two or three years as a pharmacist.
 18 Q. Let's go back. When you first came to this country, what
 19 was your first job?
 20 A. I worked in La Moderna.
 21 Q. La Moderna Pharmacy?
 22 A. Yes.
 23 Q. How did you get that job?
 24 A. Because I answered to an advertisement in the Miami Herald.
 25 Q. Do you recall what that advertisement was for?

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1 the sticky issue.
 2 THE COURT: Any further questions of this witness?
 3 MR. PELLETIER: No.
 4 THE COURT: You may step down.
 5 (Witness excused.)
 6 THE COURT: Call your next witness.
 7 MR. OGROSKY: The United States calls Carlos Gomez.
 8 Thereupon --
 9
 10 CARLOS GOMEZ
 11 called as a witness by the Government, having been first duly
 12 sworn, testified as follows:
 13 DIRECT EXAMINATION
 14 BY MR. OGROSKY:
 15 Q. Would you please state your full name and spell your last
 16 name?
 17 A. Carlos Gomez, G O M E Z.
 18 Q. Do you go by any nicknames?
 19 A. They call me The Professor.
 20 Q. Why do people call you The Professor?
 21 A. Because since 1970 I was a professor at the Faculty of
 22 Pharmacy at the University of Havana and most of the people
 23 that know me give me that nickname.
 24 Q. What was your educational background in Cuba?
 25 A. I was a pharmaceutical biochemist from the University of

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1 A. They were looking for a pharmacy technician.
 2 Q. About what time was this?
 3 A. About August of 1994.
 4 Q. When you responded to that ad, what did you do?
 5 A. I give a call to the pharmacy. I made an appointment for
 6 the next day and I came the next day and spoke to Mr. Marco
 7 Burgos and he was the person who hired me.
 8 Q. Would you characterize that as an interview?
 9 A. Excuse me?
 10 Q. Was that an interview?
 11 A. Yes, we had an interview.
 12 Q. Was there anyone else involved in that interview?
 13 A. Not in the beginning but after several minutes Mrs. Burgos
 14 arrived at the pharmacy and we had a conversation -- they had a
 15 conversation, then I had a conversation with Ms. Burgos and
 16 they finally decide to hire me.
 17 Q. At that time did you speak English?
 18 A. I speak English but not a good English. Enough for
 19 communication but not a good English.
 20 Q. What did they want you to do as a pharmacy tech?
 21 A. They were interested to make Ibuprofen gels, creams, to
 22 develop some compounded products, gels, creams, suppositories,
 23 lotions.
 24 Q. When you say to make, you also used the word "compound,"
 25 what do you mean by that?

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1 A. To prepare the compound from the raw materials. To mix the
 2 materials and to melt, do all the process required to make the
 3 cream or make solution or make the gel.
 4 Q. That is what you discussed during your interview?
 5 A. More or less.
 6 Q. At that interview, did you have a work permit?
 7 A. No, sir.
 8 MR. BIERMAN: May we approach before we go into this
 9 area.
 10 THE COURT: Come up. We will try it again.
 11 (Side bar.)
 12 MR. BIERMAN: I have a 404, 403 objection. It is
 13 probative value whether he was paid cash. It is a whole
 14 different immigration issue. That is neither here nor there.
 15 It is not relevant he was paid. He got a W-2 at the end of the
 16 year which included all of his wages. If he was not permitted
 17 to work and it is a separate crime, it has nothing to do with
 18 the crime stated here and I have no 404 information.
 19 MR. OGROSKY: It is not 404B. He is going to say that
 20 he informed the Burgoses two months later he received a work
 21 permit. That is just a fact of what happened. He hired this
 22 man to compound the medications.
 23 MR. BIERMAN: He is either able to compound and does
 24 it right or he does it wrong. That is the crime. Whether or
 25 not he had the correct work permit at this time is irrelevant.

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1 Do you recognize this?
 2 A. It is approximately a scheme of the La Moderna Pharmacy.
 3 Q. Is this the location where you were hired to work?
 4 A. Yes, Southwest Street and 11th Avenue.
 5 Q. Mr. Gomez, if you could, could you point to the area where
 6 you worked at La Moderna?
 7 A. Yes, it is here in what is reading second compounding room.
 8 The right side of the prescription department.
 9 Q. You said initially you were hired to compound gels and
 10 creams. What kind of gels and creams?
 11 A. For example, Ibuprofen gels, creams, Benzamycin cream.
 12 Q. Did you say Ibuprofen gels?
 13 A. Yes. Benzamide, not Benzamycin. It is a well known
 14 product in my country. Very useful to control the pains, the
 15 back pains and the raw material is available here in the United
 16 States. For example, I developed this cream, lotions for
 17 progesterone, suppositories. They were interested in some of
 18 this compounding.
 19 Q. When you use the word "compounding," what is compounding?
 20 A. It is an old pharmacy procedure. You mix several raw
 21 materials used in some kind of vehicles like water or alcohol
 22 or creams or fatty materials to obtain a product that is not an
 23 official formulation but well recognized by the medical
 24 profession and you can use for several purposes.
 25 Q. Do you compound today at Walgreen's?

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1 THE COURT: What is the probative value?
 2 MR. OGROSKY: This establishes the relationships.
 3 This is what he was hired to do and what he did. In fact he
 4 would testify that he wasn't compounding product.
 5 THE COURT: Richard can't hear.
 6 (Open court.)
 7 THE COURT: Sustained as to that question.
 8 BY MR. OGROSKY:
 9 Q. When was your interview?
 10 A. Approximately August 1994.
 11 Q. Did you reach an agreement with Marco and Suzanne Burgos
 12 when you would be hired?
 13 A. They told me they will let me work for 30 days and see what
 14 I would do. He let me work partially there.
 15 Q. How much did he offer to pay you?
 16 A. He didn't offer me any quantity. When I finished working
 17 the first week, Friday, he paid me \$10 an hour.
 18 Q. You were paid \$10 an hour. How many hours a week would you
 19 work?
 20 A. 40 hours a week.
 21 Q. Approximately what times of the day would you work?
 22 A. From 9 in the morning to 5 initially and after several
 23 months, from 9 to 5:30 with a half hour for lunch.
 24 Q. I am going to show you what has been admitted into evidence
 25 as Government's Exhibit 26.

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1 A. Very occasionally. For example when the doctor ordered to
 2 mix two commercial creams, or occasionally one or two companies
 3 to be dissolved in a vehicle like water or alcohol. It is not
 4 very common here in Florida and we do not receive too many
 5 requests for compounding.
 6 Q. What you have described as the process of compounding, how
 7 does it begin? Do you simply make product at Walgreen's to
 8 keep on the shelves. Actually, for example -
 9 MR. BIERMAN: I object to any questions about
 10 Walgreen's procedures.
 11 THE COURT: Sustained.
 12 BY MR. OGROSKY:
 13 Q. Mr. Gomez, did there come a time at La Moderna you were
 14 asked to compound items in addition to these creams and
 15 lotions?
 16 A. Yes.
 17 Q. When was that?
 18 A. Let me explain you something because this has been seven
 19 years, six, seven, eight years since this happened. The dates
 20 I am going to give you may be not so precise. I suppose the
 21 first month of 1995.
 22 Q. January?
 23 A. Probably January. The first month.
 24 Q. What item were you asked to compound?
 25 A. A solution for Acetylcysteine 10 percent.

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1 Q. Who at La Moderna asked you to compound Acetylcysteine?

2 A. A lady, Jancide Regueiro, the first time I saw this lady.

3 Q. Was she working there?

4 A. She was not working there.

5 Q. Where was she working?

6 A. Later on I realized she was at South Beach Pharmacy.

7 Q. What did she ask you?

8 A. She asked me for Acetylcysteine 10 percent. She asked me

9 if I was able to make that solution. I checked the procedure

10 and I said okay, I can do it.

11 Q. Did you make that Acetylcysteine that very day?

12 A. I am not sure if it was that very day or the same date. I

13 have the idea she comes that same day with a bottle of

14 Acetylcysteine but I am not sure it was exactly that same day.

15 Q. Where did you get the materials to make the Acetylcysteine?

16 A. I received it from her.

17 Q. From who?

18 A. From Janeide Portela.

19 Q. You said she gave you a procedure. Is that essentially a

20 recipe?

21 A. It is a recipe.

22 Q. Was that a typewritten recipe?

23 A. It was a recipe where this procedure has some scratching

24 and handwriting. There was a handwriting substitution of one

25 of the companies for another one.

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1 sodium. I don't remember any other one.

2 Q. Are these products you have named all aerosol medications?

3 A. Yes. Solutions for aerosol.

4 Q. How much aerosol medication were you making at La Moderna

5 on a daily basis?

6 A. I was making one or two liters and sometimes I make four,

7 seven, occasionally nine gallons. Not gallons. 4000 ml

8 bottle. A little more than a gallon.

9 Q. Did there come a time you were working at La Moderna when

10 your duties changed or when you were asked to do more than

11 compound aerosol medications?

12 A. Yes.

13 Q. When was that?

14 A. I don't know exactly. I cannot give you a date. The

15 initial idea of the compounding gels and cream did not

16 progress, so I was asked to employ part of my time helping

17 Carlos Amador in taping the labels for this compound solution,

18 for the companies that normally buy this solution.

19 Q. Who asked you?

20 A. Mr. Burgos.

21 Q. Before we go into the labels, let's go back and talk about

22 your compounding for a moment.

23 When you were compounding these aerosol medications

24 did you use a scale?

25 A. Yes.

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1 Q. Did you make the Acetylcysteine with the changed component

2 or as it was typewritten?

3 A. With the changed component.

4 Q. Did you discuss that change with anyone before you made the

5 product?

6 A. I discussed -- I can't be sure it was after or before, but

7 in the proceeding, in the process of making the solution that

8 same day, I asked Ms. Suzanne Burgos what was the reason of

9 this substitution of the sodium hydroxide for sodium

10 bicarbonate which was the substituted component.

11 Q. You discussed this change?

12 A. We talked about it.

13 Q. What was the reason for the change that she told you?

14 A. They told me we have changed this -- there were no

15 particular reasons. I think she told me it was easier. In

16 fact it is easier to use sodium bicarbonate rather than sodium

17 hydroxide. We didn't enter into a long conversation about the

18 reason. Just the brief conversation.

19 Q. After this conversation, did you make the Acetylcysteine?

20 A. After or before. At that moment I made the solution.

21 Q. Did you make any other drugs besides Acetylcysteine while

22 working at La Moderna?

23 A. Yes, several other solutions.

24 Q. What solutions?

25 A. Metaproterenol sulfate, Albuterol, sulfate, Chromelin

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1 Q. Why?

2 A. Because it is necessary to weigh with the quantity you are

3 going to be using.

4 Q. Did these recipes you were using have exact amounts of

5 ingredients?

6 A. Exact amounts of ingredients.

7 Q. By the gram?

8 A. By the gram. Normally by the grams. Occasionally by the

9 milligram.

10 Q. What kind of scale did you use?

11 A. Torsion balance. It is a kind of equipment, not too large.

12 It offers very good accuracy in the weighing of small

13 quantities.

14 Q. Did you ever make medications using a measuring cup?

15 A. Not medication. I have used -- are you asking about the

16 balance?

17 Q. I am asking about aerosol medications. Did you ever use

18 aerosol medications without using a scale, using a cup?

19 A. No, you cannot use it.

20 Q. Let me go back to what you were asked to do with the

21 prescription labels. Who asked you again?

22 A. Marco Burgos.

23 Q. Were you doing the labeling in the same room?

24 A. No. I worked part of the time in my compounding room and

25 half of the time I come to an area when I was free, I can show

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1 you.

2 Q. Please.

3 A. The area is here. We have a couple of desks, one for

4 Carlos Amador and one for me. There are additional desks for

5 other persons, but normally one for Carlos Amador and one for

6 me. A computer on each desk and we can type on our

7 workstation.

8 Q. Would you work the entire day at one location?

9 A. Yes, I always worked there.

10 Q. Was your day broken up into parts? Did you compound part

11 of the day?

12 A. I tried to organize my time because that depends when I

13 received the order, the quantity of aerosol I need to make for

14 the day.

15 Q. You said you received orders about the amounts of aerosols

16 you needed to make?

17 A. Yes.

18 Q. Who told you how much to make?

19 A. Mrs. Janeide Portela called me or occasionally I called her

20 and I asked her what is the quantity she needs for the day, how

21 many bottles of which solution.

22 I talked to Carlos Amador, that is the person that

23 normally deals with it in La Moderna and we checked what was

24 going to be the quantity we needed for the use of the La

25 Moderna customers and I make the total volume for these

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1 or some person who comes from South Beach or some people that

2 traveled from La Moderna to South Beach. There was no

3 particular person to take the solution from one pharmacy to the

4 other.

5 Q. The solutions you made at La Moderna were taken to South

6 Beach pharmacy to be bottled?

7 A. That is it, at least during the time I was there.

8 Q. If you could, what were you asked to do with regard to

9 prescriptions?

10 A. In La Moderna?

11 Q. At La Moderna.

12 A. Initially I was instructed to make refills. I never worked

13 with this system. I was instructed by Carlos Amador how to

14 make refills and in a later period when I was more practiced

15 with the system, I introduced prescriptions to the system.

16 Q. When you say the system, what do you mean?

17 A. There is some programs sold by a company named Abacus that

18 is mostly used for most of the small pharmacies and you can

19 enter information to the system to obtain labels. I keep a

20 record of all the transactions, all the operations you have

21 done around this prescription and what you do, the number of

22 refills, when you did it; what did you do.

23 Q. Who would give you these prescriptions you would enter into

24 the Abacus system?

25 A. The process of entering information, the description, was

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1 solutions.

2 Q. Based on what Janeide Portela told you?

3 A. I suppose according to the labels that she needs to order

4 of the clients, she needs to fill for the next day.

5 Q. Was this compounding room you worked in part of the

6 pharmacy where all the other drugs were kept?

7 A. Can you repeat, I can't hear you very well.

8 Q. Was the compounding room part of the prescription area of

9 the pharmacy where all the other drugs were kept?

10 A. It was not a part. It was a wall, partial wall about the

11 height of my waste. There was an open frame, like an open

12 window. We can see each other from the prescription department

13 to the compounding department. There was not immediate

14 communication. There was not a door immediately.

15 Q. After you received instructions how much aerosols to make

16 and you completed that, did you bottle the aerosol medications

17 at La Moderna?

18 A. Not to bottle. I never bottled.

19 Q. When you said bottle, to put the solution into the bottles?

20 A. No. It was never done at La Moderna. As I remember I

21 never saw any filling of bottles at La Moderna.

22 Q. Where would the aerosols that you made be bottled?

23 A. They were taken to South Beach Pharmacy.

24 Q. Who would take them?

25 A. People that come from South Beach Pharmacy, a delivery guy

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1 given by Carlos Amador while I was at La Moderna.

2 Q. I will show you what has been marked for identification

3 purposes as Government's Exhibit 90. Do you recognize this?

4 A. It is a prescription for two aerosol solutions.

5 Q. Did you see items like this in your job at La Moderna?

6 A. Yes.

7 Q. How many? -

8 A. Several were done every day. It depended if I was entering

9 refills or new prescriptions.

10 MR. OGROSKY: At this time I would like to publish

11 this exhibit as a demonstrative. It will be admitted with a

12 later witness.

13 MR. BIERMAN: I will object to publishing it out of

14 order seems to be a problem.

15 MR. OGROSKY: It will be tied up.

16 THE COURT: We are going to take a break at this time.

17 Do not discuss this case amongst yourselves or anyone

18 else. Have no contact whatsoever with anyone associated with

19 the trial. Do not read or listen to anything touching on this

20 matter in any way. Be back in the juryroom in fifteen minutes.

21 If anybody should try to talk to you about this case, instruct

22 them to immediately stop and be in contact with my staff

23 concerning it.

24 (Jury leaves room.)

25 THE COURT: How is this going to be tied up?

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1 MR. OGROSKY: This particular exhibit will be admitted
 2 through Jose Arias. Whether it comes in now, this particular
 3 witness -- for demonstrative purposes that I want to use this,
 4 he could write a sample. This was one that was actually seized
 5 and I thought it would be a good demonstrative aid to go
 6 through the prescription.
 7 THE COURT: You want him to actually detail the
 8 prescription and what it means?
 9 MR. OGROSKY: This will be like -- he has testified
 10 this was like the prescriptions he saw. He literally saw
 11 hundreds of these at his job at La Moderna and Miami Discount
 12 Pharmacy. This would be a sample of the type of prescription
 13 that he dealt with and he testified he entered into the Abacus
 14 system.
 15 MR. BIERMAN: Was this one of ours?
 16 MR. OGROSKY: This is a prescription from First Option
 17 Medical Center. It is in our exhibit list. It has been turned
 18 over far in advance.
 19 MR. BIERMAN: My question is, was it at La Moderna.
 20 MR. OGROSKY: We didn't seize any prescriptions from
 21 La Moderna. I don't believe we ever searched the pharmacy.
 22 He will testify this was like the hundreds that he saw
 23 at La Moderna and Miami Discount Pharmacy. For demonstrative
 24 purposes, it makes it easier to go through what he is going to
 25 talk about with regard to the prescriptions.

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1 isn't within the rules of Court. An exhibit can't be published
 2 until it is admitted. We don't know where this came from.
 3 whether or not I saw it. I am not even sure he was working at
 4 La Moderna at 5/1/96.
 5 MR. SWARTZ: It is a completely different patient,
 6 different doctor, different date as well as a different
 7 pharmacy.
 8 MR. BIERMAN: He was not working at La Moderna at the
 9 time. It is more confusing than it is probative because he is
 10 talking about his employment at La Moderna then he will talk
 11 about a prescription and they will hold up this big piece of
 12 evidence with a picture being worth more than a thousand
 13 words --
 14 THE COURT: What exactly is it you want him to testify
 15 about from this particular exhibit?
 16 MR. OGROSKY: He will say this is like many hundreds
 17 of prescriptions he received both at La Moderna and Miami
 18 Discount Pharmacy.
 19 Salvador Rodriguez will testify in this trial. He
 20 will testify he was a patient that was serviced by the Arias
 21 DMEs, meaning being paid. He will testify he didn't take the
 22 drugs and never saw the prescription. It was sent from the
 23 clinic to the DME and presumably to the pharmacy.
 24 This witness, for demonstrative purposes saw hundreds
 25 if not thousands of these prescriptions in his two places of

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1 MR. SWARTZ: What exactly is similar is what I think
 2 is unclear. What exactly is similar, the exact prescription is
 3 the same verbatim? I am not sure why they are offering this.
 4 THE COURT: He is offering it for demonstrative
 5 purposes for the witness to testify. He is not admitting it at
 6 this time.
 7 MR. SWARTZ: There is a point they are trying to make.
 8 THE COURT: I am sure there is a point with everything
 9 they are trying to make.
 10 MR. SWARTZ: Exactly. The point they are trying to
 11 make is there was something missing in the prescription,
 12 therefore it was similar to what he was doing there.
 13 MR. OGROSKY: This is something he can take up on
 14 cross if they have information that is different, they could
 15 cross him using this demonstrative aid.
 16 MR. SWARTZ: If they want to do that, let them ask him
 17 about the prescriptions, whether anything was missing or
 18 anything was wrong. To ask him about this is misleading. It
 19 is not from that pharmacy, it is not from any patient that was
 20 serviced at that pharmacy. We don't even know who the doctor
 21 is that prescribed that prescription, if in fact it is the same
 22 as any prescription he filled. It is misleading, Your Honor.
 23 MR. BIERMAN: It would certainly be convenient, I
 24 agree. It would be convenient for us to use our defense
 25 exhibits now, but it is not within the rules of Court. This

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1 employment.
 2 MR. BIERMAN: That is all the more reason we have a
 3 403 objection because this is after the time he was working at
 4 La Moderna. This is a Miami Pharmacy prescription, we
 5 understand, and it will be tied into something allegedly
 6 illicit while he is testifying about what he did at La Moderna.
 7 MR. OGROSKY: He will testify regardless of the
 8 exhibit. If they think there is something inaccurate --
 9 THE COURT: You will have to lay a better predicate.
 10 The question to the witness was, did you see -- he recognized
 11 this and he said it is one of a bunch of prescription for two
 12 aerosol solutions. Did you see items like this in your job at
 13 La Moderna? The answer was yes. The question was how many and
 14 he answered several were done every day. It would depend if I
 15 was entering refills or new prescriptions.
 16 If you want to introduce this as a demonstrative
 17 exhibit with the witness, you will have to establish this
 18 particular prescription and the information contained therein
 19 was exactly like what he was seeing at La Moderna. Then if you
 20 are able to establish that, that there is no difference between
 21 this and the prescriptions he saw at La Moderna and make it
 22 clear this was not a La Moderna prescription but what he was
 23 seeing at La Moderna, I will allow you to use it subject to the
 24 tie up as a demonstrative exhibit but this witness hasn't been
 25 particularly definite. He saw several of these --

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1 MR. OGROSKY: I will work with him before going back
 2 to that.
 3 I think this witness has a little bit of a English
 4 problem.
 5 MR. TARLOW: I would object to the government working
 6 with their witnesses.
 7 THE COURT: He means on the stand.
 8 MR. OGROSKY: Yes.
 9 THE COURT: He means laying the predicate on the
 10 stand. I take it that is what you meant?
 11 MR. OGROSKY: Yes.
 12 MR. BIERMAN: I still have a 403 objection because the
 13 confusion --
 14 THE COURT: This is a conspiracy charge. The
 15 objection to 403 is overruled. It will not confuse the jury.
 16 You can cross him on it but it won't confuse the jury.
 17 We are in recess for ten minutes.
 18 (Thereupon a recess was taken, after which the
 19 following proceedings were had.)
 20 (Open court. Jury not present.)
 21 THE COURT: *United States of America versus Idania C.*
 22 *Arias, et al., Case Number 00-683.*
 23 Would counsel state their appearances.
 24 (All parties present.)
 25 THE COURT: Bring in the jury.

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1 Q. You said you began working with the prescriptions in
 2 February of 1995?
 3 A. Probably February.
 4 Q. For the better part of the rest of that year you were
 5 working with prescriptions on a daily basis?
 6 A. Yes.
 7 Q. What was your duty and responsibility with regard to those
 8 prescriptions?
 9 A. To enter the prescription, enter the information into the
 10 computer.
 11 Q. What information would you enter into the computer?
 12 A. You need to enter the name.
 13 Q. The name of the patient?
 14 A. The name of the patient, some information about the patient
 15 if it was available.
 16 Q. What kind of information?
 17 A. For example, date of birth. I am not totally sure about
 18 this information because it has been too many years. Some
 19 information. Probably the address. I am not totally sure
 20 about this.
 21 Q. I understand.
 22 What other information would you enter into the
 23 computer?
 24 A. The medication that was ordered by the doctor.
 25 Q. The name of the medication?

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1 (Jury present.)
 2 THE COURT: You are still under oath, sir.
 3 Thereupon --
 4
 5 CARLOS GOMEZ,
 6 called as a witness herein, having been previously duly sworn,
 7 was examined and testified further as follows:
 8 THE COURT: You may proceed, Mr. Ogrosky.
 9 BY MR. OGROSKY: (Continuing.)
 10 Q. Mr. Gomez, when you were working at La Moderna Pharmacy in
 11 the area when you were entering material into the computer, did
 12 you work with prescriptions?
 13 A. Yes.
 14 Q. How many prescriptions did you work with on a daily basis?
 15 A. There was not a particular amount. Sometimes I would make
 16 only refills, sometimes I entered 15, 20 prescriptions in a
 17 day.
 18 Q. How many?
 19 A. 15, 20 prescriptions a day.
 20 Q. How long did you work at La Moderna Pharmacy?
 21 A. I begin on August 1994, and I worked at La Moderna until
 22 the middle of 1995. I am not exactly sure about the date. I
 23 was moved to South Beach Pharmacy. It may be August, the end
 24 or September the beginning. I am not totally sure but it is
 25 around this time.

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1 A. Yes. The strength, the quantity, the name of the doctor
 2 and the number of refills.
 3 Q. Where would you get all of this information?
 4 A. Normally we get this information from the small
 5 prescription that the doctor writes. Sometimes if this
 6 information is not complete, I was instructed to go to the
 7 information provided by the DME. It normally comes on an
 8 additional sheet, paper, that comes from the DME with some
 9 additional information.
 10 Q. Do you know what that additional information was called?
 11 Did that form have a name?
 12 A. It is the form that the DME fills and they stapled -- they
 13 send normally the prescription and this additional sheet with
 14 the name of the patient, the doctor, the medication. If it is
 15 going to be some kind of device, aerosol machine. I don't know
 16 exactly the name.
 17 Q. In your employment after you left La Moderna, did you have
 18 occasion to enter information from prescriptions into a
 19 computer system?
 20 A. When I went to South Beach Pharmacy I did this.
 21 Q. Did you have another job where you entered information into
 22 the computer?
 23 A. Now I know. Normally it is a normal procedure.
 24 Q. Between La Moderna and South Beach, did you work somewhere
 25 else?

945

1 A. No.

2 Q. After you left South Beach Pharmacy, where did you go to

3 work?

4 A. To Walgreen's Pharmacy as an intern. I was not a

5 pharmacist yet so I work as a pharmacist intern.

6 Q. What month did you leave South Beach?

7 A. About September, the end of September, 1995.

8 Q. When did you start at Walgreen's?

9 A. In December of 1995.

10 Q. In December of 1995?

11 A. Two or three months later.

12 Q. At Walgreen's?

13 A. At Walgreen's.

14 Q. You mentioned this man earlier, Carlos Amador?

15 A. Yes.

16 Q. Did you ever work with him?

17 A. Yes.

18 Q. Where?

19 A. I am sorry, sir, excuse me. I jumped.

20 When I left - when I left South Beach Pharmacy, I

21 went to work to Miami Pharmacy. It is a pharmacy owned by

22 Carlos Amador and his mother.

23 Q. Where did you meet Carlos Amador?

24 A. I worked with Carlos Amador in La Moderna.

25 Q. When you worked with Carlos Amador, did you have occasion

947

1 Q. Without telling us what it is, do you know what it is?

2 A. Yes, a prescription for aerosol.

3 Q. Have you seen prescriptions like this?

4 A. Yes.

5 Q. Where?

6 A. In La Moderna and in Miami Pharmacy.

7 Q. When you were at La Moderna, how many prescriptions like

8 this did you see?

9 A. Hundreds of them.

10 Q. Do you see at the top there where this came from?

11 A. First Option Medical Center.

12 Q. Do you recognize that?

13 A. I don't recognize this because there were a lot of DMEs.

14 Q. The information that is on here, do you recognize this?

15 A. It is normal information for a prescription for aerosol.

16 Q. When you say normal, what do you mean?

17 A. Normally the way prescriptions were reading but this is

18 incomplete.

19 MR. OGROSKY: I would like to use this.

20 MR. BIERMAN: Objection. He said this was incomplete.

21 That makes it not an example.

22 THE COURT: He is testifying about the exhibit being

23 incomplete.

24 The objection is overruled. It will be admitted as a

25 demonstrative exhibit at this time subject to the proffer by

946

1 to work with prescriptions?

2 A. Yes.

3 Q. What did you do with them?

4 A. With Carlos Amador?

5 Q. Yes.

6 A. Normally I do the same kind of work I was doing in La

7 Moderna or South Beach Pharmacy.

8 Q. What was that?

9 A. Making the solutions for the aerosols, but in this case --

10 Q. With regard to the prescriptions; what did you do?

11 A. Normally I do not enter the prescription in Miami Pharmacy.

12 Occasionally I do it.

13 Q. Did you ever do it?

14 A. I did it but not commonly, because they have two clerks

15 that their duty was to enter the prescription. Sometimes I

16 gave a hand about it; but it was not common.

17 Q. At La Moderna, that was part of your job?

18 A. Yes, partially.

19 MR. OGROSKY: At this time I would like to use the

20 demonstrative exhibit that was marked for identification

21 purposes as Government's Exhibit 90.

22 MR. BIERMAN: Object, lack of foundation.

23 THE COURT: You have to lay a predicate with the

24 actual Exhibit.

25 BY MR. OGROSKY:

948

1 the government.

2 MR. OGROSKY: I will ask the witness to step down.

3 BY MR. OGROSKY:

4 Q. Mr. Gomez, in your job at La Moderna when you would enter

5 these prescriptions, is this like many of the prescriptions you

6 had?

7 MR. BIERMAN: Objection to form.

8 THE COURT: Sustained.

9 Rephrase your question.

10 BY MR. OGROSKY:

11 Q. Looking at Government's Exhibit 90, have you seen

12 prescriptions like this?

13 A. Yes.

14 MR. BIERMAN: Objection to "like".

15 THE COURT: Overruled.

16 BY MR. OGROSKY:

17 Q. What is this?

18 A. This is a prescription for two different aerosol solutions,

19 one is Metaproterenol 0.4 percent. It is not specified the

20 strength of this solution.

21 Q. Let's go through it real slow.

22 A. It does not specify the quantity of this solution.

23 Q. Who is the patient?

24 A. Salvador Rodriguez.

25 Q. What is following his name there?

949

1 A. The address, 1457 Southwest 65th Avenue Miami and the date
 2 the doctor wrote the prescription.
 3 Q. Whose address is that?
 4 A. The address of the patient.
 5 Q. What date is that?
 6 A. That is May 1, 1996.
 7 Q. What is the first medication that is listed there?
 8 A. Metaproterenol 0.4 percent.
 9 Q. What is written after that?
 10 A. QID. That means the medication should be given to the
 11 patient four times a day.
 12 Q. What does QID stand for?
 13 A. It always means four times a day.
 14 Q. What is the volume that the patient should take four times
 15 a day?
 16 A. It is not reading. That is the reason I said it was
 17 incomplete.
 18 Q. Look at the next medication. What is that?
 19 A. That is another solution for Acetylcysteine 10 percent.
 20 Q. What does TID mean?
 21 A. Three times a day.
 22 Q. How much should this patient take three times a day?
 23 A. That is incomplete also. The doctor forgot to write the
 24 quantity he is going to give every one of these three times a
 25 day.

951

1 testified about. What volume would you type into the computer
 2 at La Moderna?
 3 A. I don't know. In this case I need to see the additional
 4 sheet. I don't know exactly in this case what they did enter.
 5 MR. BIERMAN: I want to renew my objection and move to
 6 strike. It is all supposition what he was doing.
 7 THE COURT: Overruled.
 8 BY MR. OGROSKY:
 9 Q. With this particular drug, Metaproterenol, what did you
 10 type into the computer at La Moderna with regard to volume?
 11 MR. KAPLAN: Asked and answered.
 12 THE COURT: Overruled.
 13 BY THE WITNESS:
 14 A. If there is not the quantity, you can suppose this is a
 15 commercial unit does, 2.5 ml or you can suppose it is 3, 4, 5
 16 milliliters.
 17 BY MR. OGROSKY:
 18 Q. Who told you to suppose?
 19 A. Normally --
 20 Q. At La Moderna, who told you to type in --
 21 A. All the information was told to me by Carlos Amador.
 22 Q. With a prescription like this, what should you do to find
 23 the volume?
 24 A. Go to the original sheet.
 25 Q. If it is not on the additional sheet, what should you do?

950

1 Q. How many refills are with this prescription?
 2 A. It is not reading. Neither is reading the days of the
 3 treatment.
 4 Q. What do you mean days of the treatment?
 5 A. I don't know whether this patient is going to take this
 6 medication one day, one month or one year. The doctor didn't
 7 write it.
 8 Q. In your work at La Moderna when you saw prescriptions like
 9 this, how many refills would you give?
 10 A. I was instructed about this all these prescriptions have
 11 one year last.
 12 Q. Who instructed you on that?
 13 A. Carlos Amador.
 14 Q. When you saw prescriptions like this at La Moderna, how
 15 many days did you give the prescription for?
 16 A. Normally we go to the additional sheet that is included,
 17 stapled together with this prescription and we complete the
 18 information according to the additional sheet.
 19 Q. How many days?
 20 A. Always for one month.
 21 Q. Why?
 22 A. It is a normal procedure.
 23 Q. Who told you?
 24 A. Carlos Amador.
 25 Q. Start with that first drug, Metaproterenol, that you just

952

1 MR. BIERMAN: Objection to supposition.
 2 THE COURT: Sustained.
 3 BY MR. OGROSKY:
 4 Q. Did you oftentimes go to the additional sheet? Did the
 5 additional sheet --
 6 THE COURT: I didn't hear his answer.
 7 MR. OGROSKY: He nodded.
 8 BY THE WITNESS:
 9 A. Your previous question?
 10 BY MR. OGROSKY:
 11 Q. Did you oftentimes go to the additional sheet?
 12 A. Yes.
 13 Q. Did you find the information on the additional sheet?
 14 A. Normally, usually.
 15 Q. If it wasn't on there, what would you do?
 16 A. I don't remember.
 17 Q. Would you leave it blank in the computer?
 18 A. I can't give you an answer.
 19 Q. Look at the next drug?
 20 A. Acetylcysteine 1 percent. It should be 10 percent. We can
 21 assume again it is 10 percent, the normal solution.
 22 MR. BIERMAN: Objection.
 23 THE COURT: Overruled.
 24 BY MR. OGROSKY:
 25 Q. With regard to the Acetylcysteine, how would you determine

953

1 the volume?

2 A. It is exactly the same situation that I was talking about

3 with the Metaproterenol. We have no way to know exactly what

4 the doctor wants.

5 Q. Did you ever call the doctor?

6 A. No. Normally the pharmacist is the only one authorized to

7 call the doctor and request what is the solution for this. I

8 was not a pharmacist. I never called.

9 Q. Did you ever see anyone call?

10 A. No, sir.

11 Q. If you would please have a seat.

12 I am showing you what has been marked in evidence as

13 Government's Exhibit 1J, Government's Exhibit 12, Government's

14 Exhibit 1H, Government's Exhibit 1G and Government's Exhibit 6.

15 If you can look at the first box, 1G. Do you

16 recognize this?

17 A. Yes. It is the industrial Metaproterenol 0.4 percent.

18 Q. Is that a commercially available product?

19 A. Commercially available product.

20 Q. Who made that product?

21 A. Dey Labs.

22 Q. Is that product the same as the Metaproterenol 0.4 percent

23 you just discussed?

24 A. Yes.

25 Q. Are you saying that is a commercially available product?

955

1 Pharmacy.

2 Q. What is the prescription for here?

3 A. Metaproterenol 0.5 percent.

4 Q. How much?

5 A. 0.4 percent.

6 Q. The first exhibit you looked at, how many of those

7 containers would it take to equal 5 mls?

8 A. Two vials to fulfill 5 mls.

9 Q. With this particular prescription here, you said this is a

10 compounded product?

11 A. Yes.

12 Q. What does it mean when it says Astra Phar?

13 A. They labeled this product, it is a compounded product, they

14 labeled this box as if they were selling a product, an

15 industrial product for the Astra Phar Labs. This is a label

16 that belongs to an industrial product made by Astra Phar and it

17 was stickered to a box that contains the aerosol done in our

18 pharmacy by me.

19 Q. Let me make sure I am clear. What is Astra Phar?

20 A. It is an industrial producer. It is a laboratory that

21 produced these unit vials like this, for example.

22 Q. This is 1G. What are you holding in your hand?

23 A. A metallic container in which are normally contained 5 unit

24 doses in 2.5 ml.

25 Q. Who made this?

954

1 A. It is with the same strength that the Metaproterenol that

2 was on that prescription.

3 Q. If you open up that box, please, what is the volume on the

4 containers?

5 A. 2.5 CCs. The unit dose comes in 2.5 CCs only.

6 Q. Can you open it up and take a look?

7 A. Yes.

8 Q. Those are 2.5 CCs containers?

9 A. Yes.

10 Q. Look at the next item, Government's Exhibit 12.

11 Let me ask you first, do you recognize Government's

12 Exhibit 12?

13 A. Yes. This was done in Miami Pharmacy while I was working

14 there.

15 Q. Who made this product?

16 A. The solution was done by me.

17 Q. If you would open up that box. What is that that you are

18 holding?

19 A. It is the unit dose, the vials, that contains in this case

20 5 milliliters of Metaproterenol 0.4 percent.

21 Q. That is the same pharmaceutical?

22 A. The same strength but this is industrial. This is a

23 compounded product made by us under different conditions.

24 Q. You said you made this product, how do you know that?

25 A. I was the only person that made this solution in Miami

956

1 A. Astra Phar, an industrial manufacturer.

2 Q. Let's look at the next line. It says AMC. What does that

3 stand for?

4 A. That is the initials for the pharmacist currently working

5 at the time at Miami Pharmacy, Ana Maria Curas.

6 Q. Let's look at another exhibit right now.

7 Let's look at 1G. Do you recognize this label.

8 A. I recognize it from our pharmacy.

9 Q. Is this a manufactured product?

10 A. Yes.

11 Q. Is this box you examined compounded or a manufactured

12 product?

13 A. This is the box of our compounded product.

14 Q. This is a compounded product.

15 A. The label that you were showing corresponded or belongs to

16 an industrial product from Astra, from the same industrial

17 manufacturer that comes in a box similar to this.

18 Q. What is the total quantity of Isoetharine that is in this

19 compounded box?

20 A. I don't remember exactly. I think it is 100. The

21 compounded? It depends.

22 Q. Let me hand it to you.

23 A. Let me see it.

24 Total number of vials is 60.

25 Q. What is the total quantity of the Isoetharine in that box?

957

1 A. It should be 240 ml. 60 bottles times 4 ml, it should be
2 240 ml.
3 Q. What is the quantity on the bottom of the label?
4 A. 480 ml. It should be the total quantity the patient should
5 receive.
6 Q. You have just said this box only contains 240.
7 A. That is it.
8 Q. Why is there such a discrepancy?
9 A. Normally it should be given two boxes. In this case, cases
10 like this, the patient should receive two boxes instead of one,
11 because if you allow me to explain, as the instruction said,
12 four times a day the patient should receive 120 vials for the
13 whole month and each of these boxes can only contain 60 as a
14 maximum quantity of product. In this case the patient should
15 need to receive two boxes of 60 vials each.
16 Q. Did the patient receive two boxes?
17 A. I am not sure because I was not the person who deals with
18 the delivery and the marketing of this.
19 Q. Now let's go back if you would to when you were working at
20 La Moderna. You have said there came a time you started
21 working with prescriptions, entering them in the computer. Did
22 you do anything else?
23 A. Yes.
24 Q. What did you do?
25 A. Many times independent of the time I have -- without any

959

1 right side of the pharmacy, it is in the diagram, the right
2 side, there was some kind of stands there and they put the
3 boxes. These boxes came normally in cardboard cases and they
4 put these cases and these stands and any time we need some
5 medication that is not on the counter or are not in the
6 cabinets, we go to this area, to this warehouse, I don't know
7 what name is given to it, and we pick up the boxes we need.
8 Q. When you were labeling boxes, who would print out the
9 labels?
10 A. Normally either Carlos or me would print out the labels.
11 As soon as you enter it in the computer, the printer is giving
12 you immediately the printout of the label.
13 Q. When you said Carlito, who are you referring to?
14 A. Carlos Amador.
15 Q. We looked at the labels earlier with the quantity, do you
16 recall that?
17 A. I couldn't follow you.
18 Q. We discussed the boxes of Isoetharine with the quantities.
19 Do you recall at La Moderna ever printing out labels like that?
20 A. Yes.
21 Q. What do you recall?
22 A. I print labels for hundreds of clients along several
23 months. Normally we use these labels to put on the boxes.
24 Q. Did you sticker two boxes or one box?
25 A. It depends what was the customer and what was the company

958

1 additional occupation, I helped Carlos Amador to stick the
2 labels, to put the labels on the boxes.
3 Q. On what kind of boxes?
4 A. Boxes like that. The one like that I did.
5 Q. Are you talking about the prescription labels?
6 A. Yes. I am talking about to affix on the box, each box, a
7 particular label.
8 Q. Where at La Moderna would you do that?
9 A. May I stand?
10 Q. Please.
11 A. Here in the area under storage, there was a large counter
12 and several cabinets and normally we put the labels on the
13 boxes here using this counter.
14 MR. OGROSKY: He is referring to Government's Exhibit
15 26.
16 BY MR. OGROSKY:
17 Q. In the area you indicated, is that near the restroom?
18 A. Yes, the restroom is on the other side. The counter was
19 here, on the right side.
20 Q. How would the boxes of medication get to that room?
21 A. Normally the delivery picked up these boxes in South Beach
22 Pharmacy and bring with him to La Moderna.
23 Q. Where would he put them?
24 A. Some time they put this under the counter, and sometimes
25 they put the boxes in like a warehouse. There is a side, the

960

1 that was ordering these boxes. Sometimes for several companies
2 we filled completely the order and we give the total quantity
3 for each customer and sometimes for other companies we gave
4 only one box.
5 Q. In those cases where you gave only one box, who told you to
6 do that?
7 A. Let me see how I say this.
8 The person who told me how to do what to do was Carlos
9 Amador. After several months I knew by myself for example that
10 this company picks up only one box, not two.
11 Initially the person who instructed me to do anything
12 concerning these aerosol solution product.
13 Q. Did you deal personally with the durable medical equipment
14 companies?
15 A. No. Let me not absolutely deny it. Occasionally companies
16 come with an emergency, I need a couple of boxes for a patient,
17 it is an emergency, and I deal with this and give them the
18 boxes from my hand. Other occasions I deal with this company,
19 they come to me and say I want this for this month.
20 Q. Did you ever accept payment from the DME companies?
21 A. No, sir.
22 Q. Did you ever give an invoice to a DME company?
23 A. No, sir.
24 Q. Did you ever discuss payment for the pharmaceuticals?
25 A. No, sir.

961

1 Q. Who did that, discuss payment?

2 A. The normal procedure is this. Once we finish with the

3 labeling of the boxes, Carlos Amador takes all the labels, the

4 one that were used and the ones that were not used and they

5 made a printout from the computer to know exactly the name of

6 the client, etc., etc., and he deals with it. Normally he

7 takes this printout to the area outside the pharmacy for

8 billing, I don't know exactly how they do it.

9 Q. I will change topics with you for a second.

10 Have you been indicted in this case?

11 A. No, sir.

12 Q. Has the government made any promises to you about whether

13 you would be?

14 A. Not as such.

15 Q. Has the government given you any kind of immunity?

16 A. No, sir.

17 Q. Did there come a time you left La Moderna?

18 A. I couldn't follow, I don't hear very well.

19 Q. Did there come a time you left La Moderna Pharmacy?

20 A. I don't get the idea. I am sorry.

21 Q. When did you stop working at La Moderna?

22 A. La Moderna?

23 Q. Yes.

24 A. Probably, as I told you, August, September, 1995.

25 Q. Where did you go?

962

1 THE COURT: Sustained.

2 BY MR. OGROSKY:

3 Q. When you went to work at La Moderna, you said you were

4 assigned to the compounding room?

5 A. Yes.

6 Q. Were you required to stay in that room?

7 A. Yes.

8 Q. Were you allowed to walk freely throughout the pharmacy?

9 A. Normally we should not do it.

10 Q. Why?

11 A. Because he doesn't want you to be fooling around.

12 Q. Who?

13 A. Mr. Burgos.

14 Q. When you became involved in the prescriptions and the

15 labeling, were you required to stay in those work areas?

16 A. Yes.

17 Q. Why?

18 A. Because I was there.

19 Q. Let's move now to when you went to South Beach. What was

20 your job at South Beach?

21 A. To make the solutions exactly the same I was doing at La

22 Moderna and to help Janeide in printing refills. I didn't deal

23 with new prescriptions at South Beach, I dealt with refills and

24 to give her a hand sometime early in the morning on labeling

25 the boxes.

963

1 A. I was moved to South Beach Pharmacy.

2 Q. Who moved you?

3 A. Mr. Burgos, Marco Burgos.

4 Q. How did that occur?

5 A. Very briefly, my wife has to come to the United States and

6 we have several days for ourselves. When I returned I found

7 all my compounding stuff put in cases. Mr. Burgos told me now

8 you are going to be working in South Beach. So I pickup all

9 this stuff in my own car and I moved it to South Beach Pharmacy

10 and started to work there.

11 Q. You said he boxed up all of the compounding -

12 A. Everything that was in the compounding room. The balance,

13 the glassware, the raw materials, the monitors; everything, all

14 the equipment, all the glasses, everything that I usually need

15 for making aerosols.

16 Q. Did he ask you to go to South Beach Pharmacy?

17 A. He didn't ask. He ordered me to go to South Beach.

18 Q. How was your working relationship with Mr. Burgos?

19 A. I think he was a very demanding employer.

20 Q. What do you mean by that? Describe to the jury what it was

21 like working at La Moderna for Mr. Burgos?

22 A. At that time I just came from Cuba. I was not happy in the

23 way he deals with me -

24 MR. BIERMAN: Objection, relevance. Character

25 testimony.

964

1 Q. What was Janeide's job?

2 A. She was the person that deals with all related to aerosols

3 in South Beach. She was the person that deals with the

4 companies.

5 Q. What companies?

6 A. The DME companies. He was the person that did the faxes,

7 organized the work, labeled the boxes.

8 Q. She or he?

9 A. She was the person that would normally do all these things

10 and the person that handled the delivery to the DME. When it

11 comes to the pharmacy to pick up the boxes and the cases, he

12 was the person that gave this person the cases or the boxes.

13 MR. OGROSKY: At this time I would put up Government's

14 Exhibit 27 which has been admitted into evidence.

15 THE COURT: Okay.

16 BY MR. OGROSKY:

17 Q. Do you recognize these pictures?

18 A. They are all South Beach Pharmacy, areas.

19 Q. Areas?

20 A. This is the area where they have the refrigerator.

21 Q. These are areas in South Beach Pharmacy. Were these in the

22 prescription department?

23 A. They are all outside the prescription department.

24 Q. We will go one picture at a time. Start with the middle

25 picture. What is in the middle picture?

965

1 A. The middle picture is a photo of the pump normally used to
2 fill the small vials we have seen before.
3 Q. Can you point to the pump?
4 A. The pump is here. This is the device that delivers the
5 quantity of solution. This is normally connected with an air
6 compressor that is required to work. There is a pushing pump
7 here, the pump that pushes the liquid to the dispenser.
8 Q. What are those two items in the middle, the bottles?
9 A. I don't know if this is the solution that is going to be
10 filled. There is a label but I cannot read exactly what it
11 says.
12 Maybe the solution to be transferred to the small
13 vials or perhaps it might be sodium chloride or water for
14 cleaning the machine.
15 Q. When you compounded materials, did you ever store them in
16 these types of things?
17 A. Normally 100 percent we used the same plastic bottles or
18 4000 ml bottles to keep the aerosols.
19 Q. After you finished making the medication, you would store
20 it in those bottles?
21 A. Yes.
22 Q. What was in the second picture?
23 A. Normally we keep the solution once they are mixed. There
24 are several 4,000 ml bottles there.
25 Q. Can you tell from looking at that picture if those are

967

1 the prescription department, at that time there were two
2 pharmacists working.
3 Q. On the days you worked at South Beach Pharmacy, how many
4 pharmacists were there?
5 A. Usually one.
6 Q. How many pharmacist technicians were there?
7 A. At least four.
8 In the front there were two pharmacy technicians and
9 they are working in the prescription department. I was the
10 third and Janeide Portela should be the next.
11 Q. Who supervised your work in the back area?
12 A. Nobody. Nobody asked me ever what I was doing, nothing.
13 Nobody asked me nothing. Nobody asked me anything.
14 Q. You weren't a registered pharmacist at this time, were you?
15 A. No.
16 Q. Did you ever teach anyone else how to compound?
17 A. Yes.
18 Q. Who?
19 A. Involuntarily, I taught Janeide Portela how to do this
20 solution.
21 Q. Why did you do that?
22 A. Because when I was moved to South Beach Pharmacy and I
23 always thought that was the reason, Janeide wants to know how
24 to do the solution; so she wrote totally clear information
25 about how to make all of this solution.

966

1 pharmaceuticals?
2 A. One of them says Iso. It may be Isoetharine. Maybe.
3 Q. Go to the third picture, sir. What is depicted in that
4 third picture?
5 A. This is part of the area where I normally would make the
6 solutions for aerosols.
7 Q. What equipment would you use in this third area to make the
8 aerosol medications?
9 A. Essentially the balance and a magnetic stirrer. It is a
10 device to mix the solutions without the introduction of any
11 glass. It is a magnetic bar connected to another magnetic bar
12 and you can mix or stir all the solution without your hand
13 effort.
14 Q. This item stirs the product?
15 A. Yes, mixes the product.
16 Q. Who was the pharmacist at South Beach Pharmacy when you
17 were there?
18 A. There were several. Normally it was Peter. I never
19 remember his last name. It is an Italian last name. I never
20 remember his last name. There was a pharmacist named Blanca.
21 She only works for a little time. The pharmacist in charge
22 there was this Peter.
23 Q. Was there more than one pharmacist on duty?
24 A. Normally there is one pharmacist on duty. Suzanne Burgos
25 is a pharmacist and when she comes to the pharmacy and goes to

968

1 Q. Did anyone ask you to write out instructions about how to
2 do these?
3 A. No, nobody asked me to write this instruction. She asked
4 me how to do that; but this was an informal conversation. It
5 was not an order or not a request.
6 Q. Why did you leave South Beach Pharmacy?
7 A. After several weeks there, one Friday I received a check
8 for my salary that was cut by I think \$100. The next morning I
9 went to La Moderna and had a conversation and then an argument
10 with Marco Burgos, what was the situation that made this cut in
11 my salary. After this very nasty argument, he fired me. He
12 said not to return to the pharmacy.
13 Q. Did he accuse you of any wrongdoing?
14 A. No, never.
15 Q. Where did you find employment after that?
16 A. With Carlos Amador in Miami Pharmacy.
17 Q. How long did it take you to find a job?
18 A. Three days.
19 Q. I will ask you if you could to step down and look at what
20 has been marked as Government's composite Exhibit 1.
21 Do you recognize Government's composite Exhibit 1?
22 A. These are boxes filled in Miami Pharmacy supposedly with
23 aerosol solutions.
24 Q. Who made these medications?
25 A. If these are solutions, it was made by me.

969

1 Q. You have looked at these boxes. Are these aerosol
 2 solutions?
 3 A. I don't know exactly what the bottles contain.
 4 Q. Would you like to look?
 5 A. After that time? I think it is not necessary. It contains
 6 solid material. It should be the aerosols made by me.
 7 Q. Was there anyone else that made aerosol medications at the
 8 pharmacy?
 9 A. No.
 10 Q. I will show you what has been marked Government's Exhibit
 11 23C. Do you recognize this picture?
 12 A. Yes.
 13 Q. How do you recognize it?
 14 A. Because of the labels in Miami Pharmacy and the additional
 15 label on the side of the box.
 16 Q. Do you recognize the handwriting?
 17 A. It is my handwriting, sir.
 18 Q. What was your job at Miami Discount Pharmacy?
 19 A. To make the solutions and to watch that the filling of the
 20 bottle was the most accurate possible and to label some of the
 21 boxes and eventually for a particular situation, to enter a
 22 couple of labels, some labels that were destroyed but was
 23 supposed to deal with the production and the filling of this
 24 solution.
 25 Q. Who was your boss there?

970

1 MR. SWARTZ: That is the lady in Court with me and the
 2 person standing is the person he is talking about.
 3 MR. OGROSKY: Will the record reflect the witness has
 4 identified the witness?
 5 THE WITNESS: I so identify.
 6 THE COURT: It will so reflect.
 7 BY MR. OGROSKY:
 8 Q. Can you identify Janeide Portela?
 9 A. She is wearing glasses besides Suzanne Burgos. It is seven
 10 years without glasses but it should be Janeide Portela.
 11 MR. OGROSKY: May the record reflect Mr. Gomez has
 12 identified Janeide Portela?
 13 THE COURT: It will so reflect.
 14 MR. OGROSKY: No further questions.
 15 THE COURT: Mr. Rodriguez?
 16 MR. RODRIGUEZ: No questions. Mr. Adelstein?
 17 MR. ADELSTEIN: No questions.
 18 THE COURT: Mr. Houlihan?
 19 MR. HOULIHAN: No questions.
 20 THE COURT: Mr. Bierman?
 21 MR. BIERMAN: Mr. Swartz will examine.
 22 CROSS EXAMINATION
 23 BY MR. SWARTZ:
 24 Q. Mr. Gomez, you mentioned in your direct examination about,
 25 and I cannot pronounce -- I knew I wouldn't be able to

970

1 A. Carlos Amador.
 2 Q. How long did you work at Miami Discount Pharmacy?
 3 A. About two years.
 4 Q. Earlier we discussed this labeling discrepancy; do you
 5 recall that?
 6 A. Yes.
 7 Q. What was your experience with that at Miami Discount
 8 Pharmacy?
 9 A. The same situation. Normally there were companies that
 10 picked up the total quantity, the real quantity they required
 11 and there were many companies that receive only a partial. I
 12 talked with Carlos Amador about this and after a time he began
 13 to deliver the complete quantity.
 14 Q. When did you study for your pharmacist license?
 15 A. The first test was taken ins December of 1996.
 16 MR. OGROSKY: If I could have a moment?
 17 THE COURT: Yes.
 18 BY MR. OGROSKY: --
 19 Q. You have identified a man by the name of Marco Burgos, do
 20 you see him there?
 21 MR. BIERMAN: We so stipulate this is Marco Burgos.
 22 A. Yes.
 23 THE COURT: The record will so record that.
 24 BY MR. OGROSKY:
 25 Q. You have also mentioned a Suzanne Burgos.

972

1 pronounce it, bicarbonate --
 2 A. Sodium bicarbonate.
 3 Q. You see how well I did in chemistry.
 4 You said a change was made in the formulation?
 5 A. Yes.
 6 Q. That change was suggested to you by Suzanne Burgos herself?
 7 A. It was in the paper I received from Janeide Portela. I
 8 followed this procedure and I asked Suzanne about this change
 9 and she said -- she answered we made the change. It was
 10 something like this, it was easier.
 11 Q. But you had no problem with the change?
 12 A. No, there was no problem with the change.
 13 Q. In fact you believed it was actually a good change?
 14 A. Yes, it was a change.
 15 Q. Why is that?
 16 A. I give you a brief explanation. When you use the sodium
 17 hydroxide, you need to use diluted, cooled, solution because
 18 when you add it to the Acetylcysteine, you destroy part of the
 19 Acetylcysteine.
 20 When you use the sodium bicarbonate, this problem is
 21 avoided. You need to be careful with a solution of sodium
 22 bicarbonate, there is a lot of foam; but from the final point
 23 of view it is better always to use sodium bicarbonate rather
 24 than sodium hydroxide.
 25 Q. You had no problem with that?

973

1 A. No problem with it.

2 Q. Are you familiar with the Professional Compounding Company

3 of America?

4 A. Yes.

5 Q. What is PCCA?

6 A. It is a company in Houston, Texas, that is dealing with

7 everything relating to the compounding. Once you are

8 associated, the pharmacy is associated with this company, they

9 send you or they sell you all stock to make the aerosol. They

10 give you written instructions, they can give you personal

11 instruction and they can even give the associate some kind of

12 direct instructions in Houston for the production of every kind

13 of aerosols.

14 Q. When you were there, did you buy your chemicals --

15 A. From PCCA, normally.

16 Q. If there were any questions about filling a formulation --

17 A. I would call them and they are very kindly give me good

18 advice.

19 Q. That was in existence, PCCA, the relationship with PCCA and

20 La Moderna was in existence when you started there?

21 A. Yes.

22 Q. In fact, the equipment that you described in the

23 photograph, I don't know the number, 29, maybe or 26, it is not

24 up there; but do you remember the compounding equipment?

25 A. The compounding equipment normally was there in the

975

1 medications.

2 Q. I am going to ask you to look at for purposes of

3 identification Defendant Suzanne Burgos Exhibit 2. Just take a

4 look at this, don't say what they are, just tell me if you

5 recognize it?

6 A. Yes, I recognize this.

7 Q. Can you flip through, I think there are eight or nine

8 there, tell me if that is all of them?

9 A. Yes.

10 Q. What would you call them?

11 A. Original procedures from PCCA.

12 Q. They came to you from PCCA?

13 A. By fax.

14 Q. Do you recognize your handwriting on any one of them?

15 A. Yes, on one of them.

16 Q. Just one?

17 A. The last one. Some instructions.

18 MR. SWARTZ: I will mark that as 2A for purposes of

19 identification. If you could just hold that one.

20 BY MR. SWARTZ:

21 Q. You actually worked with those papers in formulating or

22 filling these prescriptions?

23 A. Yes.

24 Can I finish answering your question?

25 Q. I don't have a question pending.

974

1 pharmacy, most of them, from PCCA. If you are talking about

2 the compounding equipment, about the pump, it is not from PCCA.

3 Q. The compounding equipment?

4 A. The glassware, the reagents, the stirrer, the balance,

5 normally it was there in the pharmacy.

6 Q. From PCCA?

7 A. Let me clarify it. Many compounding substances, the

8 balance, the glassware, the magnetic stirrer were in the

9 pharmacy when I went there to work.

10 Q. It was there already?

11 A. Yes. I ordered the reagents after I began to make the

12 solution. I was authorized to call PCCA and request all the

13 reagent I needed for this aerosol preparation.

14 Q. And that was something you were able to order if you

15 thought you needed it?

16 A. Yes.

17 Q. Did you ever look at formulations from PCCA?

18 A. If I look?

19 Q. While you worked there at La Moderna --

20 A. I ordered several formulations from PCCA.

21 Q. Those formulations, could you describe what they are?

22 A. I requested formulations for different creams.

23 Q. Let me back up. I am talking about aerosol medication.

24 Did you ever look at formulations?

25 A. Yes, I requested original procedures for the aerosol

976

1 A. Can I clarify your last words?

2 Q. Sure.

3 A. I normally follow this instruction with some modifications.

4 I didn't follow this instruction exactly as they were written.

5 Q. The modifications that you made were those that you felt --

6 A. To simplify the procedures.

7 Q. When you worked at La Moderna, the supervising -- managing

8 pharmacist was not Suzanne Burgos, was it?

9 A. When I began, I remember Suzanne. After several months

10 there were other pharmacists. One lady named Alex or

11 Alexandre. I never knew the last name. After that there was

12 Mary. I think the last name is Gabriel or something like this.

13 It was not a very common last name. There were several

14 pharmacists at La Moderna.

15 Q. When you were talking about filling the prescriptions, and

16 I believe it is 90 we are referring to, which as you said did

17 not have the dosage; is that correct?

18 A. Yes. The strength.

19 Q. Which would have been the amount that the person takes each

20 time they use the medication?

21 A. I couldn't follow you.

22 Q. The strength, is that the same as the dosage?

23 A. No. Yes, you are right. The strength is correct in the

24 case of Metaproterenol. It is incorrect in the case of

25 Acetylcysteine but in both cases the quantity is missing.

977

1 Q. You said you would look at a separate piece of paper. If
2 it didn't have it on the prescription, you could look at a
3 separate piece of paper?
4 A. To complete the information.
5 Q. Is that correct?
6 A. That is right.
7 Q. That is how you handled these prescriptions?
8 A. Yes.
9 Q. So you were able to fill them?
10 A. I was able to enter the information into the computer
11 using -- in cases like this, using the two papers, information
12 from the two sources.
13 Q. Going back to Suzanne Burgos. You got to know her as a
14 pharmacist?
15 A. Yes.
16 Q. Did you talk to her in English?
17 A. In English.
18 Q. She wasn't able to converse with you in Spanish?
19 A. No.
20 Q. You formed an opinion as to her, shall we say, competency,
21 as a pharmacist as far as overseeing the proper way of
22 handling --
23 A. I can give you my opinion about Suzanne in general.
24 Q. Let me ask you specifically. Did you find her to be a
25 pharmacist who wanted to make sure the pharmaceutical rules

375

1 Q. Peter Camili?
2 A. He never worked at La Moderna. It was Mary and Alexandre.
3 Q. They were the managing pharmacists?
4 A. They were the managing pharmacists. This Egyptian lady was
5 the only one who really wants to know what I was doing. She
6 spent two day's working with me in the compounding room making
7 herself the aerosol and watching. It is the only person who
8 really verified something.
9 Q. If there was a question on a prescription, it was her job
10 to call the doctor, the managing pharmacist?
11 A. Yes, but nobody calls.
12 Q. It was her job to do it?
13 A. Yes.
14 Q. I wanted to ask you about the diagram.
15 You know the expression, "in the box"?
16 A. No.
17 Q. The area where the medication is kept, prescription
18 medication. That is in an area that is secured or sealed
19 away -- not sealed, but it is supposed to be separate from the
20 public?
21 A. Yes.
22 Q. The compounding room in that photograph, that is adjacent
23 to where the prescription medication was?
24 A. Yes.
25 Q. I see in the photograph --

978

1 were followed correctly?
2 A. My answer is, yes, in things that concerned the
3 prescription department. I remember to ask to the person
4 working at the pharmacy, don't ever sell a medication without a
5 prescription. He asked to me and to Carlos Amador, don't ever
6 keep a box without expiration date or a lot number. Concerning
7 this kind of situation, I have the best opinion about her. I
8 think she was a nice but demanding person.
9 Q. Did she ever permit medication to be dispensed without
10 prescription?
11 A. Never. She was a very demanding person. She made sure
12 everybody obeyed the rules. I am talking about everything but
13 the aerosols, because concerning the aerosols, the interaction
14 with me was practically zero, only occasional, only to put the
15 boxes with the lot number, expiration date and not to leave a
16 box without the real information even out of the cabinets; but
17 there was no interaction, no control in my opinion. It is what
18 I see. What I saw in the production of aerosol. Carlos Amador
19 and myself were working without any control in that situation.
20 Q. That person controlling you in that situation would have
21 been the managing pharmacist; is that right?
22 A. It should be.
23 Q. Suzanne Burgos wasn't the managing pharmacist; is that
24 correct?
25 A. At that time there was, as I told you --

980

1 THE COURT: What exhibit are we talking about?
2 MR. SWARTZ: I don't know the number. It is the
3 diagram.
4 THE COURT: Identify it, please.
5 MR. SWARTZ: 26.
6 BY MR. SWARTZ:
7 Q. Can you see it from where you are sitting?
8 A. I am fine.
9 Q. If it is easier to get up, you can walk closer. I want you
10 to point to what looks like an open doorway. Right here, do
11 you see what I am referring to as a doorway. Is that a
12 doorway?
13 A. That is the entrance close to the prescription department
14 and the compounding room. There is not a wall. This is a
15 counter. The person who wants to enter into the prescription
16 department or the compounding room needs to go to this part of
17 the counter and go across the hall. Once this person arrives
18 to the end of the hall, steps up to the prescription department
19 or can continue walking to the compounding room.
20 Q. There is only one entrance to get to that area?
21 A. Yes. There is like an elastic stretching enclosure.
22 Q. You found that in the compounding area of South Beach,
23 South Point, that the compounding conditions were not bad?
24 A. They were not.
25 Q. In other words, they were good?

981

1 A. They were good.
 2 Q. They had been inspected by an inspector by the name of --
 3 A. Gluck.
 4 Q. Mr. Gluck?
 5 A. Yes.
 6 Q. From the State of Florida?
 7 A. Yes.
 8 Q. And he visited the premises while you were there, at least
 9 once?
 10 A. Yes.
 11 Q. And he did a full inspection?
 12 A. Yes.
 13 Q. If there was any problems, he would have told you about it?
 14 A. No.
 15 Q. He didn't tell you of any problems?
 16 A. No problems. We talked a lot and there were no problems O.
 17 Q. The photograph of the compounding room we look at earlier,
 18 was there more to the compounding room than we see in those
 19 photos?
 20 A. You are talking about La Moderna?
 21 Q. The photo we looked at, I think it was South Point or South
 22 Beach?
 23 A. No, La Moderna. This one?
 24 THE COURT: Identify the exhibit.
 25 BY MR. SWARTZ:

983

1 A. No. I hear about her when I was working at La Moderna.
 2 Q. What did you hear about her?
 3 A. That she was fired --
 4 MR. OGROSKY: Objection.
 5 THE COURT: Sustained.
 6 MR. SWARTZ: No more questions.
 7 THE COURT: Mr. Bierman?
 8 CROSS EXAMINATION
 9 BY MR. BIERMAN:
 10 Q. Good afternoon.
 11 A. Let me turn off my phone that turned on accidentally.
 12 Q. Mr. Gomez, I am Don Bierman and I represent Marco Burgos
 13 and I want to ask you a few questions.
 14 A. All right, sir.
 15 Q. When you were hired at La Moderna, you had recently arrived
 16 in the United States; correct?
 17 A. Yes.
 18 Q. You came from Cuba?
 19 A. Yes.
 20 Q. And your last job in Cuba you were a professor of
 21 biochemistry/pharmacist?
 22 A. I was a professor of pharmaceutical chemistry in Cuba.
 23 Q. You were very well qualified to do compounding; is that
 24 correct?
 25 A. I was and I am a very good chemist.

982

1 Q. Exhibit 27, those photographs. Was there more to the
 2 compounding room than was in those photographs?
 3 A. I can't follow the initial part.
 4 Q. I will withdraw the question. That is okay.
 5 I believe you mentioned at South Beach or South Point
 6 there were four technicians but only one pharmacist; is that
 7 what you said?
 8 A. I said normally we were four technicians working in the
 9 pharmacy. Eventually when Suzanne was not there, there was
 10 only one pharmacist.
 11 Q. Normally was there only one pharmacist there?
 12 A. Yes.
 13 Q. And how many technicians?
 14 A. At least two in the front working in the prescription
 15 department and Janeide and myself in the compounding room.
 16 Q. Who were the other two?
 17 A. There were three persons and one of them was named Cookie.
 18 Another one is named Martha. I never remember the name of this
 19 person.
 20 Q. Were they technicians?
 21 A. I suppose so, they were working with medications.
 22 There was a third person, a man. I never remember the
 23 name of this person; but I suppose they were working at least
 24 two at a time.
 25 Q. Did you ever meet Odalis Regil?

984

1 Q. Chemists understand putting ingredients together because
 2 when I was a kid if you put the wrong ones together they would
 3 explode; so that is part of a chemist's job to put ingredients
 4 together; correct?
 5 A. Correct.
 6 Q. And you were highly qualified for that job?
 7 A. I never have done that job.
 8 Q. But you taught it?
 9 A. But I know how to do it. I had never done it before.
 10 Q. When you left Cuba, your last job was at the University of
 11 Havana?
 12 A. Yes.
 13 Q. Are you a tenured professor?
 14 A. 25 year professor.
 15 Q. You had the full credentials necessary to teach at the
 16 University of Miami?
 17 A. Yes, sir, I was titular professor, the Dean of the
 18 pharmaceutical chemistry.
 19 Q. You were head of the department?
 20 A. Head of the section.
 21 Q. And Mr. Burgos asked you about that?
 22 A. We talk about a lot of things. I can't remember if we
 23 talked about this. Probably we talked about something like
 24 this.
 25 Q. Did you and he speak in Spanish?

1 A. We spoke in Spanish. My English at that time was not very
 2 good.
 3 Q. And you pride yourself, do you not, sir, in your honesty
 4 and your ability?
 5 A. Can you repeat that? I couldn't follow the idea.
 6 Q. I will try again.
 7 Are you proud of the fact that you are a professional?
 8 A. Yes.
 9 Q. That you were an educator?
 10 A. Yes.
 11 Q. That you try and do things right?
 12 A. Yes.
 13 Q. That when you take a job you work at it?
 14 A. Yes.
 15 Q. And in fact when you were running the compounding lab at La
 16 Moderna, you did it right?
 17 A. Yes.
 18 Q. And what you compounded was what filled the formula, with
 19 some modifications?
 20 A. Okay. There are solutions and solutions can be done in
 21 very different and very different efficient ways.
 22 Q. You made an end product that you were as a professional,
 23 satisfied with?
 24 A. Yes, that is correct.
 25 Q. How many times did you find green gook in the lines?

1 Q. You as a professional would never permit it, the use of a
 2 machine with fungi?
 3 A. Correct.
 4 Q. And Marco Burgos never said to you don't worry if this
 5 place is filthy, and filled with green fungus?
 6 A. Of course not.
 7 Q. If he had, you wouldn't have listened to that, you wouldn't
 8 have kept working?
 9 A. I suppose, yes.
 10 Q. Am I supposing right?
 11 A. Yes, of course. I would never allow to do anything that
 12 can be nauseous for any person.
 13 Q. In his direct examination, the Assistant U.S. Attorney
 14 asked you about some prescription which is Exhibit 90, I think,
 15 Exhibit 90, and Exhibit 90 had nothing to do with South Beach
 16 or La Moderna Pharmacy?
 17 A. That is correct, it is for Miami Pharmacy.
 18 Q. Miami Pharmacy is where you worked for two years?
 19 A. Yes, sir.
 20 Q. When you worked there for two years, you worked there with
 21 Carlos Amador?
 22 A. Yes.
 23 Q. You have identified several people you talked about and one
 24 of them was Carlos Amador?
 25 A. He is not here.

1 A. Green?
 2 Q. Green gook, I don't know how else to explain, fungus?
 3 A. I never found -- you are talking about the solutions or you
 4 are talking about the compounding?
 5 Q. In the tubes that put the solution into the vials?
 6 A. I don't have many opportunities to check these vials.
 7 because the vials were sold after probably several days after I
 8 made it.
 9 Q. I don't think you understand my question.
 10 When you took from the large container into the little
 11 vials, it went through some machinery; correct?
 12 A. Okay.
 13 Q. That machinery had tubes; correct?
 14 A. Okay.
 15 Q. And you would see that?
 16 A. I don't deal with this. There was another person who
 17 filled the bottles. I made the solutions, but I was not
 18 involved in the filling of the bottles, so I never -- to answer
 19 your question, I never saw mold in any one of the bottles and I
 20 never had the opportunity to fill a prescription, to fill the
 21 bottles using the pump because it was not my responsibility,
 22 and I didn't do, never.
 23 Q. When you moved to South Beach?
 24 A. That was my responsibility. That was very possible and I
 25 never saw a fungus

1 Q. He is not sitting there as a defendant in this case, is he,
 2 sir?
 3 A. Yes.
 4 Q. Yes, he is not?
 5 A. He is not here.
 6 Q. And you are aware, are you not, that Carlos Amador plead
 7 guilty to defrauding the United States?
 8 A. I know he pled guilty.
 9 Q. Among the things he did were illegal acts at Miami
 10 Pharmacy?
 11 A. Legal?
 12 Q. Illegal, unlawful?
 13 A. Yes.
 14 Q. And you worked there?
 15 A. Yes.
 16 Q. But you didn't know he was doing anything illegal?
 17 A. I knew it.
 18 Q. And you continued --
 19 A. I knew he was doing wrong things and I talked to him a lot
 20 of times, but I was not the owner, I was an employee and I was
 21 trying to do my job as best as possible to fill the solution
 22 with the correct volume, to try to put a label here on these
 23 boxes to avoid tampering. Anything I could do to satisfy my
 24 action. The business was not in my hands.
 25 Q. I will go back to the prescription for a moment.

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1 As you entered the courtroom, sir, you noticed those
 2 multi-colored boxes over there; didn't you?
 3 A. Multi-colored boxes?
 4 Q. They are sitting on the first bench.
 5 A. I didn't see it.
 6 Q. Did the Assistant U.S. Attorney or many of the agents that
 7 worked with you, did they ever ask you to go over there and
 8 look at the actual prescriptions from La Moderna and South
 9 Beach?
 10 A. Let me tell you -- two questions. First of all, I don't
 11 know what it is in those boxes. Second, I checked with them
 12 only several prescriptions that she showed me, but only several
 13 of them.
 14 Q. They didn't ask you to go and look through those boxes and
 15 find anything similar to number 90?
 16 A. No, sir.
 17 Q. If I hand you these prescriptions --
 18 MR. OGROSKY: May I see them, please.
 19 THE COURT: Show them to Mr. Ogrosky.
 20 (Interruption.)
 21 THE COURT: While he is looking at that, we will take
 22 a break.
 23 Do not discuss this case amongst yourselves or anyone
 24 else. Have no contact whatsoever with anyone associated with
 25 the trial. Do not read or listen to anything touching on this

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1 THE COURT: What is it you want to do with these
 2 prescriptions?
 3 MR. BIERMAN: I want to show him these and ask him if
 4 these are typical of what he received. They won't go in, they
 5 are for demonstrative purposes only and to be identified by
 6 this witness.
 7 MR. OGROSKY: He can't show these to the jury in this
 8 case and he is asking him to comment on prescriptions that
 9 aren't in evidence in our case.
 10 THE COURT: The witness can identify these
 11 prescriptions. He would not be able to show them to the jury.
 12 MR. BIERMAN: I wasn't planning on it. I didn't think
 13 the demonstrative exhibit should have been shown, either.
 14 THE COURT: They said they will tie it up.
 15 MR. BIERMAN: I will tie mine up.
 16 MR. OGROSKY: We don't want this witness to testify to
 17 something unrelated to this case. Our prescription was for
 18 First Option.
 19 THE COURT: He is entitled to show prescriptions that
 20 the pharmacy filled if he knows about them. He hasn't
 21 indicated he has knowledge of the pharmacy's prescriptions that
 22 were filled. He only worked in the compounding room; but if he
 23 can identify these as prescriptions he recognizes from La
 24 Moderna, ask him that. I will not allow them to be shown to
 25 the jury now. You will have to wait for your case to introduce

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1 matter in any way. Be back in the juryroom in fifteen minutes.
 2 If anybody should try to talk to you about this case, instruct
 3 them to immediately stop and be in contact with my staff
 4 concerning it.
 5 (Jury leaves room.)
 6 MR. OGROSKY: We object to these particular documents.
 7 They didn't have any tie to the conspiracy. These are
 8 prescriptions for different patients, it looks like a number of
 9 different doctors. I don't know what Mr. Bierman wants to do
 10 with these, but I don't think he should be introducing
 11 documents in our case. They are not marked and there is no tie
 12 to this clinic. He could pull a prescription out and say this
 13 is a good prescription as opposed to this one and I don't know
 14 what that has to do with this case. This witness testified to
 15 these prescriptions like the ones he saw at La Moderna.
 16 THE COURT: Are these aerosol prescriptions?
 17 MR. BIERMAN: Yes, of course. The point being that
 18 these were available and to put that on and suggest from his
 19 memory, which he says I don't have specific memory anyway,
 20 there were some like this; these have been available. The
 21 government spent at my reciprocal discovery, their agent spent
 22 two to three days going over my prescriptions. They could have
 23 copied them because that is what Rule 16 provides. They are
 24 here, they are available and I objected at the time to that
 25 exhibit --

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1 them; but he can show them to the witness and ask him if he can
 2 identify them.
 3 MR. BIERMAN: That is all I intended to do.
 4 MR. SHOHAT: Why is it the government can show
 5 demonstrative exhibits during their direct examination and we
 6 can't offer exhibits to counter that? Are we going to have to
 7 call the witnesses back?
 8 THE COURT: You may have to.
 9 I have ruled with this case with twelve defendants and
 10 in the administration of justice in this case, that the
 11 government is going to introduce their case and their exhibits
 12 and in the defense case you will introduce your witnesses and
 13 your exhibits.
 14 You can lay the predicate and seek to introduce them
 15 at that time, but I will not allow the introduction of exhibits
 16 for twelve different defendants during the government's case.
 17 We will have an orderly presentation of the case. The
 18 government has the burden, they go first, then the defendants
 19 proceed and during the defense case you will be able to
 20 introduce your exhibits.
 21 MR. SHOHAT: I understand, Your Honor, and the reason
 22 for it; but the only thing I am suggesting, Judge, it can be
 23 very unfair to the defense. The government gets to do these
 24 demonstrative examinations --
 25 THE COURT: Mr. Shohat, I allowed the government to

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1 introduce that particular exhibit as a demonstrative exhibit
 2 subject to the proffer that was provided by the government they
 3 are going to tie it up and I found it to be a sufficient
 4 proffer.
 5 MR. SHOHAT: I am not complaining about it.
 6 THE COURT: Then don't complain about it. I have
 7 ruled and this is how we are going to proceed. I allowed the
 8 government to go forward because I found there was a factual
 9 basis for their proffer.
 10 MR. SHOHAT: It is going to extend the trial
 11 enormously.
 12 THE COURT: We will have to deal with that,
 13 Mr. Shohat.
 14 We are in recess for ten minutes.
 15 (Thereupon a recess was taken, after which the
 16 following proceedings were had.)
 17 (Open court. Jury not present.)
 18 THE COURT: United States of America versus Idania C.
 19 Arias, et al., Case Number 00-683.
 20 Would counsel state their appearances.
 21 (All parties present.)
 22 THE COURT: Mr. Pelletier, Richard is going to need a
 23 monitor so he is able to see what you are showing.
 24 MR. PELLETIER: I will take care of it.
 25 Can we take care of another matter?

995

1 A. Yes.
 2 Q. A pharmacy can have an opening in the counter so the
 3 employees can walk back and forth?
 4 A. Yes.
 5 Q. But if Joe Public walks into the general retail drugstore
 6 and starts walking back there, he will be told to stop?
 7 A. Yes, correct.
 8 Q. Because you are not allowed back there, quite simply?
 9 A. Correct.
 10 Q. That is no problem that you have ever encountered, is it,
 11 with the public coming back into the pharmacy when you were
 12 working at La Moderna?
 13 A. I couldn't follow you, the idea, sir.
 14 Q. When you were working at La Moderna, did you ever encounter
 15 members of the public coming back into the compounding area?
 16 A. No, never.
 17 Q. Into the pharmacy?
 18 A. No.
 19 Q. Into the storage area?
 20 A. The storage area -- what do you call the storage area, let
 21 me see exactly to be sure what I am answering you.
 22 Q. Where the restroom is, you didn't have members of the
 23 public coming in there?
 24 A. Not usually.
 25 Q. This is Exhibit 26.

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1 THE COURT: How much longer on cross?
 2 MR. BIERMAN: Ten or fifteen minutes.
 3 MR. TARLOW: I would like to go ahead of Mr. Lazarus.
 4 No more than ten minutes.
 5 THE COURT: We will take it up before the next
 6 witness, Mr. Pelletier, if we get to it.
 7 Bring the jury in, please.
 8 (Jury present.)
 9 THE COURT: You are still under oath, sir.
 10 Thereupon --
 11
 12 CARLOS GOMEZ,
 13 called as a witness herein, having been previously duly sworn,
 14 was examined and testified further as follows:
 15 THE COURT: You may proceed. Mr. Bierman.
 16 BY MR. BIERMAN: (Continuing.)
 17 Q. Now that we have had a break, it is a good time to ask you
 18 about the bathroom at La Moderna. Is it a public bathroom?
 19 A. No, it is for the employees.
 20 Q. I gather there may have been some occasion if somebody was
 21 desperate, some client was desperate --
 22 A. Maybe it happened. I do not discard this option.
 23 Q. It was not common?
 24 A. It is not common. It was for employees.
 25 Q. And it was the control of La Moderna?

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1 The storage area around the area of the restroom?
 2 A. If a person needed to go to the restroom, they needed to go
 3 through the storage area.
 4 Q. Other than an emergency, the public was not coming into
 5 this area?
 6 A. Not normally.
 7 Q. This is the area that has the restroom and underneath it
 8 the word storage?
 9 A. Correct.
 10 Q. Before the break, Mr. Gomez, we were looking at what has
 11 now been marked as Defendant Burgos Exhibit 4 for
 12 identification, a composite group of prescriptions. Don't say
 13 anything about them. I just want you to look at them for the
 14 moment
 15 (Interruption.)
 16 BY MR. BIERMAN:
 17 Q. Were these the type of prescriptions you would put into the
 18 computer when you worked at La Moderna?
 19 A. The type.
 20 Q. Were these during the time period you work at La Moderna?
 21 A. 1995. This was not the time. This was not the time. This
 22 one has no date. Several correspond to the time I was working,
 23 several were after that. One of them without a time and one of
 24 them is a copy. Okay.
 25 At least all of these were sent or received at La

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1 Moderna or when I was working at La Moderna.
 2 Q. I can't ask you about them now because they are not in
 3 evidence but we may return to them later.
 4 MR. BIERMAN: I would offer them. Your Honor.
 5 THE COURT: I have already ruled.
 6 MR. BIERMAN: I understand.
 7 BY MR. BIERMAN:
 8 Q. Now that you have passed the pharmacy board and you are a
 9 licensed pharmacist. If a customer walks into a store where
 10 you are working, let's say as an example I come into your store
 11 and I have a prescription for 30 days worth of Zocar 40
 12 milligrams, and I have also a prescription for 30 days worth of
 13 Hyzar 12.5?
 14 A. Hyzar?
 15 Q. Hyzar, blood pressure medicine, heart medicine.
 16 A. 12.5?
 17 Q. Yes.
 18 A. Continue.
 19 Q. I hope it is okay. I take it every day.
 20 And I say to you, and now it is not me, I am sure, but
 21 when I say to you these two prescriptions together, how much
 22 would this be, Mr. Gomez, and you look at them and tell me
 23 according to Walgreen's list or Eckerd's list that the Zocar is
 24 \$120 for a month's worth and the Hyzar is \$90 and that comes to
 25 210 and I say to you I can only afford now \$110. Can you fill

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1 A. Yes, sir.
 2 Q. And you included in your background that you had been a
 3 tech and you did compounding?
 4 A. Excuse me. When I answered my boards?
 5 Q. Yes.
 6 A. I don't need to give information about this. I only need
 7 to give them the results of the test, not information about --
 8 they only asked me to know if I had some kind of problem with
 9 the law with any place I work or something like this.
 10 Q. You had no problem in your mind you had been working in
 11 compounding, correct?
 12 A. I think I will need the assistance. Sometimes I can't
 13 follow you.
 14 THE COURT: Let's assist him. You will have to answer
 15 in Spanish. Answer totally in Spanish. She will interpret for
 16 you.
 17 BY THE WITNESS:
 18 A. No problem.
 19 BY MR. BIERMAN:
 20 Q. When you were asked about manufactured available, and I
 21 don't remember which one of these medicines it was, medicines
 22 in 2.5 milligrams and did you filled a 5 milligram prescription
 23 with compounded medicine as opposed to manufactured medicine?
 24 A. The answer is, no. Miami Pharmacy filled a prescription
 25 erroneously.

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1 one half of that prescription at my request.
 2 A. Yes
 3 Q. You don't have to call a doctor or do anything else?
 4 A. No, sir.
 5 Q. And you would find nothing wrong with that?
 6 A. No, sir.
 7 Q. Other than medicine costs too much?
 8 A. Of course.
 9 Q. The first time you began compounding the aerosols was in
 10 January of 1995?
 11 A. The first time I begin compounding was in August and it was
 12 in the first month of 1995. January.
 13 Q. January as in the first month?
 14 A. Yes, 1995.
 15 Q. And you began doing some of the ordering?
 16 A. Yes.
 17 Q. Incidentally, there is nothing wrong with compounding?
 18 A. No. It is allowed by the legislation to make compounded
 19 products.
 20 Q. It is a proper function?
 21 A. Yes.
 22 Q. You did it for four years, almost?
 23 A. A pharmacist.
 24 Q. When you applied for your pharmacy license, you included
 25 your background?

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1 THE COURT: Sir, you will have to answer totally in
 2 Spanish. You can go back and forth. It is much too
 3 complicated.
 4 BY THE WITNESS:
 5 A. Miami pharmacy prepared and filled that prescription
 6 erroneously.
 7 BY MR. BIERMAN:
 8 Q. The patients that received aerosols were frequently
 9 elderly; is that correct?
 10 A. I do not have the exact information, but I must suppose
 11 they are the people who needed it the most.
 12 Q. It would not be unusual, would it, that a doctor rather
 13 than have an elderly patient, most of whom apparently -- strike
 14 that. -- an elderly patient have one ampule rather than two to
 15 break and put into a machine would rather have 2.5 rather than
 16 5 milliliter sizes; wouldn't he?
 17 A. Yes, the doctor may desire that. But the usual thing,
 18 since compounding can be done throughout the entire range of
 19 values, of logical values that the doctor might need, it makes
 20 no sense that the doctor should order double the amount of
 21 vials or half of the necessary strength in order to resolve a
 22 problem. That has no sense whatsoever.
 23 Q. But you have to follow the doctor's orders whether it made
 24 no sense or not?
 25 A. You are looking at my answer as a pharmacist today.

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1 Q. The pharmacy would have had to follow the doctor's order
 2 when you work at Miami Pharmacy?
 3 A. As long as the order - well, when I work at Miami
 4 Pharmacy, I was not a pharmacist. I cannot answer what another
 5 pharmacist would have done at that time.
 6 I can answer what I would do at this time if I found
 7 myself - I should try to contact the doctor and solve the
 8 problem, but, if I had any questions concerning the good end or
 9 the appropriateness of serving out this medicine to the
 10 patient, I would not fill the prescription because in the last
 11 instance the pharmacist is responsible for whatever should
 12 happen with that medicine.
 13 Q. Are you done?
 14 A. Yes.
 15 Q. But there would be nothing dangerous in using a compounded
 16 5 milliliters if the prescription said 5 milliliters; is that
 17 correct?
 18 A. There will be no problem in doing so if the prescription
 19 says 5 milliliters.
 20 Q. When you were transferred to South Beach, you were unhappy
 21 about that; correct?
 22 A. I needed to drive my old vehicle a longer distance for a
 23 longer time, but my working relationship with Janeide Portela
 24 was good. Outside that, there was no other problem.
 25 Q. As a result of your move to South Beach, you were no longer

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1 Q. When you worked at La Moderna, you did not fill the little
 2 vials; correct?
 3 A. As far as I could see, at La Moderna as long as I was
 4 there, the vials were not being filled up.
 5 Q. There?
 6 A. At La Moderna.
 7 Q. But they would return the next day, the boxes would return
 8 filled the next day?
 9 A. Yes, from South Beach.
 10 Q. When you were at La Moderna, did Carlos Amador ever give
 11 you cash as a payment for anything other than a loan if you
 12 ever lent him money?
 13 A. Carlos Amador never gave me anything that was not payment
 14 of my salary.
 15 Q. You worked for salary as a tech in charge of the
 16 compounding; correct?
 17 A. Exactly, with the same salary I had started with at La
 18 Moderna. I started earning \$10 an hour, and when the pharmacy
 19 applied for bankruptcy, I was making \$12 an hour.
 20 Q. You got that pay for doing a good job; right?
 21 A. Of course.
 22 Q. Carlos Burgos - Marco Burgos wanted you to be in your
 23 workstation?
 24 A. Yes. In general he did not like for employees to be
 25 outside their workstations unnecessarily.

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1 working with Carlito, as you called him, or Carlos Amador, your
 2 friend?
 3 A. I must make it clear, Carlos Amador is not my friend or was
 4 my friend. He was my boss. He was my employer and if I
 5 remember correctly, at the time I went or was sent over to
 6 South Beach, Carlos Amador was in the process of purchasing a
 7 pharmacy, or else he had already left La Moderna or he left the
 8 following day.
 9 Q. Were you helping him in the evenings to open his new
 10 pharmacy?
 11 A. No, sir.
 12 Q. Within three days of your argument with Marco Burgos,
 13 you immediately went to work for Carlos Amador?
 14 A. That is correct.
 15 Q. As a pharmacist tech. It was never your job to call the
 16 physician to clarify a prescription?
 17 A. No, sir.
 18 If you should speak slower, I can understand you in
 19 English. Occasionally, I don't understand what you are saying
 20 and I do wish to answer your question appropriately.
 21 Q. I do appreciate that.
 22 You also had nothing to do, and I am only addressing
 23 the time you worked at La Moderna and South Beach. You had
 24 nothing to do with the billing; correct?
 25 A. Nothing at all.

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1 Q. And in your workstation you didn't make deliveries to DMEs
 2 unless they came in for an emergency; is that correct?
 3 A. I make no deliveries of any kind. I could serve out an
 4 order. And by serving out I understand, print out the labels,
 5 stick them on to the boxes, and give them either to Carlos
 6 Amador, which was practically the most common thing, or,
 7 occasionally, if it was an emergency, I would take these labels
 8 to the office so they would make out the labels.
 9 I never had any kind of economic financial
 10 relationship with any customer. I do not think it would have
 11 been allowed.
 12 Q. You had a job and you did your job; right, and I was not
 13 suggesting you were a delivery person?
 14 A. But it is good to clarify the idea.
 15 Q. Of course.
 16 One last question. When you got to working at Carlos
 17 Amador's, you noticed that he had the Rolodex from La Moderna
 18 and the same customers as La Moderna that he took with him?
 19 A. At some point I did have the opportunity to see the
 20 Rolodex, you are right.
 21 Q. And he took it, no doubt, without permission from La
 22 Moderna?
 23 A. I cannot answer that properly.
 24 MR. BIERMAN: Thank you.
 25 THE COURT: Mr. Terlow?

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CROSS EXAMINATION

1 BY MR. TARLOW:

2 Q. Professor Gomez, good afternoon. My name is David Tarlow

3 and I represent Magnus Ogbenna, the gentleman that is standing:

4 could you describe him?

5 A. Aha.

6 Q. You have never seen him before?

7 A. Never.

8 Q. And you have never seen me before?

9 A. No.

10 Q. What I just want to do is take a couple of minutes and ask

11 you some questions about something that you just answered to

12 Mr. Bierman.

13 A. Okay.

14 Q. You began your employment with Miami Pharmacy in September

15 of 1995; would that be correct?

16 A. October, 1995.

17 Q. And you left, stopped working at Miami Pharmacy in November

18 of 1997; would that be correct?

19 A. Correct.

20 Q. What you told this jury is that when you were working at

21 Miami Pharmacy, you basically had two responsibilities?

22 A. Exactly.

23 Q. The first responsibility was to compound certain aerosol

24 medications?

25

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1 exact, achieve volumes of 3, 4 or 5 milliliters. Not 2.5.

2 Q. Sir, all I asked you was, was it your responsibility?

3 A. Yes, it was my responsibility.

4 Q. And you also told this jury that you would also put labels

5 on the vials to indicate the correct volume; right?

6 A. No, sir. As far as I can remember, none of those labels

7 indicated the volume. That is the greatest problem with

8 compounded solutions. If you looked at any of these volumes,

9 you will see it says, for example, it could say Acetylcysteine

10 10 percent strength, but it will not give you the volume in any

11 case.

12 Q. Let me get to the point. The attorney asked you, you

13 didn't realize that Carlos Amador was doing anything illegal

14 and your answer was, of course I did?

15 A. Yes.

16 Q. Then you turned and you explained to this jury that you

17 were just an employee, that you were trying to do your job as

18 best as possible to fill the solution with the correct volume

19 to try to put a label here, on this with the correct volume and

20 to try and put a label on the boxes to avoid tampering?

21 A. I don't remember having mentioned the volume because that

22 is impossible, and that is correct, I did know that Carlos

23 Amador was doing shady business but I was not in any way

24 related to Carlos Amador's shady business from the commercial

25 point of view.

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1 A. Correct. Right.

2 Q. One of those compounded medications would be Acetylcysteine

3 10 percent?

4 A. Yes, sir.

5 Q. Another one was Albuterol sulfate 5 percent?

6 A. No. Albuterol is prepared at 0.083 percent or if the

7 doctor so requests 0.05 percent. Albuterol at 5 percent is an

8 industrial-medication. Highly concentrated. It can not be

9 used directly in aerosols without dilution.

10 Q. Did you compound Albuterol sulfate in 0.83 in Miami

11 Pharmacy?

12 A. I remember having prepared it at 0.83 percent and 0.5

13 percent. Not any other strength.

14 Q. The second responsibility that you told this jury was to

15 make sure that the individual vials were being filled up

16 properly, the proper amount would go in the little vial?

17 A. Let me answer you properly. That is a responsibility that

18 I assigned to myself, because with the equipment to do the

19 filling, as had been shown here, which essentially is the same

20 type that was used in Miami Pharmacy, it is very difficult to

21 achieve delivery of a precise volume, specially if you are

22 changing from one volume to another. With the permission of

23 Carlos Amador, I would ask for the purchase of a certain device

24 that would reduce the force, the pressure in the pump and that

25 way we could with a precision that was acceptable, but not

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1 I knew, for example, sometimes he was delivering one

2 box of medication instead of the two, and at some point I did

3 tell him I could not allow that, because in the future I meant

4 to become a pharmacist, and that was not acceptable to me and

5 starting at that time, all the boxes began to be delivered in

6 the proper manner.

7 When the inspectors came to the pharmacy they found no

8 patients that had not been fully served.

9 Q. We will get to that.

10 Because, sir, you will recall that in March of 1997,

11 the inspectors came to Miami Pharmacy; correct?

12 A. Possibly.

13 Q. You know that?

14 A. I don't know the date. I know that inspectors were there

15 speaking with Carlos Amador.

16 Q. You know the inspectors took some of the boxes of the

17 aerosols that you compounded; is that correct?

18 A. I am at this moment finding out.

19 Q. You were aware that the authorities tested the

20 Acetylcysteine that had been compounded, that it wasn't at 10

21 percent, it was subpotent; correct?

22 A. I heard of that, yes.

23 Q. You are not part of any conspiracy involving Medicare?

24 A. Of course not.

25 Q. The government hasn't charged you criminally with any

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1 wrongdoing?
2 A. Apparently.
3 Q. How is it that the things that you were making were not
4 what they were sold as if you weren't a part of any conspiracy?
5 A. My answer is, that you don't know much about chemistry.
6 Because Acetylcysteine is a compound that decomposes extremely
7 easily and I don't know how long the inspectors took. I told
8 them I didn't know how long the inspectors had taken. I don't
9 know where they left those vials; but it is very easy for
10 Acetylcysteine to decompose very easily. The other compounds,
11 the other substances are much less easy to decompose, for
12 instance, the Metaproterenol, Albuterol, they don't decompose
13 quite as easily.
14 Q. So these 15 or 16 folks are crystal clear, when you were
15 compounding aerosol medications, for example, Acetylcysteine at
16 10 percent, when it was compounded, it was at 10 percent?
17 A. It was prepared at 10 percent. I did compound them to the
18 concentration that was required.
19 Q. So, allegations that the Acetylcysteine that you compounded
20 were misbranded by putting a label indicating that it was not
21 at its proper strength would also be false?
22 A. I don't understand your idea. I understand your words but
23 not your idea.
24 Q. It is not my idea, the prosecutor's idea. Specifically,
25 when they came and they inspected, they made accusations that

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1 THE COURT: Sustained.
2 BY MR. TARLOW:
3 Q. Did you have an agreement with anybody to cheat Medicaid?
4 A. Not at all.
5 Q. So, the only explanation, if I understand you correctly,
6 was based upon the shelf life of the drugs that were compounded
7 by yourself and how they were kept and stored by agents of the
8 government, and by the time they were tested, naturally would
9 have decomposed; is that correct?
10 A. I am going to answer.
11 On every occasion, the solutions and compounds were
12 prepared the way they were supposed to be based on my
13 knowledge. I can't give you another explanation to the fact
14 that the Acetylcysteine was less than 10 percent. There is no
15 other explanation I can give you other than natural
16 decomposition.
17 There are other possibilities, but the most logical
18 one to what I attributed naturally is to the period of time
19 that it was stored. I don't know when the analysis was done.
20 MR. TARLOW: Thank you very much.
21 THE COURT: Mr. Lazarus.
22 MR. LAZARUS: No questions.
23 THE COURT: Anybody else?
24 Mr. Ogrosky.
25 THE WITNESS: I think we can go back to English.

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1 the drugs, Acetylcysteine 10 percent was misbranded or
2 mislabeled because the product wasn't actually Acetylcysteine
3 at 10 percent. That is not true; is it?
4 MR. OGROSKY: Objection. Who is "they"?
5 THE COURT: Identify "they."
6 BY MR. TARLOW:
7 Q. When I say "they," I am talking about officers of the
8 Bureau of Pharmacy Services that are responsible for
9 implementing and enforcing the Florida Drug and Cosmetic Act as
10 promulgated not only by Florida law, but by United States Code.
11 You are clear as to that; right?
12 A. Yes.
13 Q. So, the explanation that you have for when these guys came
14 and were making accusations that your product wasn't what you
15 said it was, there are only two reasonable responses --
16 THE COURT: Is this a question or an argument?
17 MR. TARLOW: I will make my question.
18 BY MR. TARLOW: --
19 Q. Number one, are you a conspirator that got together with
20 Jose Pepe Arias and other people to not compound drugs to what
21 they were supposed to be?
22 A. May I answer?
23 Q. Absolutely.
24 MR. OGROSKY: Objection. It calling for a legal
25 conclusion.

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1 THE COURT: You want to go back to English?
2 THE WITNESS: Yes.
3 REDIRECT EXAMINATION
4 BY MR. OGROSKY:
5 Q. Who was the first person who gave you the recipe or
6 formulary for Acetylcysteine?
7 A. Ms. Janeide Portela.
8 Q. Where were you working when you received it?
9 A. At La Moderna.
10 Q. Who was the first pharmacist that you discussed this recipe
11 for Acetylcysteine with?
12 A. The only person I discussed it with was Ms. Suzanne Burgos.
13 Q. Was this recipe or formulary for Acetylcysteine, is this
14 what was used to make this product at Miami Discount Pharmacy?
15 A. Yes. Let me tell you something. Not exactly. I made
16 little modifications to all these procedures to save time; but
17 essentially it is the same procedure. It is not exactly the
18 same but it is the same idea.
19 Q. The written formulary that you received from Janeide
20 Portela, it had changes to it?
21 A. Yes.
22 Q. Who made those changes?
23 A. According to what Suzanne Burgos told me, it was them. I
24 understand by them, Suzanne Burgos because she was the only one
25 that knew it at La Moderna.

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1 Q. How did you test the Acetylcysteine to know it was 10
 2 percent?
 3 A. There is no way. You weigh the amount of drugs and you mix
 4 it with the exact volume of the liquid and there should be no
 5 problem. The problems are United States Pharmacopeia which
 6 means they follow a particular quality. You can weigh this
 7 product confidentially.
 8 Q. Did you make it the same way at La Moderna as you did at
 9 Miami Pharmacy?
 10 A. The same way approximately.
 11 Q. What was different?
 12 A. From the original procedure I received?
 13 Q. Yes?
 14 A. The sodium bicarbonate, because they have a procedure that
 15 required to add sodium bicarbonate stage by stage, pass by
 16 pass, and it is a slow process. You can calculate exactly what
 17 is the quantity you need and calculate the amount you need to
 18 add in excess to obtain an increasing pH. That is the acidity
 19 of the media to obtain a particular balance.
 20 Q. This process you are describing, how would you test the pH?
 21 A. There is a paper, a pH paper that can be used to verify the
 22 pH is exactly the one you want.
 23 Q. Did you use this pH paper at La Moderna and Miami Discount
 24 Pharmacy?
 25 A. Yes, sir.

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1 prescriptions have you seen that call for Acetylcysteine?
 2 A. One.
 3 MR. BIERMAN: Objection, relevancy.
 4 THE COURT: Overruled.
 5 BY THE WITNESS:
 6 A. One or two.
 7 BY MR. OGROSKY:
 8 Q. Those prescriptions that called for Acetylcysteine, did
 9 they call for it to be compounded?
 10 A. No, it is a normal prescription from a doctor
 11 Acetylcysteine 10 percent and that is it. We cannot compound
 12 it because it is an industrial product. Even if they decide
 13 some time to do it, it is not allowed by the law. You cannot
 14 compound Acetylcysteine 10 percent at least in the volume --
 15 Q. When you started working at La Moderna, did you in fact
 16 compound Acetylcysteine?
 17 A. Yes.
 18 Q. When Mr. Bierman was up here he asked you whether you took
 19 pride in your compounding; do you remember that question?
 20 A. Excuse me?
 21 Q. When Mr. Bierman was questioning you, he asked if you took
 22 pride in your compounding and he pointed to the compounding
 23 room?
 24 A. I remember.
 25 Q. You have testified that you and Carlos Amador labeled the

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1 Q. I will switch topics. You were asked a number of questions
 2 about your work at Walgreen's. As a pharmacist at Walgreen's,
 3 how much aerosol do you compound?
 4 MR. SWARTZ: Objection.
 5 THE COURT: Ground?
 6 MR. SWARTZ: Beyond the scope of cross.
 7 THE COURT: Overruled.
 8 BY THE WITNESS:
 9 A. Never. We do not compound aerosols at Walgreen's.
 10 BY MR. OGROSKY:
 11 Q. How many prescriptions at Walgreen's have you seen that
 12 called for compounded aerosol medications?
 13 MR. BIERMAN: Objection, relevancy and competency to
 14 this case.
 15 THE COURT: Overruled.
 16 A. Perhaps I can answer you. I have seen a couple of
 17 prescriptions for Acetylcysteine, 30 ml bottles that normally
 18 is used or are used for aerosol. I have seen two prescriptions
 19 for Acetylcysteine in the last two or three years.
 20 BY MR. OGROSKY:
 21 Q. Let me make sure this is clear. In your work as a
 22 pharmacist at Walgreen's, how many total prescriptions have you
 23 seen that called for compounded aerosol?
 24 A. Not one.
 25 Q. In your work as a pharmacist at Walgreen's, how many total

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1 products with 480 milliliters when in fact they contained only
 2 240 milliliters --
 3 MR. BIERMAN: Objection, he did not. It misstates
 4 what he testified to.
 5 THE COURT: Overruled.
 6 BY MR. OGROSKY:
 7 Q. You did that in the storage room. My question to you is,
 8 do you take pride in what you did in that storage room?
 9 A. Let me answer several things.
 10 You were talking in general concerning a solution not
 11 about anyone of these in particular?
 12 Q. Let me withdraw the question and re-ask it.
 13 A. All right.
 14 THE COURT: Mr. Ogrosky, we will stop here for the day
 15 unless you tell me you only have another five minutes.
 16 MR. OGROSKY: I only have another five minutes.
 17 THE COURT: Then go ahead.
 18 BY MR. OGROSKY:
 19 Q. Mr. Gomez, when Mr. Bierman asked you the question, he
 20 asked if you were an honest person and took pride in the work
 21 you were doing in the compounding room and you answered him
 22 that you did.
 23 A. Yes.
 24 Q. Do you take pride in what you did in this room, in the
 25 storage room?

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1 A. No, sir. I tried to answer concerning my chemical work. I
 2 know that we were working there, I know I was doing something
 3 wrong. I was aware of that and I was not proud of that.
 4 Q. What was your financial stake in La Moderna Pharmacy?
 5 A. What was my salary?
 6 Q. What was your financial stake in this operation to compound
 7 medications? How much did you make per box?
 8 A. I was not paid per box. I received a salary. \$10 an hour
 9 from the very beginning.
 10 Q. What about at Miami Discount Pharmacy, how much did you
 11 make per box at Miami Discount Pharmacy?
 12 A. No, sir, nothing. I received a salary in South Beach and
 13 La Moderna and with Miami Pharmacy. I even didn't receive a
 14 bonus. Never, in no case.
 15 Q. Mr. Swartz asked you about this organization PCCA, the
 16 professional compounding, whatever it is, and he spent some
 17 time about ordering products and compounding.
 18 Why was it necessary to compound these medications at
 19 La Moderna?
 20 A. Because it was a business. It is cheaper to make a
 21 compound solution and sell this medication than buy an
 22 industrial product from an authorized supplier, it is much more
 23 expensive, so the profit you are going to obtain with a brand
 24 is much less than the one you will be obtaining with
 25 compounding. That is the reason for the compounding, it is

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1 THE COURT: You may step down, sir.
 2 (Witness excused.)
 3 THE COURT: We will end at this time. It is within
 4 the five minutes.
 5 Do not discuss this case amongst yourselves or anyone
 6 else. Have no contact whatsoever with anyone associated with
 7 the trial. Do not read or listen to anything touching on this
 8 matter in any way. If anybody should try to talk to you about
 9 this case, instruct them to immediately stop and be in contact
 10 with my staff concerning it.
 11 Give your notebooks to Larry and be back in the
 12 juryroom tomorrow morning at 8:45. Have a nice afternoon and
 13 evening. I will see you tomorrow.
 14 (Jury leaves room.)
 15 THE COURT: What is your issue, Mr. Pelletier?
 16 MR. PELLETIER: With respect to our next witness,
 17 Mr. Amador, I did not disclose the fact he had several arrests.
 18 no convictions, for marijuana and one I believe was a cocaine
 19 possession charge. Two were cocaine. He has not received any
 20 convictions.
 21 I don't know what the Court's pleasure is in that
 22 regard. I have made sufficient copies of his arrest history
 23 for the defense attorneys. My problem with turning it over is
 24 that generally when I do they go away and start cross examining
 25 him on these arrests which is not permissible as I understand

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1 only profit.
 2 MR. BIERMAN: Objection. It is outside the cross.
 3 THE COURT: Overruled.
 4 BY MR. OGROSKY:
 5 Q. Based on your experience as a pharmacist at Walgreen's, was
 6 it necessary to compound all of these aerosol medications?
 7 A. I think there are enough industrial products on the
 8 market --
 9 MR. BIERMAN: I object on time frame. There is a
 10 different time frame.
 11 THE COURT: Sustained.
 12 BY MR. OGROSKY:
 13 Q. Mr. Gomez, when you worked at La Moderna Pharmacy from
 14 August of 1994 through approximately September of 1995, you now
 15 are a licensed pharmacist in the State of Florida. Based on
 16 your experience when you look back on it, was it necessary to
 17 compound these aerosol medications?
 18 A. No. I think there is enough product on the market.
 19 MR. SWARTZ: Objection.
 20 THE COURT: Overruled.
 21 BY THE WITNESS:
 22 A. There are a lot of them on the market. Too many. It is
 23 not necessary. All of this compounding product existed several
 24 years ago as industrial product.
 25 MR. OGROSKY: No further questions.

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1 the Federal Rules of Evidence. That is why I haven't turned it
 2 over. I don't know what the Court's pleasure is in that
 3 regard. I am happy to do it and will do so. I just do not
 4 want to invite comments about these arrests in the examination
 5 of him.
 6 MR. RODRIGUEZ: First of all, Your Honor, I filed a
 7 motion this morning and I think Mr. Pelletier's response is as
 8 a result of that. I am greatly concerned about some of the
 9 witnesses the government is presenting and the lack of Brady
 10 information we received
 11 Let me focus in on what he just told us. It is not
 12 for the government to marshall what favorable evidence we can
 13 introduce at trial. It is obvious from what he has told me the
 14 government has been well aware of this individual's prior
 15 arrest record. That is required under Brady for the government
 16 to disclose to us. Whether we can impeach him with that or
 17 whether we can use it is something for the Court to decide, but
 18 for Mr. Pelletier to sit on this is an obvious Brady violation.
 19 I would like to discuss with the Court some of the
 20 other prospective witnesses and some of the witnesses that have
 21 already gone on I feel the government hadn't properly addressed
 22 Brady, Kyles and Bagley.
 23 THE COURT: Actually, I will be signing an order for
 24 referral to Judge Turnoff. I will have Judge Turnoff set a
 25 hearing for that in the afternoon so you can all work that out