



In the Matter of the Request for Opinion
Concerning the Conduct of
SOON KIM, MD, Trustee, Humboldt General
Hospital Board of Trustees,
State of Nevada,

Request for Opinion No.: 10-92C

Subject. /

EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION

The following is the Executive Director's recommendation based on consideration and investigation of the Request for Opinion attached as Tab B hereto regarding the conduct of Soon Kim, MD, Trustee, Humboldt General Hospital Board of Trustees ("Subject"), a public officer, and on the Subject's written response to the Complaint, attached as Tab D. Additional information compiled by the Commission's Investigator is attached for the Investigatory Panel's consideration.

Facts:

At the August 31, 2010 meeting of the Humboldt General Hospital Board of Trustees, the board considered an agenda item regarding the "deadline to receive signed agreement for employment of Soon Kim, MD." When the matter came up for discussion, Dr. Kim did not disclose that the agreement in question related to her own employment contract. When the Trustees considered a motion to set the deadline at the next day, September 1, 2010, Dr. Kim voted on the motion without undertaking the abstention analysis outlined in NRS 281A.420 (3).

Allegations and Subject's response:

The main allegations are:

1. **NRS 281A.420 (1)** - that Dr. Kim failed to disclose her pecuniary interest in her employment contract when the matter was to be considered at the August 31, 2010 Board Meeting.

While the amount of compensation or the fact of the contract was not at issue in the vote, imposing a deadline on the signing of the agreement that, if not met, would negate the offer of employment, certainly might affect Dr. Kim's pecuniary interest.

Dr. Kim's counsel's response relied on the argument that everybody in the room knew that the vote involved a procedural matter involving Dr. Kim, therefore an oral disclosure was unnecessary. In addition, Dr. Kim's response argued that counsel to the

Board of Trustees failed to interrupt the meeting to suggest that Dr. Kim disclose the conflict, and that she relied on his silence in her decision to refrain from making a disclosure on the issue.

2. **NRS 281A420 (3)** - that Dr. Kim failed to undertake the abstention analysis prescribed in statute on the record and make a determination whether abstention would be necessary before voting regarding whether to impose a deadline on her proposed contract.

Dr. Kim did not analyze whether the independence of judgment of a reasonable person whose employment contract is being considered to have a deadline for response placed on it would be materially affected by the conflict.

Again, Dr. Kim's counsel points to the failure of Board counsel to interrupt the proceedings and advise Dr. Kim to undertake the analysis as a basis and excuse for Dr. Kim failing to do so.

Analysis and Recommendation:

At the July Board meeting, the board voted to offer to extend Dr. Kim's contract with the hospital for a two-year period, beginning January 1, 2011. Dr. Kim was provided the contract, but one month after the vote, had not signed and returned the agreement to the hospital. Hoping to firm up its plans, the Trustees considered placing a deadline on Kim's response so that, if she declined the offer, the Trustees could secure a replacement General Surgeon before Kim's current contract expired.

The initial motion was to require Dr. Kim to respond with a signed agreement by the next day, September 1, 2010, or the offer would be withdrawn. That vote failed due to a tie. Dr. Kim participated in that vote. Then the Board considered providing a longer period for her response to the contract, and at that time, Board Counsel advised Dr. Kim, and another board member, that they should disclose their conflict of interest and abstain from voting, which they did.

Minutes of the relevant meeting provide evidence that Dr. Kim did not make any disclosure and that Dr. Kim did vote regarding the deadline issue without placing the abstention analysis on the record. The central question for the Commission is whether NRS 281A.420 required her to disclose her conflict of interest and undertake the abstention analysis based on the matter before the Trustees.

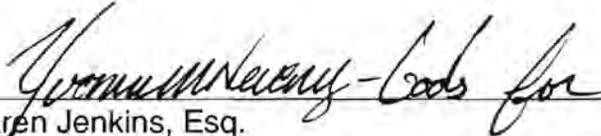
NAC 281A.435 Basis for finding by panel; unanimous finding required for determination that no just and sufficient cause exists. (NRS 281A.290)

1. A finding by a panel as to whether **just and sufficient cause** exists for the Commission to render an opinion on an ethics complaint **must be based on credible evidence.**

2. A finding by a panel that no just and sufficient cause exists for the Commission to render an opinion on an ethics complaint must be unanimous.

3. As used in this section, **"credible evidence" means the minimal level of any reliable and competent form of proof** provided by witnesses, records, documents, exhibits, concrete objects, and other such similar means, **that supports a reasonable belief by a panel that the Commission should hear the matter and render an opinion.** The term does not include a newspaper article or other media report if the article or report is offered by itself.

Based on the foregoing, I recommend that the Investigatory Panel find that credible evidence was provided with the RFO to find that just and sufficient cause exists to forward this matter to the full Commission for hearing.

 Date: January 27, 2011
Caren Jenkins, Esq.
Executive Director

Post-script: Dr. Kim has appeared before this Commission previously on a disclosure and abstention related RFO, has attended a training presentation offered by Commission staff, and should be aware that she is solely responsible for understanding and applying the Ethics in Government Laws without reliance on Board counsel.