



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion  
Concerning the Conduct of  
SOON KIM, Trustee,  
Humboldt County General Hospital Board of  
Directors, State of Nevada,  
Subject. /

Request for Opinion No.: 09-11C

**INVESTIGATOR'S REPORT (Tab A):**

**Introduction:**

On February 27, 2009, an Ethics Complaint was filed against Soon Kim (Kim), a Trustee of Humboldt County General Hospital Board of Trustees (Board), alleging that she voted to approve a payment to herself.

**Jurisdiction:**

As a Trustee of the Board, no dispute exists that Kim is a public officer as defined by NRS 281A.160. Therefore, the Nevada Commission on Ethics (Commission) has jurisdiction to render an opinion in this matter, pursuant NRS 281A.280 and NRS 281A.440.

**Issues:**

The first issue is whether Kim violated NRS 281A.400.2 when she allegedly used her position to approve payments to herself. The second issue is whether Kim violated NRS281A.420.2 when

1 she failed to disclose her pecuniary interest before voting on the alleged payment to herself. The  
2 third issue is whether Kim violated NRS 281A.400.4 when she failed to abstain from voting on  
3 the alleged payment.

4  
5 **Request for Opinion No. 09-11C (Ethics Complaint). (Tab B):**

6  
7 On February 27, 2009 an Ethics Complaint was filed by Debra A. Aitken (Aitken). The  
8 following is the summary of the allegations:

9  
10 On February 24, 2009, Kim violated:

- 11 1.) NRS 281A.400.2 when she used her position for personal gain,  
12 2.) NRS 281A.420.4 when she failed to disclose her pecuniary interest,  
13 3.) NRS 281A.420.2 when she failed to abstain from voting on the disbursement of funds that  
14 included a payment to herself.

15  
16 **Amended Notice to Subject of Ethics Complaint. (Tab C):**

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18 On March 3, 2009 an Amended Notice to Subject of was sent to Kim and her legal counsel Bob  
19 Dolan (Dolan).

20  
21 **Response to Ethics Complaint. (Tab D):**

22  
23 On March 16, 2009, a response entitled Procedural Issues Relative to Complaint and Response  
24 was received from Kim's legal counsel Dolan. Dolan stated that Kim did not violate any  
25 provisions of NRS 281A and she had acted within her authority and responsibility. In addition,  
26 Dolan stated that at the time of the February 24, 2009 Board meeting, Kim was not aware that the  
27 "weekly check run" was a part of the packet distributed to Board members. Finally, Kim relied on  
28 the advice of hospital's legal counsel Maher who did not raise any objection before her vote.

1 **Investigation Summary:**

2  
3 I interviewed the following individuals and reviewed the following documents:

4  
5 **Witnesses interviews and responses. (Tab E):**

- 6
- 7 • Debra Aitken, requestor of an Ethics Complaint No. 09-11C, via e-mail on March
  - 8 25, 2009. (Exhibit 1).
  - 9 • Soon Kim, subject of an Ethics Complaint No. 09-11C, via fax on March 27,
  - 10 2009. (Exhibit 2).

11  
12 **Documents. (Tab F):**

13  
14 I obtained and reviewed the following documents and materials relevant to the investigation:

- 15
- 16 • Fax from Bob Dolan, counsel for Kim, dated April 1, 2009. (Exhibit 3).
  - 17 • E-mail from Larry Hutcheson, dated March 31, 2009. (Exhibit 4).
  - 18 • E-mail and attachment from Jessica Moyrong (Moyrong), Administrative
  - 19 Assistant and Medical Staff Coordinator, dated March 30, 2009. (Exhibit 5).
  - 20 • Agenda and minutes from the February 24, 2009, Board meeting. (Exhibit 6).
  - 21 • Information packet provided to the Board members for the February 24, 2009,
  - 22 Board meeting. (Exhibit 7).
  - 23 • Audio recordings from the February 24, 2009, Board meeting. (Not included, but
  - 24 available).
  - 25 • Agenda and minutes from the January 27, 2009, Board meeting. (Exhibit 8).
  - 26 • Information packet provided to the Board members for the January 27, 2009,
  - 27 Board meeting. (Not included but available).

- 1                   • Commission’s Opinions No. 90-2C (Confidential) and 93-19C, In re  
2                   Guinchigliani. (Exhibits 9).  
3

4 **Investigative findings:**

5  
6 The following are my investigative findings:  
7

8 Kim was elected to the Board during the November 2008 general election. She attended her first  
9 Board meeting as a Trustee on January 27, 2009. At the said meeting, the hospital’s  
10 Administrator James Parish (Parish) and the hospital’s Legal Counsel Kent Maher (Maher)  
11 discussed the possibility of a conflict of interest for Kim and a Board member Cooney. Parish  
12 and Maher offered the guidance to Kim and Cooney on a vote related to the purchase of a video  
13 colonoscopy system (Exhibit 2, p.7). Besides Kim’s basic salary, she is entitled to certain  
14 percentage of revenue from medical procedures. (Tab D, Exhibit I). The purchase of a video  
15 colonoscopy system would allegedly increase the number of procedures and revenue to the  
16 hospital. The purchase would also increase Kim’s compensation. After some discussion, Kim  
17 abstained from the vote on this purchase.  
18

19 Kim’s counsel Dolan stated that “a protocol has been created” by Parish and Maher on bringing  
20 possible conflicts of interest to the attention of the Board members before a vote. (Tab D, p.3 line  
21 4). Dolan argued that Kim was relying on the advice of the legal counsel. Since there were no  
22 objections to her vote, Kim did not feel that she had a conflict of interest. In addition, Dolan  
23 stated that the documentation included with the Nevada Commission on Ethics Complaint No.  
24 09-11C shows the payment in question as a line item. However, the documentation packet e-  
25 mailed to Kim on February 23, 2009, did not include this particular document (Exhibit 5).  
26 Therefore, Kim did not know the check issued to her in the amount of \$7, 078.47 was a part of  
27 the “weekly check run” she voted to approve. (Exhibit 6). Furthermore, Dolan stated that the  
28 check was already paid to Kim about a month prior. (Tab D, p. 4, line 14), (Tab D, Exhibit E).

1 Finally, Dolan stated the Complaint is nothing but political attack by Aitken, Kim's opponent  
2 during the election.

3  
4 On March 23, 2009, I requested a copy of the packet distributed to the Board members for the  
5 February 24, 2009, Board meeting. An Administrative Assistant to the Hospital Administrator  
6 Jessica Moyrong (Moyrong) stated that there were two packets, since the number of pages was  
7 too large to be sent via e-mail. The information was divided into two different packets. The first  
8 packet consisting of 25 pages was e-mailed to all Board members on February 23, 2009. (Exhibit  
9 5). It did not include the "weekly check run" as a line item. This packet included only the total  
10 amounts disbursed. The second packet that included the details of the "weekly check run" was  
11 available to the Board members at the hospital administrator's office. However, the second  
12 packet was delivered by Chief Financial Officer Larry Hutcheson (Hutcheson) to Kim's office  
13 on February 20, 2009. (Exhibit 4). Moyrong also stated that the second packet including the  
14 "weekly check run" was also given to Allen Violette (Violette), Kim's husband upon his request.  
15 Said packet was given to Violette at the meeting on February 24, 2009.

16  
17 Upon receiving the packet from Moyrong on March 30, 2009, I compared it with the packet e-  
18 mailed to the Board members on February 23, 2009 with the packet sent via US mail. The packet  
19 e-mailed to the Board members on February 23, 2009 did not include the "weekly check run"  
20 with line items. It showed only the total amounts disbursed. The packet delivered to Kim's  
21 office included the "weekly check run" with line items including the \$ 7,078.47 check to Kim.

22  
23 Kim claims that she had no knowledge of any documents being delivered to her office and she  
24 does not recall seeing the "weekly check run" as a line item. Therefore, she did not know that  
25 there may be a conflict of interest, especially when the \$7, 078.47 check in question was already  
26 paid to her on January 16, 2009. (Tab D, Exhibit E). No objection to her vote was raised by legal  
27 counsel Maher on February 24, 2009.

1 It was Kim’s responsibility to familiarize herself with the content of “weekly check run” and that  
2 she had the opportunity to do so. On the other hand, it appears that Kim was entitled to the  
3 payment as described in her employment contract. (Tab D, Exhibit I), (Tab D, Exhibit F)  
4 Therefore, the allegation that Kim received unwarranted privilege appears to have no merit.

5  
6 To fully understand this case and establish the need for Kim’s disclosure and abstention, one  
7 should evaluate the confidential Commission’s Opinion No. 90-2C where the public officer was  
8 prohibited from voting on the budget when her salary appeared as a line item. This case is  
9 distinguished from the Commission’s Opinion No. 93-19C In re Guinchigliani. In that opinion,  
10 the Commission concluded that the public officer did not violate NRS 281A.420.2 (revised NRS  
11 281.501.2) while voting on the executive budget that ultimately included her salary. Her salary  
12 was not a line item in the budget.

13  
14 A public officer should determine the need for abstention on case-by-case analysis; however the  
15 facts in Opinion 90-02C are similar to that of Kim. Therefore, it is my opinion that Kim should  
16 be treated as the subject of the said Opinion.

17  
18 **Investigative conclusion:**

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20 The evidence DOES support the claim that on dates as alleged in the complaint, Kim violated  
21 NRS 281A.420.4 when she failed to disclose her pecuniary interest; NRS 281A.420.2 when she  
22 failed to abstain from voting. On the alleged violation of NRS 281A.400.2, the evidence DOES  
23 NOT support the claim that Kim used her position to secure unwarranted privileges, because  
24 Kim was entitled to the reimbursement for her expenses as described in her employment  
25 contract. (Tab D, Exhibit I).

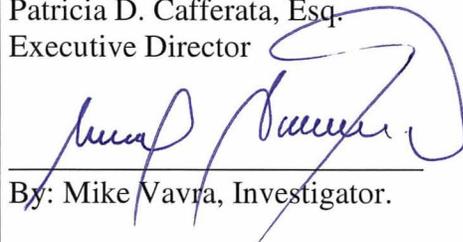
26  
27 Therefore, on the allegation in Ethics Complaint No. 09-11C, I conclude that just and  
28 sufficient cause DOES EXIST for the Commission to render an opinion that on February

1 24, 2009, Kim failed to disclose her pecuniary interest and failed to abstain from voting  
2 during the approval of “weekly check run” and the \$ 7,078.47 payment to herself.

3 On the allegation of violation of NRS 281A.400.2, I conclude that just and sufficient cause  
4 DOES NOT EXIST for the Commission to render an opinion that February 24, 2009,  
5 Kim used her position to secure unwarranted privileges.  
6

7 Dated this 1 day of April 2009.  
8

9 NEVADA COMMISSION ON ETHICS  
10 Patricia D. Cafferata, Esq.  
11 Executive Director

12   
13 By: Mike Vavra, Investigator.