

1 **BEFORE THE BOARD OF MEDICAL EXAMINERS**
2 **OF THE STATE OF NEVADA**

3 * * * * *

4
5 **In the Matter of Charges and Complaint**

Case No. 22-36618-1

6 **Against:**

FILED

7 **GARY LYNN MANLEY, PA-C**

JUN 14 2022

8 **Respondent.**

**NEVADA STATE BOARD OF
MEDICAL EXAMINERS**
By: 

9
10 **COMPLAINT**

11 The Investigative Committee¹ (IC) of the Nevada State Board of Medical Examiners
12 (Board), by and through Aaron Bart Fricke, J.D., General Counsel and attorney for the IC, having a
13 reasonable basis to believe that Gary Lynn Manley, PA-C, (Respondent) violated the provisions of
14 Nevada Revised Statutes (NRS) Chapter 630 and Nevada Administrative Code (NAC) Chapter 630
15 (collectively, the Medical Practice Act), hereby issues its Complaint, stating the IC's charges and
16 allegations as follows:

17 1. Respondent was at all times relative to this Complaint a physician assistant holding
18 an active license to practice medicine in the State of Nevada (License No. PA1209). Respondent
19 was originally licensed by the Board on March 1, 2010.

20 2. At all times relevant to this Complaint, Respondent was employed as a licensed
21 physician assistant at Western State Pain Institute ("Western"), at 3910 Pecos-McCleod
22 Intersection, Las Vegas, Nevada, 89121. Respondent began working at Western in or around
23 January of 2019.

24 3. On or about September 19, 2019, at Western, Respondent did knowingly and
25 intentionally distribute a Schedule II controlled substance, Oxycodone, without a legitimate
26 medical purpose and outside the usual course of professional practice, in violation of Title 21,
27

28 ¹ 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 Bret W. Frey, M.D. (Chair), Chowdhury H.
Ahsan, M.D., Ph.D., FACC, and Col. Eric D. Wade, USAF (Ret.) (Public Member).

1 United States Code, Sections 841(a)(1), (b)(1)(C), and Code of Federal Regulations, Section
2 1306.04.

3 4. On or about August 10, 2020, at Western, Respondent did knowingly and
4 intentionally distribute a Schedule II controlled substance, Oxycodone, without a legitimate
5 medical purpose and outside the usual course of professional practice, in violation of Title 21,
6 United States Code, Sections 841(a)(1), (b)(1)(C), and Code of Federal Regulations, Section
7 1306.04.

8 5. On or about June 2, 2022, in the United States District Court, District of Nevada, in
9 Case No. 2:22-cr-00101-APG-VCF-1, entitled “U.S.A. v. Gary Manley” (hereinafter, the “Federal
10 Case”) Respondent pled guilty to a two-count Criminal Information, which charged Respondent
11 with two (2) counts of Distribution of a Controlled Substance (Oxycodone), in violation of 21
12 U.S.C. §§ 841(a)(1), (b)(1)(C) (Counts One and Two).

13 6. Pursuant to a Plea Agreement, under Fed. R. Crim. P. 11(c)(1)(A) and (B), which
14 was filed on or about June 2, 2022 (hereinafter, the “Plea Agreement”), a true and correct copy of
15 which is attached hereto as **Exhibit 1** and incorporated herein by this reference, and an
16 Arraignment & Plea proceeding held in the Federal Case, Respondent knowingly and voluntarily
17 pleaded guilty to two (2) counts of Distribution of a Controlled Substance, in violation of 21 USC
18 841(a)(1) and (b)(1)(C), respectively, as alleged in Counts One and Two of the Criminal
19 Information filed in the Federal Case the same day.

20 7. Pursuant to 18 USC 3559(a)(3), violation of 21 USC 841(a)(1) and (b)(1)(C), as
21 alleged in Counts One and Two of the Criminal Information and as admitted to by Respondent in
22 the Plea Agreement filed in the Federal Case, constitute Class C felonies.

23 8. Pursuant to the Plea Agreement, Respondent admitted and declared under penalty
24 of perjury that the facts set forth below are true and correct:

25 a. On September 19, 2019, a confidential human source (“CHS-I”), conducted
26 a consensually monitored and recorded appointment with Respondent, who was then acting within
27 the course of his employment at Western. A female employee met CHS-I and took he/she to an
28 exam room. She told him/her that Western was a cash-only clinic and that the first visit would

1 cost five hundred dollars (\$500.00) and that follow up visits thereafter would cost three hundred
2 dollars (\$300.00).

3 b. After some time, Respondent entered the exam room. CHS-I complained of
4 pain in the right knee and described the pain as being an 8 out of 10 on the pain scale, as
5 previously instructed by agents. CHS-I also stated that they had previously received pain
6 medication from another doctor in Las Vegas, and “Roxy 30s” (that is, Oxycodone 30 mg) in
7 California. CHS-I gave Manley an x-ray of a generic right knee that the U.S. Federal Bureau of
8 Investigations (FBI) provided to CHS-I prior to the consultation. The x-ray showed no obvious
9 indicators of degeneration or damage, only normal wear for a person of CHS-I’s age and gender.

10 c. Despite the x-ray not supporting CHS-I’s complaint of knee pain,
11 Respondent briefly touched CHS-I’s knee and told CHS-I that they needed to obtain a magnetic
12 resonance imaging (“MRI”) scan to support the x-ray. Respondent then said, in sum and in
13 substance, ‘I’m bound by the law here ... supposedly to keep you from becoming an addict ...only
14 6% of us are susceptible,’ and so the “other 94% of us have to put up with crap.”

15 d. CHS-I was thereafter prescribed fifty-six (56) tablets of
16 Oxycodone/Acetaminophen 10/325mg, a Schedule II controlled substance. FBI agents
17 subsequently confirmed that this prescription was electronically requested under Respondent’s
18 license issued by the U.S. Drug Enforcement Agency (DEA).

19 e. On August 10, 2020, CHS-I conducted another consensually monitored and
20 recorded appointment with Respondent, who was then acting within the course of his employment
21 at Western. Upon CHS-I’s arrival on August 10, 2020, CHS-I was taken to an exam room. A
22 female employee asked about CHS-I’s pain. CHS-I said he/she needed more medication, as they
23 had run out pretty quickly the previous month. CHS-I’s estimated their pain at an 8 or 9 out of 10,
24 but said that the (opioid) medication helped. The employee noted that CHS-I was not
25 experiencing any side effects and took their weight and blood pressure. Respondent then entered
26 the exam room and said that he was working alone that day. After asking CHS-I a question about
27 ibuprofen, Respondent worked on the computer and had little further interaction with CHS-I.
28 Moreover, although Respondent had previously told CHS-I during a prior consultation that he

1 needed to put an MRI in CHS-I's medical file because it was required by law, Respondent made
2 no mention of any MRI at the August 10, 2020, visit and carried out no physical exam of CHS-I.

3 f. CHS-I was thereafter prescribed one hundred twenty (120) tablets of
4 Oxycodone 15mg, a Schedule II controlled substance. FBI agents subsequently confirmed that
5 this prescription was electronically requested under Respondent's DEA license.

6 g. Respondent knowingly distributed Oxycodone, a Schedule II controlled
7 substance, on September 19, 2019, and August 10, 2020, outside the usual course of professional
8 practice and not for a legitimate medical purpose, each in violation of 21 U.S.C. §§ 841(a)(1),
9 (b)(1)(C).

10 9. Pursuant to the Plea Agreement, Respondent also admitted that he is, in fact and
11 under the law, guilty of the crimes charged, and acknowledged that if he elected to go to trial
12 instead of pleading guilty, the United States could prove his guilt beyond a reasonable doubt.
13 Respondent further acknowledged that his admissions and declarations of fact set forth in the Plea
14 Agreement satisfied every element of the charged offenses.

15 **COUNT I**

16 **NRS 630.306(1)(c) - Unlawful Distribution of Controlled Substances**

17 10. All of the allegations in the above paragraphs are hereby incorporated by reference
18 as though fully set forth herein.

19 11. Pursuant to NRS 630.306(1)(c), distribution, including administering, dispensing,
20 or prescribing, of any controlled substance to others except as authorized by law is grounds for
21 disciplinary action against a licensee.

22 12. NAC 630.380(1)(m) provides that violating any provision of NRS 630.301 to
23 630.3065, is grounds for initiating disciplinary action against a physician assistant.

24 13. As demonstrated by, but not limited to, the above-outlined facts, Respondent, on or
25 about September 19, 2019, at Western, knowingly, and intentionally distributed a controlled
26 substance, Oxycodone, outside the usual course of his professional practice and not for a
27 legitimate medical purpose, in violation of 21 USC 841(a)(1), (b)(1)(C).

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1 14. By reason of the foregoing, Respondent is subject to discipline by the Board as
2 provided in NRS 630.352.

3 **COUNT II**

4 **NRS 630.306(1)(p) - Unsafe or Unprofessional Conduct**

5 15. All of the allegations in the above paragraphs are hereby incorporated by reference
6 as though fully set forth herein.

7 16. Engaging in any act that is unsafe or unprofessional conduct in accordance with
8 regulations adopted by the Board is grounds for disciplinary action against a licensee pursuant to
9 NRS 630.306(1)(p).

10 17. NAC 630.380(1)(m) provides that violating any provision of NRS 630.301 to
11 630.3065, is grounds for initiating disciplinary action against a physician assistant.

12 18. As demonstrated by, but not limited to, the above-outlined facts, Respondent, on or
13 about September 19, 2019, at Western, knowingly, and intentionally dispensed a controlled
14 substance, Oxycodone, outside the usual course of his professional practice and not for a
15 legitimate medical purpose.

16 19. Respondent's conduct was unsafe and unprofessional.

17 20. By reason of the foregoing, Respondent is subject to discipline by the Board as
18 provided in NRS 630.352.

19 **COUNT III**

20 **NRS 630.301(9) - Disreputable Conduct**

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

23 22. Conduct that brings the medical profession into disrepute is grounds for discipline
24 pursuant to NRS 630.301(9), including, without limitation, conduct that violates any provision of
25 a code of ethics adopted by the Board by regulation based on a national code of ethics.

26 23. NAC 630.380(1)(m) provides that violating any provision of NRS 630.301 to
27 630.3065, is grounds for initiating disciplinary action against a physician assistant.

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1 24. As demonstrated by, but not limited to, the above-outlined facts, Respondent’s
2 conduct on or about September 19, 2019, at Western, brings the medical profession into disrepute.

3 25. By reason of the foregoing, Respondent is subject to discipline by the Board as
4 provided in NRS 630.352.

5 **COUNT IV**

6 **NRS 630.301(4) - Malpractice**

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

9 27. NRS 630.301(4) provides that malpractice of a physician is grounds for initiating
10 disciplinary action against a licensee.

11 28. NAC 630.040 defines malpractice as “the failure of a physician, in treating a
12 patient, to use the reasonable care, skill, or knowledge ordinarily used under similar
13 circumstances.”

14 29. NAC 630.380(1)(m) provides that violating any provision of NRS 630.301 to
15 630.3065, is grounds for initiating disciplinary action against a physician assistant.

16 30. As demonstrated by, but not limited to, the above-outlined facts, Respondent, on
17 September 19, 2019, at Western, failed to use the reasonable care, skill or knowledge ordinarily
18 used under similar circumstances when rendering medical services to patients.

19 31. By reason of the foregoing, Respondent is subject to discipline by the Board as
20 provided in NRS 630.352.

21 **COUNT V**

22 **NRS 630.306(1)(c) - Unlawful Distribution of Controlled Substances**

23 32. All of the allegations in the above paragraphs are hereby incorporated by reference
24 as though fully set forth herein.

25 33. Pursuant to NRS 630.306(1)(c), distribution, including administering, dispensing,
26 or prescribing, of any controlled substance to others except as authorized by law is grounds for
27 disciplinary action against a licensee.

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1 34. NAC 630.380(1)(m) provides that violating any provision of NRS 630.301 to
2 630.3065, is grounds for initiating disciplinary action against a physician assistant.

3 35. As demonstrated by, but not limited to, the above-outlined facts, Respondent, on or
4 about August 10, 2020, at Western, knowingly, and intentionally distributed a controlled
5 substance, Oxycodone, outside the usual course of his professional practice and not for a
6 legitimate medical purpose, in violation of 21 USC 841(a)(1), (b)(1)(C).

7 36. By reason of the foregoing, Respondent is subject to discipline by the Board as
8 provided in NRS 630.352.

9 **COUNT VI**

10 **NRS 630.306(1)(p) - Unsafe or Unprofessional Conduct**

11 37. All of the allegations in the above paragraphs are hereby incorporated by reference
12 as though fully set forth herein.

13 38. Engaging in any act that is unsafe or unprofessional conduct in accordance with
14 regulations adopted by the Board is grounds for disciplinary action against a licensee pursuant to
15 NRS 630.306(1)(p).

16 39. NAC 630.380(1)(m) provides that violating any provision of NRS 630.301 to
17 630.3065, is grounds for initiating disciplinary action against a physician assistant.

18 40. As demonstrated by, but not limited to, the above-outlined facts, Respondent, on or
19 about August 10, 2020, at Western, knowingly, and intentionally dispensed a controlled substance,
20 Oxycodone, outside the usual course of his professional practice and not for a legitimate medical
21 purpose.

22 41. Respondent's conduct was unsafe and unprofessional.

23 42. By reason of the foregoing, Respondent is subject to discipline by the Board as
24 provided in NRS 630.352.

25 **COUNT VII**

26 **NRS 630.301(9) - Disreputable Conduct**

27 43. All of the allegations in the above paragraphs are hereby incorporated by reference
28 as though fully set forth herein.

1 44. Conduct that brings the medical profession into disrepute is grounds for discipline
2 pursuant to NRS 630.301(9), including, without limitation, conduct that violates any provision of
3 a code of ethics adopted by the Board by regulation based on a national code of ethics.

4 45. NAC 630.380(1)(m) provides that violating any provision of NRS 630.301 to
5 630.3065, is grounds for initiating disciplinary action against a physician assistant.

6 46. As demonstrated by, but not limited to, the above-outlined facts, Respondent's
7 conduct on or about August 10, 2020, at Western, brings the medical profession into disrepute.

8 47. By reason of the foregoing, Respondent is subject to discipline by the Board as
9 provided in NRS 630.352.

10 **COUNT VIII**

11 **NRS 630.301(4) - Malpractice**

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

14 49. NRS 630.301(4) provides that malpractice of a physician is grounds for initiating
15 disciplinary action against a licensee.

16 50. NAC 630.040 defines malpractice as "the failure of a physician, in treating a
17 patient, to use the reasonable care, skill, or knowledge ordinarily used under similar
18 circumstances."

19 51. NAC 630.380(1)(m) provides that violating any provision of NRS 630.301 to
20 630.3065, is grounds for initiating disciplinary action against a physician assistant.

21 52. As demonstrated by, but not limited to, the above-outlined facts, Respondent, on or
22 about August 10, 2020, at Western, failed to use the reasonable care, skill or knowledge ordinarily
23 used under similar circumstances when rendering medical services to patients.

24 53. By reason of the foregoing, Respondent is subject to discipline by the Board as
25 provided in NRS 630.352.

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COUNT IX

NRS 630.306(1)(g) – Continual Failure to Practice Medicine Properly

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

55. Pursuant to NRS 630.306(1)(g), the continual failure of a physician to exercise the skill or diligence or use the methods ordinarily exercised under the same circumstances by physicians in good standing practicing in the same specialty or field is grounds for disciplinary action or denying licensure.

56. NAC 630.380(1)(m) provides that violating any provision of NRS 630.301 to 630.3065, is grounds for initiating disciplinary action against a physician assistant.

57. In previous separate disciplinary actions against Respondent taken by the Board in Case Nos. 20-36618-1 and 20-36618-2, respectively, Respondent admitted to and the Board found numerous individual violations of the Nevada Medical Practice Act, including: NRS 630.301(3), Disciplinary Action by Another State Medical Board; NRS 630.306(1)(b)(2), Violation of Standards of Practice; NRS 630.3062(1)(a), Failure to Maintain Proper Medical Records; NRS 630.301(4), Malpractice; NRS 630.306(1)(b)(2), Violation of Standards of Practice; NRS 630.3062(1)(a), Failure to Maintain Proper Medical Records; and NRS 630.301(4), Malpractice.

58. By the facts alleged herein, and by repeated, knowing, willful and criminal acts in violation of the Nevada Medical Practice Act, including malpractice, violating state and federal laws pertaining to the proper prescription and distribution of controlled substances, among other misconduct, Respondent has continually failed to exercise the skill and diligence and use the methods ordinarily exercised under the same circumstances by physicians in good standing practicing in her same specialty or field.

59. Respondent's conduct, considered in its entirety, is extraordinarily and persistently unprofessional in character.

60. By reason of the foregoing, Respondent is subject to discipline by the Board as provided in NRS 630.352.

1 WHEREFORE, the Investigative Committee prays:

2 1. That the Board give Respondent notice of the charges herein against him and give
3 him notice that he may file an answer to the Complaint herein as set forth in
4 NRS 630.339(2) within twenty (20) days of service of the Complaint;

5 2. That the Board set a time and place for a formal hearing after holding an Early
6 Case Conference pursuant to NRS 630.339(3);

7 3. That the Board determine what sanctions to impose if it determines there has been
8 a violation or violations of the Medical Practice Act committed by Respondent;

9 4. That the Board award fees and costs for the investigation and prosecution of this
10 case as outlined in NRS 622.400;

11 5. That the Board make, issue and serve on Respondent its findings of fact,
12 conclusions of law and order, in writing, that includes the sanctions imposed; and

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

15 DATED this 14th day of June, 2022.

16 INVESTIGATIVE COMMITTEE OF THE
17 NEVADA STATE BOARD OF MEDICAL EXAMINERS

18 By: _____

19 AARON BART FRICKE, J.D.

20 General Counsel

21 9600 Gateway Drive

22 Reno, NV 89521

23 Tel: (775) 688-2559

24 Email: africke@medboard.nv.gov

25 *Attorney for the Investigative Committee*

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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 14 day of June, 2022.

INVESTIGATIVE COMMITTEE OF THE
NEVADA STATE BOARD OF MEDICAL EXAMINERS

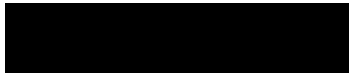
By: 
BRET W. FREY, M.D.
Chairman of the Investigative Committee

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CERTIFICATE OF SERVICE


I hereby certify that I am employed by the Nevada State Board of Medical Examiners and that on the 14th day of June, 2022, I served a file-stamped copy of the foregoing **COMPLAINT**, via USPS Certified Mail with courtesy copy by email to:

GARY LYNN MANLEY, PA-C



Tracking No.: 9171 9690 0935 0254 7604 36

DATED this 14th day of June, 2022.



MERCEDES FUENTES
Legal Assistant
Nevada State Board of Medical Examiners

EXHIBIT 1

EXHIBIT 1

1 JASON M. FRIERSON
 United States Attorney
 Nevada Bar No. 7709
 2 PETER S. LEVITT
 Assistant United States Attorney
 3 501 Las Vegas Boulevard South, Suite 1100
 Las Vegas, Nevada 89101
 4 Tel: (702) 388-6336
 Fax: (702) 388-6418
 5 peter.s.levitt@usdoj.gov
 Attorneys for the United States
 6

7 UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF NEVADA

8 UNITED STATES OF AMERICA,
 9 Plaintiff,
 10 v.
 11 GARY MANLEY,
 12 Defendant.

No. 2:22-cr-00101-APG-VCF-1

**Plea Agreement for Defendant
 Gary Manley Pursuant to Fed. R. Crim. P.
 11(c)(1)(A) and (B)**

14 This plea agreement between Gary Manley ("defendant") and the United States
 15 Attorney's Office for the District of Nevada (the "USAO") sets forth the parties' agreement
 16 regarding the criminal charges referenced herein and the applicable sentences, and fines, in the
 17 above-captioned case. This agreement binds only defendant and the USAO and does not bind
 18 the district court, the U.S. Probation Office, or any other federal, state, local, or foreign
 19 prosecuting, enforcement, administrative, or regulatory authorities. This agreement does not
 20 prohibit the USAO or any agency or third party from seeking any other civil or administrative
 21 remedies, directly or indirectly against defendant or defendant's property.

22 This agreement becomes effective upon signature by defendant, defendant's counsel, and
 23 an Assistant United States Attorney.

24

1 I. DEFENDANT'S OBLIGATIONS

2 1. Defendant agrees to:

3 a. At the earliest opportunity requested by the USAO and provided by the
4 district court, appear and plead guilty to a two-count Criminal Information in the form attached
5 to this agreement as Exhibit A, or a substantially similar form, each of which charges defendant
6 with Distribution of a Controlled Substance (Oxycodone), in violation of 21 U.S.C. §§ 841(a)(1),
7 (b)(1)(C);

8 b. Stipulate to the facts agreed to in this agreement;

9 c. Abide by all agreements regarding sentencing contained in this agreement;

10 d. Not seek to withdraw defendant's guilty pleas once they are entered;

11 e. Appear for all court appearances, surrender as ordered for service of
12 sentence, obey all conditions of any bond, and obey any other ongoing court order in this matter;

13 f. Not commit any federal, state, or local crime;

14 g. Be truthful at all times with the U.S. Probation and Pretrial Services Offices
15 and the Court;

16 h. Before and after sentencing, upon request by the Court, the USAO, or the
17 Probation Office, provide accurate and complete financial information, submit sworn
18 statements, and/or give depositions under oath concerning defendant's assets and defendant's
19 ability to pay. As part of the required disclosure, defendant agrees to provide any and all
20 financial information and authorizations requested by the Probation Office for preparation of the
21 Presentence Report. Defendant further agrees that, upon filing of this agreement, the USAO is
22 authorized to obtain defendant's credit report. Defendant will also complete a financial form
23 provided by the USAO, to include all supporting documentation, and return it to the USAO
24 within three (3) weeks from entry of the plea. Defendant agrees that the district court may enter

1 any order necessary to effectuate or facilitate disclosure of defendant's financial information; and

2 i. To facilitate payment of any fine or assessment obtained directly or
3 indirectly as a result of defendant's crimes. Defendant agrees to voluntarily release funds and
4 property under defendant's control or in which defendant has any property interest, before and
5 after sentencing, to pay any fine identified in this agreement, agreed to by the parties, or ordered
6 by the Court.

7 **II. THE USAO'S OBLIGATIONS**

8 2. The USAO agrees to:

9 a. Stipulate to facts agreed to in this agreement;
10 b. Abide by all agreements regarding sentencing contained in this agreement;
11 c. At sentencing, provided that defendant demonstrates an acceptance of
12 responsibility for the offenses up to and including the time of sentencing, recommend a two-level
13 reduction in the applicable sentencing guidelines offense level, pursuant to USSG § 3E1.1, and
14 move for an additional one-level reduction if available under that section;

15 d. At sentencing, move to dismiss the remaining counts of the indictment as
16 against defendant. Defendant agrees, however, that the district court may consider any dismissed
17 charges in determining the applicable sentencing guidelines range, the propriety and extent of
18 any departure from that range, and the sentence to be imposed; and

19 e. Not bring any additional charges against defendant arising out of the
20 investigation in the District of Nevada which culminated in this agreement and based on
21 conduct known to the USAO. However, the USAO reserves the right to prosecute defendant for
22 (a) any crime of violence as defined by 18 U.S.C. § 16; and (b) any criminal tax violations
23 (including conspiracy to commit such violations chargeable under 18 U.S.C. § 371). Defendant
24 agrees that the district court at sentencing may consider any uncharged conduct in determining

1 the applicable sentencing guidelines range, the propriety and extent of any departure from that
2 range, and the sentence to be imposed after consideration of the sentencing guidelines and all
3 other relevant factors under 18 U.S.C. § 3553(a).

4 III. ELEMENTS OF THE OFFENSES

5 3. Counts 1-2: The elements of Distribution of a Controlled Substance under 21
6 U.S.C. §§ 841(a)(1), (b)(1)(C), as charged in Counts 1 and 2, are as follows:

7 First: The defendant knowingly distributed oxycodone, a schedule II controlled
8 substance;

9 Second: The defendant knew that it was oxycodone, or some other federally
10 controlled substance; and

11 Third: The defendant distributed the controlled substance outside the usual course
12 of professional practice and not for a legitimate medical purpose.

13 *See* Ninth Circuit Model Criminal Jury Instruction 9.18 (2021 ed.).

14 IV. CONSEQUENCES OF CONVICTION

15 4. Maximum Statutory Penalties: Defendant understands that the statutory
16 maximum sentence the district court can impose for each violation of 21 U.S.C. §§ 841(a)(1),
17 (b)(1)(C), as charged in Count 1 and 2 is: 20 years imprisonment; a five-year period of supervised
18 release; a fine of \$1,000,000; and a mandatory special assessment of \$100 per count.

19 a. Defendant understands that the total statutory maximum sentence the
20 district court can impose for both violations of 21 U.S.C. §§ 841(a)(1), (b)(1)(C), as charged in
21 Counts 1 and 2 is: 40 years imprisonment; a 10-year period of supervised release; a fine of
22 \$2,000,000; and a mandatory special assessment of \$200.

23 5. Parole Abolished: Defendant acknowledges that defendant's prison sentence
24 cannot be shortened by early release on parole because parole has been abolished.

1 6. Supervised Release: Defendant understands that supervised release is a period of
2 time following imprisonment during which defendant will be subject to various restrictions and
3 requirements. Defendant understands that if defendant violates one or more of the conditions of
4 any supervised release imposed, defendant may be returned to prison for all or part of the term of
5 supervised release authorized by statute for the offenses that resulted in the term of supervised
6 release, which could result in defendant serving a total term of imprisonment greater than the
7 statutory maximum stated above.

8 7. Factors under 18 U.S.C. § 3553: Defendant understands that the district court
9 must consider the factors set forth in 18 U.S.C. § 3553(a) in determining defendant's sentence.
10 However, the statutory maximum sentence limit the district court's discretion in determining
11 defendant's sentence.

12 8. Potential Collateral Consequences of Conviction: Defendant understands that, by
13 pleading guilty, defendant may be giving up valuable government benefits and valuable civic
14 rights, such as the right to vote, the right to possess a firearm, the right to hold office, and the
15 right to serve on a jury. Defendant understands that once the district court accepts defendant's
16 guilty pleas, it will be a federal felony for defendant to possess a firearm or ammunition.
17 Defendant understands that the conviction in this case may also subject defendant to various
18 other collateral consequences, including but not limited to revocation of probation, parole, or
19 supervised release in another case and suspension or revocation of a professional license.
20 Defendant understands that unanticipated collateral consequences will not serve as grounds to
21 withdraw defendant's guilty pleas.

22 9. Potential Removal/Deportation Consequences of Conviction: Defendant
23 understands that, if defendant is not a United States citizen, the felony conviction in this case
24 may subject defendant to removal, also known as deportation, which may, under some

1 circumstances, be mandatory; denial of citizenship; and denial of admission to the United States
2 in the future. The district court cannot advise defendant fully regarding the immigration
3 consequences of the felony conviction in this case, but defendant's attorney has advised him
4 about the deportation risks of his guilty plea. Defendant understands that unexpected
5 immigration consequences will not serve as grounds to withdraw defendant's guilty pleas.

6 **V. FACTUAL BASIS**

7 10. Defendant admits that defendant is, in fact, guilty of the offenses to which
8 defendant is agreeing to plead guilty. Defendant acknowledges that if defendant elected to go to
9 trial instead of pleading guilty, the USAO could prove defendant's guilt beyond a reasonable
10 doubt. Defendant further acknowledges that defendant's admissions and declarations of fact set
11 forth below satisfy every element of the charged offenses. Defendant waives any potential future
12 claim that the facts defendant admitted below are insufficient to satisfy the elements of the
13 charged offenses. Defendant admits and declares under penalty of perjury that the facts set forth
14 below are true and correct:

15 a. In 2019-2020, defendant was a licensed physician's assistant ("PA") in the
16 State of Nevada (Nevada Medical License PA1209, NPI #1164749693, DEA License #
17 MM2157647) at Western State Pain Institute ("Western"), at 3910 Pecos-McCleod Intersection,
18 Suite D100, Las Vegas, Nevada, 89121. Defendant began practicing pain management at
19 Western around January of 2019.

20 **Count 1**

21 b. On September 19, 2019, a confidential human source ("CHS 1"),
22 conducted a consensually monitored and recorded appointment with defendant, who was then
23 acting within the course of his employment at Western. A female employee met CHS 1 and took
24 him to an exam room. She told him that Western was a cash-only clinic; that the first visit would

1 cost \$500; and that follow up visits would cost \$300.

2 c. After some time, defendant entered the exam room. CHS 1 complained of
3 pain in the right knee and described the pain as being an 8 out of 10 on the pain scale, as
4 previously instructed by agents. CHS 1 also stated that they had previously received pain
5 medication from another doctor in Las Vegas, and "Roxy 30s" (that is, Oxycodone 30 mg) in
6 California. CHS 1 gave Manley an x-ray of a generic right knee that FBI provided to CHS 1
7 prior to the consultation. The x-ray showed no obvious indicators of degeneration or damage,
8 only normal wear for a person of CHS 1's age and gender.

9 d. Despite the x-ray not supporting CHS 1's complaint of knee pain,
10 defendant briefly touched CHS 1's knee and told CHS 1 that they needed to obtain a magnetic
11 resonance imaging ("MRI") scan to support the x-ray. Defendant then said, in sum and in
12 substance, "I'm bound by the law here . . . supposedly to keep you from becoming an addict . . .
13 only 6% of us are susceptible," and so the "other 94% of us have to put up with crap."

14 e. CHS 1 was thereafter prescribed 56 tablets of Oxycodone/Acetaminophen
15 10/325mg, a Schedule II controlled substance. FBI agents subsequently confirmed that this
16 prescription was electronically requested under defendant's DEA license.

17 Count 2

18 f. On August 10, 2020, CHS 1 conducted another consensually monitored
19 and recorded appointment with defendant, who was then acting within the course of his
20 employment at Western.¹ Upon CHS 1's arrival on August 10, 2020, CHS 1 was taken to an
21 exam room. A female employee asked about CHS 1's pain. CHS 1 said he/she needed more

22 _____
23 ¹ Between the September 19, 2019, and the August 10, 2020 consultations, CHS 1
24 consulted with defendant at Western on two other occasions: November 13, 2019, and January
21, 2020. At the conclusion of the November 13, 2019, and January 21, 2020 consultations,
defendant prescribed and distributed Oxycodone to CHS 1 outside the usual course of
professional practice and not for a legitimate medical purpose.

1 medication, as he/she had run out pretty quickly the previous month. CHS 1's estimated his/her
2 pain at an 8 or 9 out of 10, but said that the (opioid) medication helped. The employee noted
3 that CHS 1 was not experiencing any side effects and took his/her weight and blood pressure.
4 Defendant then entered the exam room and said that he was working alone that day. After
5 asking CHS 1 a question about ibuprofen, defendant worked on the computer and had little
6 further interaction with CHS 1. Moreover—although defendant had previously told CHS 1
7 during a prior consultation that he needed to put an MRI in CHS 1's medical file because it was
8 required by law—defendant made no mention of any MRI on August 10, 2020, and carried out
9 no physical exam of CHS 1.

10 g. CHS 1 was thereafter prescribed 120 tablets of Oxycodone 15mg, a
11 Schedule II controlled substance. FBI agents subsequently confirmed that this prescription was
12 electronically requested under defendant's DEA license.

13 Conclusion

14 h. Defendant admits that: (i) he knowingly prescribed and distributed
15 Oxycodone, a schedule II controlled substance, on September 19, 2019, and August 10, 2020; (ii)
16 he knew that it was Oxycodone, or some other federally controlled substance; and (iii) he
17 distributed Oxycodone on September 19, 2019, and August 10, 2020 outside the usual course of
18 professional practice and not for a legitimate medical purpose, in violation of 21 U.S.C. §§
19 841(a)(1), (b)(1)(C).

20 i. All of the foregoing events occurred in the State and Federal District of
21 Nevada.

22 VI. SENTENCING FACTORS

23 11. Discretionary Nature of Sentencing Guidelines: Defendant understands that in
24 determining defendant's sentence, the district court is required to calculate the applicable

1 sentencing guidelines range and to consider that range, possible departures under the sentencing
 2 guidelines, and the other sentencing factors set forth in 18 U.S.C. § 3553(a). Defendant
 3 understands that the sentencing guidelines are advisory only, that defendant cannot have any
 4 expectation of receiving a sentence within the calculated sentencing guidelines range, and that
 5 after considering the sentencing guidelines and the other § 3553(a) factors, the district court will
 6 be free to exercise its discretion to impose any sentence it finds appropriate.

7 12. Offense Level Calculations: The parties jointly agree and stipulate that, in
 8 calculating defendant's advisory guidelines sentencing range, the Court should use the following
 9 base offense level and adjustments; acknowledge that these stipulations do not bind the district
 10 court; and agree that they will not seek to apply or advocate for the use of any other base offense
 11 levels or any other specific offense characteristics, enhancements, or reductions in calculating the
 12 advisory guidelines range:

13	Base Offense Level [USSG § 2D1.1(c)(13)]:	14 ²
14	Adjusted Offense Level:	14

15 13. Reduction for Acceptance of Responsibility: Under USSG § 3E1.1(a), the USAO
 16 will recommend that defendant receive a two-level downward adjustment for acceptance of
 17 responsibility unless defendant (a) fails to truthfully admit facts establishing a factual basis for the
 18 guilty pleas when defendant enters the pleas; (b) provides false or misleading information to the
 19 USAO, the Court, Pretrial Services, or the Probation Office; (c) denies involvement in the

20 _____
 21 ² The Base Offense Level is based on the following:

22 Count 1: 56 tablets of 10 mg Oxycodone = 560 mg or 0.56 grams. $0.56 \times 6,700$ (USSG
 § 2D1.1(8)(D)) = 3,752 grams, or 3.75 KG of Converted Drug Weight.

23 Count 2: 120 tablets of 15 mg Oxycodone = 1,800 mg or 1.8 grams. $1.8 \times 6,700 = 12,060$ grams,
 or 12.06 KG of Converted Drug Weight.

24 Adding the two counts (3.75 and 12.06 KG) yields a total of 15.81 KG of Converted Drug
 Weight. Under USSG § 2D1.1(c)(13), Base Offense Level 14 applies to "at least 10 KG but less
 than 20 KG of Converted Drug Weight."

1 offenses or provides conflicting statements regarding defendant's involvement or falsely denies or
2 frivolously contests conduct relevant to the offenses; (d) attempts to withdraw any of defendant's
3 guilty pleas; (e) commits or attempts to commit any crime; (f) fails to appear in court; or (g)
4 violates the conditions of pretrial release.

5 Under USSG § 3E1.1(b), if the district court determines that defendant's total offense
6 level before operation of § 3E1.1(a) is 16 or higher, and if the USAO recommends a two-level
7 downward adjustment pursuant to the preceding paragraph, the USAO will move for an
8 additional one-level downward adjustment for acceptance of responsibility before sentencing
9 because defendant communicated defendant's decision to plead guilty in a timely manner that
10 enabled the USAO to avoid preparing for trial and to efficiently allocate its resources.

11 14. Criminal History Category. Defendant acknowledges that the district court may
12 base defendant's sentence in part on defendant's criminal record or criminal history. The district
13 court will determine defendant's criminal history category under the sentencing guidelines.

14 15. Additional Sentencing Information: The stipulated sentencing guidelines
15 calculations are based on information now known to the parties. Defendant understands that
16 both defendant and the USAO are free to (a) supplement the facts in this agreement by supplying
17 relevant information to the U.S. Probation and Pretrial Services Offices and the district court
18 regarding the nature, scope, and extent of defendant's criminal conduct and any aggravating or
19 mitigating facts or circumstances; and (b) correct any and all factual misstatements relating to the
20 district court's sentencing guidelines calculations and determination of sentence. While this
21 paragraph permits both the USAO and defendant to submit full and complete factual
22 information to the U.S. Probation and Pretrial Services Offices and the district court, even if that
23 factual information may be viewed as inconsistent with the facts agreed to in this agreement, this
24 paragraph does not affect defendant's and the USAO's obligations not to contest the facts agreed

1 to in this agreement. Good faith efforts to provide truthful information or to correct factual
2 misstatements shall not be grounds for defendant to withdraw defendant's guilty pleas.

3 Defendant acknowledges that the U.S. Probation Office may calculate the sentencing
4 guidelines differently and may rely on additional information it obtains through its investigation.
5 Defendant also acknowledges that the district court may rely on this and other additional
6 information as it calculates the sentencing guidelines range and makes other sentencing
7 determinations, and the district court's reliance on such information shall not be grounds for
8 defendant to withdraw defendant's guilty pleas.

9 VII. POSITIONS REGARDING SENTENCING

10 16. The USAO will recommend that the district court sentence defendant at the low
11 end of the advisory guideline range as determined by the district court, and will recommend
12 that the sentences on each count run concurrently to each other. Defendant may argue for a
13 downward variance pursuant to 18 U.S.C. § 3553(a), and may argue for a non-custodial
14 sentence.

15 17. Defendant acknowledges that the district court does not have to follow the
16 recommendation of either party.

17 18. Notwithstanding its agreement to recommend a sentence as described above, the
18 USAO reserves its right to defend any lawfully imposed sentence on appeal or in any post-
19 conviction litigation.

20 19. If defendant commits any act that results in the Court finding that defendant is
21 not entitled to a downward adjustment for acceptance of responsibility, the USAO is entitled to
22 argue for any sentence it deems appropriate under 18 U.S.C. § 3553(a). In any such event,
23 Defendant remains bound by the provisions of this agreement and shall not have the right to
24 withdraw defendant's guilty pleas.

1 **VIII. WAIVER OF CONSTITUTIONAL RIGHTS**

2 20. Defendant understands that by pleading guilty, defendant gives up the following
3 rights:

- 4 a. The right to persist in a plea of not guilty;
- 5 b. The right to a speedy and public trial by jury;
- 6 c. The right to be represented by counsel—and if necessary have the court
7 appoint counsel—at trial. Defendant understands, however, that, defendant retains the right to
8 be represented by counsel—and if necessary have the court appoint counsel—at every other stage
9 of the proceeding;
- 10 d. The right to be presumed innocent and to have the burden of proof placed
11 on the USAO to prove defendant guilty beyond a reasonable doubt;
- 12 e. The right to confront and cross-examine witnesses against defendant;
- 13 f. The right to testify and to present evidence in opposition to the charges,
14 including the right to compel the attendance of witnesses to testify;
- 15 g. The right not to be compelled to testify, and, if defendant chose not to
16 testify or present evidence, to have that choice not be used against defendant; and
- 17 h. The right to pursue any affirmative defenses, Fourth Amendment or Fifth
18 Amendment claims, and any other pretrial motions that have been filed or could be filed.

19 **IX. WAIVER OF APPELLATE RIGHTS**

20 21. Waiver of Appellate Rights. Defendant knowingly and expressly waives: (a) the
21 right to appeal any sentence imposed within or below the applicable Sentencing Guideline range
22 as determined by the district court; (b) the right to appeal the manner in which the district court
23 determined that sentence on the grounds set forth in 18 U.S.C. § 3742; and (c) subject solely to
24 the exceptions listed in the next paragraph, the right to appeal any other aspect of the conviction,

1 including but not limited to the constitutionality of the statutes of conviction; and any other
2 aspect of the sentence.

3 22. Defendant reserves only the right to appeal any portion of the sentence that is an
4 upward departure or variance from the applicable Sentencing Guideline range as determined by
5 the district court.

6 23. Waiver of Post-Conviction Rights. Defendant also knowingly and expressly
7 waives all collateral challenges, including any claims under 28 U.S.C. § 2255, to defendant's
8 conviction, sentence, and the procedure by which the district court adjudicated guilt and
9 imposed sentence, except non-waivable claims of ineffective assistance of counsel.

10 24. Preservation of Evidence: Defendant acknowledges that the USAO and the
11 agencies investigating this case are not obligated or required to preserve any evidence obtained in
12 the investigation of this case.

13 **X. RESULT OF WITHDRAWAL OF GUILTY PLEAS**
14 **OR VACATUR/REVERSAL/SET-ASIDE OF CONVICTIONS**

15 25. Consequence of withdrawal of guilty pleas: Defendant agrees that if, after entering
16 guilty pleas pursuant to this agreement, defendant seeks to withdraw and succeeds in
17 withdrawing defendant's guilty pleas on any basis other than a claim and finding that entry into
18 this agreement was involuntary, then (a) the USAO will be relieved of all of its obligations under
19 this agreement, (b) should the USAO choose to pursue any charge that was either dismissed or
20 not filed as a result of this agreement, then (i) any applicable statute of limitations will be tolled
21 between the date of defendant's signing of this agreement and the filing commencing any such
22 action; and (ii) defendant waives and gives up all defenses based on the statute of limitations,
23 any claim of pre-indictment delay, or any speedy trial claim with respect to any such action,
24

1 except to the extent that such defenses existed as of the date of defendant's signing this
2 agreement.

3 26. Consequence of vacatur, reversal, or set-aside: Defendant agrees that if any count
4 of conviction is vacated, reversed, or set aside, the USAO may: (a) ask the district court to
5 resentence defendant on any remaining counts of conviction, with both the USAO and
6 defendant being released from any stipulations regarding sentencing contained in this agreement;
7 (b) ask the district court to void the entire plea agreement and vacate defendant's guilty pleas on
8 any remaining counts of conviction, with both the USAO and defendant being released from all
9 their obligations under this agreement; or (c) leave defendant's remaining convictions, sentence,
10 and plea agreement intact. Defendant agrees that the choice among these three options rests in
11 the exclusive discretion of the USAO, and that, should the USAO choose to pursue any charge
12 that was either dismissed or not filed as a result of this agreement, then (i) any applicable statute
13 of limitations will be tolled between the date of defendant's signing of this agreement and the
14 filing commencing any such action; and (ii) defendant waives and gives up all defenses based on
15 the statute of limitations, any claim of pre-indictment delay, or any speedy trial claim with
16 respect to any such action, except to the extent that such defenses existed as of the date of
17 defendant's signing this agreement.

18 **XII. BREACH OF AGREEMENT**

19 27. Defendant agrees that if, at any time after this agreement becomes effective,
20 defendant knowingly violates or fails to perform any of defendant's obligations under this
21 agreement ("a breach"), the USAO may declare this agreement breached. All of defendant's
22 obligations are material, a single breach of this agreement is sufficient for the USAO to declare a
23 breach, and defendant shall not be deemed to have cured a breach without the express agreement
24 of the USAO in writing. If the USAO declares this agreement breached, and the district court

1 finds such a breach to have occurred, then: (a) if defendant has previously entered guilty pleas
2 pursuant to this agreement, defendant will remain bound by the provisions of this agreement and
3 will not be able to withdraw the guilty pleas, and (b) the USAO will be relieved of all its
4 obligations under this agreement.

5 **XIII. COURT AND UNITED STATES PROBATION**
6 **AND PRETRIAL SERVICES OFFICE NOT PARTIES.**

7 28. Defendant understands that the Court and the U.S. Probation and Pretrial
8 Services Office are not parties to this agreement and need not accept any of the USAO's
9 sentencing recommendations or the parties' agreements to facts or sentencing factors.

10 29. Defendant understands that both defendant and the USAO are free to argue on
11 appeal and collateral review that the district court's sentencing guidelines calculations and the
12 sentence it chooses to impose are not error.

13 30. Defendant understands that even if the district court ignores any sentencing
14 recommendation, finds facts or reaches conclusions different from those agreed to by the parties,
15 or imposes any sentence up to the maximum established by statute, defendant cannot, for that
16 reason, withdraw defendant's guilty pleas, and defendant will remain bound to fulfill all
17 defendant's obligations under this agreement. Defendant understands that no one—not the
18 prosecutor, defendant's attorney, or the Court—can make a binding prediction or promise
19 regarding the sentence defendant will receive, except that it will be within the statutory
20 maximum.

21 **XIV. ADDITIONAL ACKNOWLEDGMENTS**

22 31. The Defendant acknowledges that:

23 a. Defendant read this agreement and defendant understands its terms and
24 conditions.

1 b. Defendant had adequate time to discuss this case, the evidence, and this
2 agreement with defendant's attorney.

3 c. Defendant carefully and thoroughly discussed all terms of this agreement
4 with defendant's attorney.

5 d. Defendant understands the terms of this agreement and voluntarily agrees
6 to those terms.

7 e. Defendant has discussed with defendant's attorney the following: the
8 evidence; defendant's rights; possible pretrial motions that might be filed; possible defenses that
9 might be asserted either prior to or at trial; the sentencing factors set forth in 18 U.S.C. 3553(a);
10 the relevant sentencing guidelines provisions; and consequences of entering into this agreement.

11 f. The representations contained in this agreement are true and correct,
12 including the factual basis for defendant's offenses set forth in this agreement.

13 g. Defendant was not under the influence of any alcohol, drug, or medicine
14 that would impair defendant's ability to understand the agreement when defendant considered
15 signing this agreement and when defendant signed it.

16 32. Defendant understands that defendant alone decides whether to plead guilty or go
17 to trial, and acknowledges that defendant has decided to enter defendant's guilty pleas knowing
18 of the charges brought against defendant, defendant's possible defenses, and the benefits and
19 possible detriments of proceeding to trial.

20 33. Defendant understands that no promises, understandings, or agreements other
21 than those set forth in this agreement have been made or implied by defendant, defendant's
22 attorney, or the USAO, and no additional promises, agreements, or conditions shall have any
23 force or effect unless set forth in writing and signed by all parties or confirmed on the record
24 before the district court.

1 34. Defendant acknowledges that defendant decided to plead guilty voluntarily and
2 that no one threatened, coerced, or forced defendant to enter into this agreement.

3 35. Defendant is satisfied with the representation of defendant's attorney, and
4 defendant is pleading guilty because defendant is guilty of the charges and chooses to take
5 advantage of the promises set forth in this agreement and for no other reason.

6 XV. PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

7 36. The parties agree that this agreement will be considered part of the record of
8 defendant's guilty plea hearing as if the entire agreement had been read into the record of the
9 proceeding.

10 AGREED AND ACCEPTED

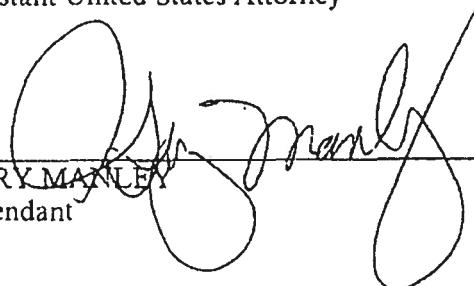
11 UNITED STATES ATTORNEY'S OFFICE
12 FOR THE DISTRICT OF NEVADA

13 JASON M. FRIERSON
14 United States Attorney

15 

16 PETER S. LEVITT
17 Assistant United States Attorney

15 5/13/22
16 _____
16 Date

18 

19 GARY MANLEY
20 Defendant

19 5/13/2022
20 _____
20 Date

22 

23 RUSSELL E. MARSH, ESQ.
24 Attorney for Defendant

22 5-13-22
23 _____
23 Date