



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion  
Concerning the Conduct of  
SHARLENE COONEY, Member, Humboldt  
General Hospital District, Humboldt  
County, State of Nevada,

Request for Opinion No.: 09-26C

Subject. /

INVESTIGATOR'S REPORT (Tab A):

Introduction:

Request for Opinion No. 09-26C (Ethics Complaint). (Tab B):

On April 14, 2009, complainant Debra Aitken (Aitken) filed an Ethics Complaint against public officer Sharlene Cooney (Cooney), a Member of the Board of Humboldt General Hospital District (Hospital Board), alleging that Cooney violated NRS 281A.420(4), when she failed to fully disclose her commitment in a private capacity to her superior Dr. Soon Kim (Kim), (Complaint, page 1), on January 27, 2009, and that she violated NRS 281A.420(2) when she failed to abstain from voting on the purchase of a medical device during the January 27, 2009 Hospital Board meeting (Complaint, page 1).

Jurisdiction:

As an elected Member of the Hospital Board, no dispute exists that Cooney is a public officer as defined in NRS 281A.160. Therefore, the Nevada Commission on Ethics (Commission) has

1 jurisdiction to investigate and take appropriate action in this matter, pursuant NRS 281A.280 and  
2 NRS 281A.440.

3  
4 **Issues:**

5  
6 The issues are whether Cooney violated:

- 7
- 8 1. NRS 281A.420(4), when she failed to disclose a commitment in a private capacity to her  
9 superior before voting on the purchase of a medical device on January 27, 2009.  
10 (Allegation added by the Executive Director).
  - 11 2. NRS 281A.420(2), when she failed to abstain from voting on purchase of medical device  
12 on January 27, 2009. (Alleged by the complainant).
- 13

14 **Response to Ethics Complaint. (Tab C):**

15  
16 Cooney and her legal counsel Robert Dolan, Esq. (Dolan), filed a response to the Ethics  
17 Complaint on May 28, 2009. Dolan stated that Cooney did not violate any provisions of NRS  
18 281A, because she is not, as alleged in the complaint, employed by Kim. In addition, Dolan  
19 stated that Cooney is employed by the hospital, and her salary remains the same regardless of the  
20 number of medical devices owned by the hospital. In addition, Dolan stated that Cooney relied  
21 on the advice of the Hospital Board's legal counsel Kent Maher, Esq. (Maher).

22

23 **Investigation Summary:**

24  
25 I interviewed the following individuals and reviewed their responses:

26

27 **Witnesses Interviews and responses. (Tab D):**

28

- 1 • Kent Maher, Esq. (Maher), legal counsel for the Humboldt General Hospital, via  
2 e-mail, on June 19, 2009. (Exhibit 1).
- 3 • Soon Kim, via her legal counsel Dolan, on June 17, 2009. (Exhibit 2).
- 4 • Debra Aitken, via e-mail, on June 10, 2009. (Questionnaire sent June 10, 2009.  
5 Complainant did not respond by the time of completion of this report).
- 6 • Sharlene Cooney, via her legal counsel Dolan, on May 28, 2009. (Response to  
7 Complaint, Tab C).

8  
9 **Documents. (Tab E):**

10  
11 I obtained and reviewed the following documents and materials relevant to the investigation:

- 12  
13 • Minutes from the January 27, 2009 hospital Board meeting. (Exhibit 3).

14  
15 **Relevant Statutes and Commission's Opinions. (Tab F):**

- 16  
17 • NRS 281A.420(2), (4), and (8).
- 18 • Nevada Commission on Ethics Opinions, In re Woodbury, No. 99-56A, and In re  
19 Kubichek, No.97-07A.

20  
21 **Investigative findings:**

22  
23 **Background:**

24  
25 Cooney is a Member of the Hospital Board. She was elected during November 2008 general  
26 election and sworn into her four-year term in January 2009. In addition to her elected position,  
27 Cooney is employed by the hospital as a physician office assistant. Cooney works in the surgery  
28 department, which is supervised by Kim. (Exhibit 1).

1 **Investigation:**

2  
3 During the Hospital Board meeting on January 27, 2009, the Board discussed the purchase of an  
4 additional video colonoscopy system for the surgery department. Maher, the hospital's legal  
5 counsel questioned Hospital Administrator James Parrish (Parrish), and was informed that the  
6 colonoscopy system would allow for more procedures and more revenue. Maher stated that this  
7 purchase could benefit Board member Kim, the hospital's surgeon, and Board member Cooney  
8 an employee of the surgery department. Maher explained the ethics rules to the Board and  
9 suggested that disclosures should be made. (Exhibit 3, page 3).

10  
11 Board member Kim stated that she could not understand how she would profit from the  
12 purchase, since she did not believe more colonoscopy procedures were possible. In addition, Kim  
13 stated that she has no problem abstaining on the matter. (Exhibit 3, page 3). (Exhibit 2, page 2).

14  
15 Board member Cooney disclosed that she works in the surgery department, but that her salary is  
16 not affected by the number of medical devices or by the number of procedures. (Tab C, page 1),  
17 (Exhibit 2, page 2). After Cooney's disclosure, legal counsel Maher stated that he did not see a  
18 problem with Cooney's participation in the discussion. Cooney did not abstain and voted on the  
19 purchase of the colonoscopy system. (Exhibit 3, page 3), (Tab C, page 3).

20  
21 A response received from Kim on June 17, 2009 via her counsel Dolan explains Kim's relation  
22 to Cooney and claims that the hospital's Business Office Manager, Penny Begay (Begay), is  
23 Cooney's supervisor. In addition, Kim stated that she would not benefit from the purchase of an  
24 additional colonoscopy system. The colonoscopy devices currently owned by the hospital are  
25 also used by other physicians. Therefore, she would not receive any greater or lesser benefit than  
26 any other physician using such device. (Tab C, page 1, line 27).

1 A response received on June 19, 2009 from Maher describes Cooney's employment status.  
2 Maher stated that Kim is the supervisor of the surgery department and Cooney works directly  
3 under her supervision. In addition, Maher stated that Cooney's employment activities are  
4 determined by Kim, and Cooney answers only to her. Although Kim does not have control over  
5 the signing and payment of Cooney's paycheck, Kim's opinion in determining Cooney's salary  
6 is given substantial consideration. Finally, Maher stated that the hospital administrator advised  
7 that if Kim indicated to him that Cooney's employment should be terminated, it would most  
8 likely be terminated upon such request, and, the administrator would not consider termination  
9 without Kim's input. (Exhibit 1).

10  
11 Since Kim claimed that Begay is Cooney's immediate supervisor, I requested additional  
12 clarification from Maher on June 19, 2009. Maher responded that Begay is the business office  
13 manager, and such, she is responsible for staffing; however, it is the department's supervisor, in  
14 this case Kim, who is Cooney's immediate supervisor. (Exhibit 1).

15  
16 First, Cooney and Kim do not share a relationship enumerated in NRS 281A.420(8). Second,  
17 during the investigation, no sufficient evidence was discovered that Kim benefited from  
18 Cooney's participation in the vote during Hospital Board's meeting on January 27, 2009. Still, I  
19 note that the evidence received from Maher indicates that Kim is Cooney's supervisor, which  
20 contradicts the statements of both, Cooney and Kim. Finally, it appears that Cooney relied on the  
21 opinion of Maher, the hospital's legal counsel, who stated no objection to Cooney's participation  
22 on the vote.

- 23  
24 **1.) The first allegation is that Cooney failed to disclose a commitment in a private**  
25 **capacity to her superior, Dr. Soon Kim, before voting on the purchase of a medical**  
26 **device during the Hospital Board's meeting on January 27, 2009.**

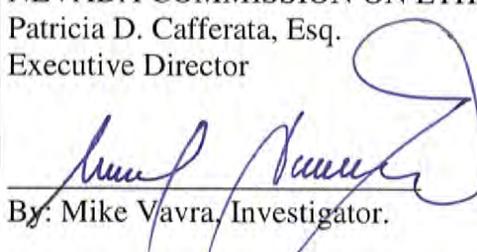
1 During the Hospital Board meeting on January 27, 2009, Cooney disclosed that she works in the  
2 surgery department and her wages remain the same regardless of the purchase of any additional  
3 medical device. In addition, Cooney stated that neither she nor any person related to her would  
4 benefit from the purchase of the medical device. Cooney did not disclose that Kim is her  
5 supervisor, since she alleges she does not work for her, she works for the hospital.

6  
7 **2.) The second allegation is that Cooney failed to abstain from voting on the purchase**  
8 **of a medical device during the Hospital Board's meeting on January 27, 2009.**

9  
10 Aitken alleges that Cooney's vote on the purchase of a medical device resulted in an  
11 unwarranted benefit to Kim, Cooney's superior. As noted above, legal counsel Maher did not  
12 object to Cooney's participation in the vote; therefore, Cooney did not believe that there was a  
13 need for abstention. In addition, responses from Cooney (Tab C, page 1), and Kim (Exhibit 2,  
14 page 2), suggest that Kim did not receive an unwarranted benefit as alleged by the complainant.

15  
16 Dated this 18 day of June 2009.

17  
18 NEVADA COMMISSION ON ETHICS  
19 Patricia D. Cafferata, Esq.  
20 Executive Director

21   
22 By: Mike Vavra, Investigator.