### BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF NEVADA

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Against:

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27 28 is disclosed in the Patient Designation served upon Respondent along with a copy of this Complaint. 111 111

FILED

Case No. 22-8110-1

NEVADA STATE BOARD OF

### **COMPLAINT**

The Investigative Committee (IC)1 of the Nevada State Board of Medical Examiners (Board), by and through Ian J. Cumings, Esq., Deputy General Counsel and attorney for the IC, having a reasonable basis to believe that James Bentley Manning, M.D. (Respondent) violated the provisions of Nevada Revised Statutes (NRS) Chapter 630 and the Nevada Administrative Code (NAC) Chapter 630 (collectively Medical Practice Act), hereby issues its Complaint (Complaint), stating the IC's charges and allegations as follows:

Respondent was at all times relative to this Complaint, a physician licensed to 1. practice medicine in the in the State of Nevada (License No. 5684). Respondent was originally licensed by the Board on July 1, 1988.

### A. Respondent's Treatment of Patient A

In the Matter of Charges and Complaint

JAMES BENTLEY MANNING, M.D.,

Respondent.

Patient A was a 75-year-old female when she presented to Respondent for medical 2. care on April 16, 2015. Patient A's true identity is not disclosed herein to protect her privacy, but

<sup>1</sup> The Investigative Committee of the Nevada State Board of Medical Examiners, at the time this formal Complaint was authorized for filing, was composed of Board members Mr. M. Neil Duxbury, Chair, Aury Nagy, M.D., and Michael C. Edwards, M.D., FACS.

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- Patient A presented to Respondent with marked stiffness, weakness, and pain with 3. motion in her left shoulder. Respondent diagnosed Patient A with a chronic large rotator cuff tear, and advanced degenerative joint disease of the left shoulder.
- On July 2, 2015, Respondent performed a preoperative history and physical for 4. Patient A. Respondent documented a normal neurologic examination with sensation grossly intact in all dermatomes, and intact motor function in all groups. Respondent discussed treatment options and risks of surgery with Patient A, who elected to undergo a left reverse total shoulder arthroplasty. Respondent scheduled Patient A for surgery on July 6, 2015.
- On July 6, 2015, Respondent performed a left reverse total shoulder arthroplasty 5. (Operation 1), on Patient A. During Operation 1, the left axillary artery was damaged. A vascular surgeon was called in intraoperatively to repair the artery. The vascular surgeon attempted to close the damaged artery with a mattress suture but the vessel tore. Ultimately, a purse string suture was utilized, and an additional two (2) ties were placed around the artery to control the bleeding, leaving the artery occluded by suture. Respondent failed to note the tearing or additional suturing required to close the artery in his postoperative report. Operation 1 was then completed without further complications.
- Respondent failed to document or obtain a postoperative physical exam of Patient 6. A following Operation 1 and failed to ascertain the significance of the blood vessel following the procedure.
- 7. On July 22, 2015, Respondent had the first postoperative visit with Patient A who complained of numbness in her hand. Respondent failed to document or perform a thorough and appropriate motor, sensory, and vascular exam of the operative extremity.
- Patient A was seen again on August 5, 2015, and August 27, 2015, with continued 8. complaints and numbness in the left hand and weakness. Respondent noted Patient A had "atypical pain." Respondent failed to document or perform a thorough and appropriate motor, sensory, and vascular exam of the operative extremity post-operatively and failed to workup Patient A's numbness and "atypical pain."

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- On September 2, 2015, and September 24, 2015, Respondent examined Patient A 9. for complaints of pain in her right shoulder but did not document or reference the left shoulder at these visits. Respondent's notes his neurologic examination of the right shoulder "[s]ensation grossly intact in all dermatomes, motor function intact in all groups."
- On November 10, 2015, Patient A was examined by Respondent with continuing 10. complaints of numbness of the hand, pain, and weakness in the left extremity. Respondent failed to document or perform a thorough and appropriate exam of the left upper extremity with no mention of a vascular examination.
- In November 2015, Patient A was examined by other physicians who noted her 11. vascular and neurologic defects. An angiography revealed the total occlusion of the left axillary artery. Patient A ultimately underwent a second procedure, (Operation 2), to remove the occlusion and revascularize the left upper extremity. Neurologic evaluation following Operation 2 confirmed chronic brachial plexopathy which results in pain, decreased movement, and sensation in the arm and shoulder.
- Patients with postoperative neurologic symptoms should be evaluated with a high 12. index of suspicion to avoid a delay in treatment and should be followed closely to prevent permanent injury. Respondent documented Patient A's continued complaints of left-hand numbness and noted "atypical pain" but failed to workup the etiology of Patient A's neurologic deficits. Respondent also failed to perform or document a thorough and appropriate motor, sensory and vascular examination of Patient A despite the vascular injury during Operation 1 which occurred close to the brachial plexus.

### **COUNT I**

### NRS 630.301(4) - Malpractice

- All of the allegations contained in the above paragraphs are hereby incorporated by 13. reference as though fully set forth herein.
- NRS 630.301(4) provides that malpractice of a Physician is grounds for initiating 14. disciplinary action against a licensee.

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- NAC 630.040 defines malpractice as "the failure of a physician, in treating a 15. patient, to use the reasonable care, skill, or knowledge ordinarily used under similar circumstances."
- As demonstrated by, but not limited to, the above-outlined facts, Respondent 16. committed malpractice with respect to the treatment of Patient A by failing to recognize and diagnose the source of her neurologic symptoms. Additionally, Respondent repeatedly failed to properly document or perform an appropriate motor, sensory, and vascular examination with a patient who had suffered a vascular injury close to the brachial plexus during surgery.
- By reason of the foregoing, Respondent is subject to discipline by the Board as 17. provided in NRS 630.352.

### **COUNT II**

### NRS 630.306(1)(g) - Continual Failure to Exercise Skill or Diligence

- All of the allegations contained in the above paragraphs are hereby incorporated by 18. reference as though fully set forth herein.
- Continual failure by the Respondent to exercise the skill or diligence or use the 19. methods ordinarily exercised under the same circumstances by physicians in good standing practicing in the same specialty or field is grounds for disciplinary action against a licensee pursuant to NRS 630.306(1)(g)
- Respondent continually failed to exercise skill or diligence as demonstrated by his 20. failure to properly document or perform a thorough and appropriate motor, sensory, and vascular examination of Patient A on no less than six (6) occasions following Operation 1 despite an injury to the axillary artery during the procedure.
- By reason of the foregoing, Respondent is subject to discipline by the Board as 21. provided in NRS 630.352.

### **COUNT III**

### NRS 630.306.3062(1)(a) - Failure to Maintain Proper Medical Records

22. All of the allegations contained in the above paragraphs are hereby incorporated by reference as though fully set forth herein.

	23.	NRS 630.3062(1)(a) provides that the "failure to maintain timely, legible, accurate,
and	complete	medical records relating to the diagnosis, treatment and care of a patient" constitute
grou	nds for in	itiating discipline against a licensee.

- 24. Respondent failed to maintain proper medical records relating to the diagnosis, treatment, and care of Patient A, by failing to correctly document the details of a vascular injury sustained by Patient A during Operation 1, and the subsequent complications in the repair of the of that injury.
- 25. By reason of the foregoing, Respondent is subject to discipline by the Board as provided in NRS 630.352.

### WHEREFORE, the Investigative Committee prays:

- 1. That the Board give Respondent notice of the charges herein against him and give him notice that he may file an answer to the Complaint herein as set forth in NRS 630.339(2) within twenty (20) days of service of the Complaint;
- That the Board set a time and place for a formal hearing after holding an Early Case Conference pursuant to NRS 630.339(3);
- That the Board determine what sanctions to impose if it determines there has been a violation or violations of the Medical Practice Act committed by Respondent;
- That the Board award fees and costs for the investigation and prosecution of this
  case as outlined in NRS 622.400;
- That the Board make, issue and serve on Respondent its findings of fact, conclusions of law and order, in writing, that includes the sanctions imposed; and

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## OFFICE OF THE GENERAL COUNSEL Nevada State Board of Medical Examiners

9600 Gateway Drive Reno, Nevada 89521 (775) 688-2559

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6. That the Board take such other and further action as may be just and proper in these premises.

DATED this 14th day of February, 2022.

INVESTIGATIVE COMMITTEE OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS

By:

TAN J. CUMINGS, Esq. Deputy General Counsel 9600 Gateway Drive Reno, NV 89521 Tel: (775) 688-2559

Email: <u>icumings@medboard.nv.gov</u>
Attorney for the Investigative Committee

### OFFICE OF THE GENERAL COUNSEL Nevada State Board of Medical Examiners

# 9600 Gateway Drive Reno, Nevada 89521 (775) 688-2559

### VERIFICATION

STATE OF NEVADA	)
	: SS.
COUNTY OF WASHOE	)

Bret W. Frey, M.D., having been duly sworn, hereby deposes and states under penalty of perjury that he is the Chairman of the Investigative Committee of the Nevada State Board of Medical Examiners that authorized the Complaint against the Respondent herein; that he has read the foregoing Complaint; and that based upon information discovered in the course of the investigation into a complaint against Respondent, he believes that the allegations and charges in the foregoing Complaint against Respondent are true, accurate and correct.

DATED this Hay of July, 2022.

INVESTIGATIVE COMMITTEE OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS

By:

BRET

Chairman of the Investigative Committee