



**STATE OF NEVADA**

**BEFORE THE NEVADA COMMISSION ON ETHICS**

In the Matter of the Third-Party Request  
for Opinion Concerning the Conduct of  
**SOON KIM**, Trustee, Humboldt General  
Hospital District Board of Trustees,  
Humboldt County, State of Nevada,

**Request for Opinion No. 09-11C**

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Public Officer. /

**OPINION**

**I. STATEMENT OF THE CASE**

On February 27, 2009, a private citizen filed a Third-Party Request for Opinion ("RFO") with the Nevada Commission on Ethics ("Commission") pursuant to NRS 281A.440(2) alleging that Dr. Soon Kim, Trustee of the Humboldt General Hospital District Board of Trustees, violated various provisions of the Ethics in Government Law ("Ethics Law") set forth in NRS 281A by using her position to obtain an unwarranted privilege and by failing to disclose and abstain on a matter before the Board.

Pursuant to NRS 281A.440, the Commission conducted an investigation and an investigatory panel of two commissioners<sup>1</sup> determined that just and sufficient cause existed for the Commission to hold a hearing and

render an opinion regarding the allegations.

This matter came before a quorum<sup>2</sup> of the Nevada Commission on Ethics during a public hearing on January 14, 2010, in consideration of the RFO. Dr. Kim was present at the hearing and provided sworn testimony. Bob Dolan, Esq., of Dolan Law LLC, represented Dr. Kim in this matter.

At the conclusion of the hearing on January 14, 2010, the Commission deliberated in open session, and after fully considering the evidentiary facts and circumstances presented in witness testimony and documents, orally provided Dr. Kim with its decision that, based on a preponderance of the substantial and probative evidence, Dr. Kim violated the Ethics Law. The

<sup>1</sup> Commissioners George M. Keele, Esq., and J.T. Moran III, Esq., served on the Investigatory Panel. Pursuant to NRS 281A.220(4), they took no part in the hearing or opinion in this matter.

<sup>2</sup> The quorum consisted of Acting Chairman Paul H. Lamboley, Esq., and Commissioners Erik Beyer, Gregory J. Gale, Mark A. Hutchison, Esq., John W. Marvel, and James M. Shaw.

Commission, however, deemed the violation not to be willful. Based on the record developed, the Commission now adopts and issues this written Opinion as its formal statement of findings of fact and conclusions of law in this case.

## II. PROCEDURAL HISTORY<sup>3</sup>

On February 24, 2009, in her role as Trustee, Dr. Kim voted on the Humboldt General Hospital's monthly "check run" that included a check issued to her in the amount of \$7,078.47 for reimbursement of certain expenses. Based on this action, an RFO was filed with the Commission alleging that Dr. Kim violated NRS 281A.400(2) because she used her position as a Hospital Board Trustee for private gain; that she violated NRS 281A.420(2) when she failed to disclose her pecuniary interest in the check; and that she violated NRS 281A.420(4) by failing to abstain from voting to approve the check run.

After a thorough investigation, the Commission's Executive Director presented the three allegations to an Investigatory Panel pursuant to NRS 281A.440(4). The Panel determined that there was just and sufficient cause to forward only two of the allegations to the Commission to render an opinion pursuant to NRS 281A.440(5).

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<sup>3</sup> The Nevada Legislature amended the Ethics Laws during the 2009 Legislative Session. See 2009 *Stat. of Nevada*, ch. 257, p. 1037 (Senate Bill No. 160). Specifically, the NRS provisions relevant to this matter regarding disclosure and abstention (NRS 281A.420) were amended and/or renumbered twice. Because Dr. Kim's actions occurred prior to the effective date of the second set of amendments, the law in effect on February 24, 2009, with the amendments set forth in Section 9 of Senate Bill 160, is controlling. Senate Bill 160 also amended and/or renumbered NRS 281A.440 regarding Commission procedures. This opinion sets forth the exact language of the applicable statutes below. All citations to these provisions in this opinion refer to the numbering and language applicable at the time of Dr. Kim's conduct.

The Panel found sufficient credible evidence<sup>4</sup> for the Commission to hold a hearing and render an opinion regarding whether Dr. Kim violated the Ethics Laws when she failed to disclose her pecuniary interest and then failed to abstain from voting on the hospital's weekly check run that included a check payable to her. The Panel, however, dismissed the allegation that Dr. Kim received an unwarranted privilege by approving the check because Dr. Kim was legally entitled to the \$7,078.47 payment under her employment contract with the Hospital District.

During the course of these proceedings, Dr. Kim twice moved to dismiss this matter on grounds that she no longer had a pecuniary interest in the check at the time of the vote. The Commission, finding that she had a pecuniary interest, denied both motions.

## III. FINDINGS OF FACT

1. Dr. Soon Kim is an elected member of the Board of Trustees of the Humboldt Hospital District in Humboldt County, Nevada. This is the first elected position she has held. She is also employed by the Hospital District as a general surgeon for Humboldt General Hospital.
2. On January 16, 2009, the hospital issued Dr. Kim a check in the amount of \$7,078.47 to reimburse her for out-of-pocket expenses she incurred in 2007 and 2008. The

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<sup>4</sup> NAC 281A.435 defines "credible evidence" as "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."

payment was approved by Larry Hutcheson, the hospital's Chief Financial Officer, in accordance with her employment contract. Other hospital physicians are similarly reimbursed as allowed by their individual contracts.

3. Dr. Kim, having been elected to the Board in November 2008, attended her first Board meeting on January 27, 2009. At that meeting, Kent Maher, the Board's legal counsel, advised Dr. Kim regarding her obligations to disclose and abstain with regard to an item on the Board's agenda. As the item concerned the purchase of a colonoscopy system to be used in Dr. Kim's surgical clinic, Maher recommended that Dr. Kim disclose her relationship with respect to the purchase and abstain from discussion and action on the item. From this exercise, Dr. Kim was at least on notice of the disclosure and abstention framework.
4. The next regular Board meeting was held on February 24, 2009. In preparation for that meeting, the hospital's Administrative Assistant Jessica Moyrong emailed a "board packet" to each board member at about noon on February 23rd. The packet contained the Meeting Agenda and information related to the agenda items, excluding the "check run" document which was too large to transmit electronically. The email advised, however, that a copy of the "check register" was available for the board members to pick up.
5. The "check run" is one of the financial reports the CFO prepares for each Board meeting and includes

details concerning the hospital's general cash fund expenditures for the month preceding the Board meeting. It is a printout of the Accounts Payable Check Register listing each check issued by date, and shows the payee and the check amount. The check run includes the hospital's wire, phone, and other similar payments. For January 2009, about 400 checks appeared on the check run, totaling over \$1.6 million, including the check issued to Dr. Kim on January 16, 2009.

6. Despite that CFO Hutcheson left a copy of the check run on her unattended desk a few days before the February 24, 2009 meeting, Dr. Kim did not receive the check run before or at the Board meeting. She did not review the report prior to voting to approve the check run.
7. At the February 24, 2009 meeting, Hospital Administrator James Parrish presented the four financial reports listed on the agenda under item D "Presentation/Review/Approval of Financial Reports." Although listed separately as items D-1 through D-4, the Board voted to approve the reports as a whole. The check run appeared on the agenda as item D-1 "Warrants disbursed - Monthly expenditures."
8. When voting to approve the financial reports, Dr. Kim was unaware that the reimbursement check issued to her on January 16, 2009 was included in the check run, and neither Board counsel Kent Maher nor Administrator James Parrish commented to Dr. Kim regarding her conflict of interest by voting to

approve a disbursement to herself. Dr. Kim therefore made no disclosure or abstention with respect to the agenda item.

#### **IV. STATEMENT OF ISSUES**

The issues in this matter arise out of Dr. Kim's actions at the February 24, 2009, Board meeting when she voted to approve the hospital's check run for January 2009, which included a check payable to her for \$7,078.47. The Commission considers whether Dr. Kim was required to disclose her financial interest in and/or abstain from voting to approve the items in the check run.

The Commission finds and concludes, by a preponderance of substantial, probative evidence, that Dr. Kim's failure to disclose her interest in the check which was included in the approval of the check run violated the Ethics Law. Further, the Commission finds and concludes that the violation was not willful and therefore does not impose a sanction in this matter.

NRS 281A.420(4) prohibits a public officer from acting on a matter in which the public officer has a pecuniary interest without first disclosing the nature and extent of the interest. Dr. Kim had a pecuniary interest in the reimbursement check and she therefore violated NRS 281A.420(4) by failing to disclose that interest prior to voting to approve the check run. The hospital staff's failure to provide Dr. Kim with the details of the check run, or to advise her of the potential conflict of interest, does not excuse her conduct. As a public official, she is obligated to be fully informed about both the Ethics Law and

any matters or items upon which she is voting.

The Commission further finds and concludes that under NRS 281A.420(2) Dr. Kim was not required to abstain, because the resulting benefit or detriment accruing to her was no greater than the benefit or detriment accruing to any other physician entitled to a reimbursement check under similar circumstances.

#### **V. DISCUSSION OF RELEVANT STATUTES AND ISSUES**

##### **A. Public Policy**

##### **NRS 281A.020**

1. It is hereby declared to be the public policy of this State that:

(a) A public office is a public trust and shall be held for the sole benefit of the people.

(b) A public officer or employee must commit himself to avoid conflicts between his private interests and those of the general public whom he serves.

Dr. Kim serves as a publicly elected member of the Board of Trustees of the Humboldt Hospital District. She is therefore a public officer and must commit herself to avoid conflicts of interest between her private interests and those of the general public whom she serves.

Because she is employed by the Hospital District as a general surgeon for Humboldt General Hospital, Dr. Kim is also a public employee. The matter before the Commission, however, concerns only her actions as a public officer.

## B. Disclosure of pecuniary interest

### NRS 281A.420(4)

At the time of Dr. Kim's conduct, NRS 281A.420(4) (including the amendment in Section 9 of Senate Bill No. 160), provided:

Except as otherwise provided in this section, a public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

- (a) Regarding which he has accepted a gift or loan;
- (b) Which would reasonably be affected by his commitment in a private capacity to the interest of others; or
- (c) In which he has a pecuniary interest,

→without disclosing sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest. Such a disclosure must be made at the time the matter is considered.

The Commission first considers whether Dr. Kim had a pecuniary interest in the check run that would trigger the disclosure provisions. Dr. Kim contends that she did not have a pecuniary interest in the check run at the time of the disputed vote. She points out that she was entitled to be reimbursed for her expenses under her employment contract, and that the hospital's Chief Financial Officer had approved the reimbursement and issued the \$7,078.47 check almost six weeks before the Board meeting. Because the

check had already issued, and, presumably was cashed, before the vote, Dr. Kim argues that no pecuniary interest existed at the time for her to disclose.

The Commission disagrees. To accept Dr. Kim's position would render the Board's action with respect to the check run meaningless. The check run did not appear on the meeting agenda as an informational item, but as an action item for the Board's review and approval of expenditures made by the Chief Financial Officer during January 2009. Dr. Kim participated in that vote and thereby ratified and approved all checks issued in January, including the check issued to her on January 16, 2009.

The Ethics Law does not define the term "pecuniary interest," and no definition is given elsewhere in the NRS. In the absence of a statutory definition of "pecuniary interest," the term is properly to be construed and given a plain, ordinary, common language meaning, which is "consisting of, measured in or relating to money," *Webster's New Collegiate Dictionary*, (1976); or "monetary interest," see *Black's Law Dictionary*, 885 (9<sup>th</sup> ed. 2009) (pecuniary or financial interest is "an interest involving money or its equivalent"). Because Dr. Kim clearly had a monetary interest in the reimbursement check, she had a pecuniary interest in the check run.

NRS 281A.420 requires a public officer, prior to acting on any matter in which the officer has a pecuniary interest, to disclose the interest at the time the matter is considered. Dr. Kim does not dispute that she failed to disclose her interest in the check, but claims that her

failure should be excused because the Board's legal counsel Kent Maher did not alert her to the conflict of interest. She points out that the February meeting was only the second regular Board meeting that she had attended, and that at her first meeting Maher did counsel and advise her to disclose her interest in the hospital's purchase of a colonoscopy system for her clinic, and also recommended that she abstain from voting on the purchase. Dr. Kim argues that Maher's actions at the January Board meeting created a protocol that she expected would be followed at future Board meetings and, since the protocol was not followed, her actions should be excused.

Dr. Kim also maintains that her failure to disclose should be excused because the hospital staff did not provide her with the check run either prior to or at the Board meeting. Although there was testimony at the hearing that the staff at least attempted to provide Dr. Kim with a copy of the check run, no question exists that she did not review the check run before voting at the Board meeting.

The Ethics Law imposes an affirmative duty on public officers to be informed regarding the Ethics Law, and to understand how the law governs their behavior. It is the public officer's responsibility – and not the responsibility of the public body's legal counsel – to comply with the Ethics Law. Further, the Ethics Law also requires public officers to be fully informed of any matters or items upon which they are voting. Should the public body's staff fail to provide the public officer with information relevant to a matter, the public officer should refrain from voting until he or she has had an opportunity to

become informed. A public officer may also request that the item be tabled until a later date, and seek additional information in the interim period. A public officer who fails to make a fair inquiry or to conduct due diligence regarding an item votes at his or her own peril.

The disclosure requirement is especially important where, as here, a Board member has a known financial relationship with the entity. Dr. Kim was contractually employed as a general surgeon at the Hospital and had reason to know her compensation and reimbursements were a matter of Board action as well as public record.

Accordingly, the Commission concludes that Dr. Kim violated NRS 281A.420(4) by failing to disclose her pecuniary interest when voting on the check run.<sup>5</sup>

### **C. Willfulness**

#### **NRS 281A.170**

At the time of Dr. Kim's conduct, NRS 281A.170 provided:

"Willful violation" means a violation where the public officer or employee knew or reasonably should have known that his conduct violated this chapter.

Although the Commission concludes that the circumstances surrounding the check run vote do not excuse Dr. Kim's failure to disclose, we find them relevant to the issue of whether her conduct was willful.

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<sup>5</sup> Commissioners Beyer and Shaw voted against the motion finding a violation of the disclosure law.

The applicable standard in this matter is whether the public officer knew or should have known that the conduct violated the Ethics Law. In this regard, the Commission notes that the check run consisted of over 400 checks, some \$1.6 million in expenditures in the aggregate; that Dr. Kim's reimbursement check that was previously approved and issued was not listed as a separate agenda item, but rather was included in a lengthy list of expenditures; that the check run itself unremarkably appeared within the agenda as "Warrants disbursed – Monthly expenditures;" and that Dr. Kim's failure to disclose occurred during her second meeting as a public officer.

While it is foreseeable that Dr. Kim's compensation or reimbursement could be included at some time for Board action, there was no effort to specifically notify Dr. Kim, as a Board member and employee, of that fact at this meeting by the hospital administrative personnel who themselves were knowledgeable of the situation and Dr. Kim's newness to Board presentations and protocols, and the potential application of the Ethics Law.

Under these particular circumstances, the Commission finds that there was no basis to conclude that Dr. Kim either knew or reasonably should have known that the check run in question included her reimbursement and by failing to make disclosure she was violating the Ethics Law. The Commission therefore concludes that Dr. Kim's failure to disclose her pecuniary interest in the \$7,078.47 reimbursement check was not a willful violation.<sup>6</sup> Consequently, no

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<sup>6</sup> Commissioners Hutchison and Shaw voted against this finding.

sanction under NRS 281A.480 is imposed.

The Commission now turns to the issue of whether Dr. Kim was required to abstain from voting to approve the check run.

#### **D. Abstention**

##### **NRS 281A.420(2)**

At the time of Dr. Kim's conduct, NRS 281A.420(2) (including the amendment in Section 9 of Senate Bill No. 160), provided:

Except as otherwise provided in this section, in addition to the requirements of the code of ethical standards, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

- (a) His acceptance of a gift or loan;
- (b) His pecuniary interest; or
- (c) His commitment in a private capacity to the interests of others.

→It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the

requirements set forth in subsection 4 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

Abstention is required if the public officer's pecuniary interest would materially affect the independence of judgment of a reasonable person in the officer's situation. The law presumes, however, that a pecuniary interest has no material effect on a reasonable person's judgment where the benefit or detriment accruing to the public officer "is not greater than that accruing to any other member of the general business, profession, occupation or group."

The Board's vote approved the hospital's payment of \$7,078.47 to Dr. Kim as reimbursement for certain out-of-pocket expenses. Although the Commission believes that the reimbursement check was for a significant amount, the Commission, under the statutory presumption, need not determine the check's effect on a reasonable person's judgment.

It is clear from the evidence and testimony presented that Dr. Kim's vote to approve the check did not result in a benefit to her greater than that accruing to other physicians employed by Humboldt Hospital District with similar contract rights. The hospital's Chief Financial Officer determined that Dr. Kim's contract provided for reimbursement of the expenses she incurred, and therefore he approved the issuance of the check. The evidence showed that other physicians have similar contracts with the hospital, and would be entitled to reimbursement pursuant to their individual contracts.

The Commission therefore concludes that Dr. Kim was not required to abstain from voting on the check run because the resulting benefit to her was no greater than the benefit accruing to any other physician entitled to reimbursement under similar circumstances. Accordingly, the Commission finds no violation of NRS 281A.420(2).

## VI. CONCLUSIONS OF LAW


1. At all times relevant to this matter, Dr. Kim was a "public officer," as defined by NRS 281A.160. The Commission has jurisdiction over public officers pursuant to NRS 281A.280.
2. Pursuant to NRS 281A.440(2)(b) and NRS 281A.460, the Commission has jurisdiction to render an opinion in this matter.
3. As Hospital Board Trustee, Dr. Kim violated the provisions of NRS 281A.420(4) by voting to approve the January 2009 check run, which included the approval of a reimbursement check payable to her in the amount of \$7,078.47, without disclosing her pecuniary interest in the check.
4. Dr. Kim's failure to disclose her pecuniary interest in a vote on February 24, 2009 was not willful. Accordingly, sanctions are not imposed pursuant to NRS 281A.480.



5. Dr. Kim was not required under NRS 281A.420(2) to abstain from the vote despite her pecuniary interest, because she accrued no greater benefit than that accruing to any other physician entitled to a reimbursement under similar circumstances.

Dated this 17th day of April, 2012.

NEVADA COMMISSION ON ETHICS

By:   
Paul H. Lamboley, Esq.  
Vice Chair<sup>7</sup>

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<sup>7</sup> Pursuant to NRS 281A.220(4), at the time of the hearing in this matter, then-Commission Chair Keele and Vice-Chair Moran did not participate in this opinion as they served on the Investigatory Panel. Pursuant to NAC 281A.175, Commissioner Lamboley was appointed to serve as the Acting Chair in this matter. At the time this written opinion was issued, Commissioner Lamboley served as the Commission's Vice Chair and signed this opinion on behalf of the participating commissioners.