



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion
Concerning the Conduct of STEVE EVENSON,
Former Chairman,
Pershing General Hospital Board of Trustees
Pershing County,
State of Nevada,

Request for
Opinion No. 10-05C

Subject.
/

STIPULATED AGREEMENT

1. **PURPOSE:** This stipulated agreement resolves Request for Opinion 10-05C before the Nevada Commission on Ethics ("Commission") concerning Steve Evenson ("Evenson") and constitutes the opinion of the Commission in this matter.¹

2. **JURISDICTION:** At all material times, Evenson served as a member of the Pershing General Hospital Board of Trustees ("Board") in Pershing County, Nevada, making him a public officer pursuant to NRS 281A.160. Nevada Revised Statute ("NRS ") 281A.280 gives the Commission jurisdiction over all elected and appointed public officers. Therefore, Evenson was a public officer subject to the jurisdiction of the Commission.

3. **PROCEDURAL STATUS AND HISTORY:**

The following circumstances or events are relevant to the matter:

¹ Due to certain confidential information protected by federal law, this public version of the stipulation will not make reference to the specific conflicts of interest applicable to the matter.

- a. The Pershing County Board of Commissioners appointed Evenson to fill a Board vacancy in 2006. Evenson resigned his position on the Board on July 3, 2010 due to a serious knee injury.
- b. On February 1, 2010, the Commission received a third-party Request for Opinion (RFO) from Matthew Rees, through his attorney, Nicole Harvey, Esq., stating that Evenson violated the following provisions of the Ethics in Government Law set forth in NRS 281A by allegedly:
 - 1) Using governmental time and property to benefit his personal interest in terminating the employment of the Hospital's Chief Executive Officer, Matt Rees ("Rees") - NRS 281A.400(7);
 - 2) Seeking to benefit his personal interest in terminating Rees' employment through the influence of a subordinate, Rees' assistant - NRS 281A.400(9);
 - 3) Seeking other employment through the use of his public position to "appoint himself" or be appointed to serve as the Hospital Board's legal counsel - NRS 281A.400(10);
 - 4) Telling Rees, the Hospital's Chief Executive Officer, to suggest that the Hospital Board, during its August 4, 2009 meeting, adopt a 25 percent discount policy on existing hospital accounts receivable – NRS 281A.420(1) and (3)²; and
 - 5) Using his position on the Hospital Board to secure an unwarranted preference in satisfying his personal interest in terminating Rees' employment by:

² The Commission's investigation of this allegation revealed a possible disclosure and abstention violation by Evenson pursuant to NRS 281A.420(1) and (3) during that Board meeting because of an alleged pecuniary interest in the matter and commitment in a private capacity to the interests of others regarding the matter. The Commission issued a Notice of Additional Issues and Facts pursuant to NAC 281A.415 outlining these specific allegations.

- a) Conferring with Littler Mendelson law firm in Reno, Nevada for the purposes of reviewing Rees' employment contract and not sharing all pertinent information with the Hospital Board regarding the legal advice provided by Littler Mendelson and making changes to Rees' employment contract without the Hospital Board's approval - NRS 281A.400(2); and
- b) Engaging in a continuous pattern of abusive questioning of Mr. Rees on October 28, 2009, December 30, 2009 and February 11, 2010, appearing to have the intent of terminating Rees' employment - NRS 281A.400(2)³;
- c. The Commission provided Evenson with proper notice of the allegations and an opportunity to file a written response. Evenson was advised of the allegations asserted in the RFO.
- d. On March 29, 2010, Evenson filed a written response to the RFO.
- e. The Commission's staff investigated the allegations and provided reports and recommendations to the Commission's investigatory panel ("Panel").
- f. Pursuant to NRS 281A.440, on April 8, 2010, the two-member Panel of the Commission reviewed the RFO, Evenson's written response, the staff reports and recommendations and other evidence.
- g. The Commission staff presented the Panel with the allegations set forth in paragraph "b." The Panel reviewed the materials identified above and it determined that:

³ The RFO alleged that Evenson engaged in a "hostile, sarcastic and obnoxious" demeanor against Rees (page 4) and attacked Rees' character (page 7) and cited to a review of various audio recordings of Hospital Board meetings to prove the alleged conduct. Upon receipt and review of various audio recordings, the Commission's Investigator identified the meetings and dates listed here as supportive of this allegation.

- 1) **Just and sufficient cause did not exist**⁴, for the Commission to conduct a public hearing and render an opinion regarding the allegations that Evenson violated:
 - a) NRS 281A.400(7) by using governmental time, property, equipment and other facility to benefit his personal interest in pursuing termination of Rees' employment on January 12, 2010 and May 20, 2009, by requesting information from Rees' assistant, Rusty Kemp; and
 - b) NRS 281A.400(9) by seeking to benefit his personal interest through the influence of his subordinate on January 12, 2010 and May 20, 2009 by requesting information from Rees' assistant, Rusty Kemp.
- 2) **Just and sufficient cause did exist** for the Commission to conduct a public hearing and render an opinion regarding the allegations that Evenson violated:
 - a) NRS 281A.400(10) by seeking other employment through the use of his public position by attempting to "appoint himself" or be appointed to serve as the Hospital Board's legal counsel;
 - b) NRS 281A.420(1) by failing to disclose a pecuniary interest and/or a commitment in a private capacity to the interests of others when the Hospital Board considered implementing a discount policy on outstanding patient balances;
 - c) NRS 281A.420(3) by failing to abstain from voting on the Hospital Board's motion to adopt a discount policy for outstanding patient balances regarding

⁴ These allegations were dismissed by the panel upon its finding that just and sufficient cause did not exist. Accordingly, these allegations were not considered by the Commission.

- which he may have had a pecuniary interest or a commitment in a private capacity to the interests of others - NRS 281A.420(3); and
- d) NRS 281A.400(2) by using his position on the Hospital Board to further his personal interest in terminating Rees' employment by:
- i.) Conferring with Littler Mendelson law firm in Reno, Nevada for the purposes of reviewing Rees' employment contract and not sharing all pertinent information with the Hospital Board regarding the legal advice provided by Littler Mendelson and making changes to Rees' employment contract without the Hospital Board's approval; and
 - ii.) Engaging in a continuous pattern of abusive public questioning of Rees on October 28, 2009, December 30, 2009 and February 11, 2010, appearing to have the intent of terminating Rees' employment.
- h. In lieu of a full hearing regarding his alleged violations of NRS 281A, Evenson enters into this stipulation acknowledging his duty to disclose and refrain from participating in public matters in which any conflict of interest arises between his duties to the public as a Board member and his pecuniary interests and commitments in a private capacity to the interests of others. The Commission finds insufficient evidence that Evenson used his position as a member of the Board to secure an unwarranted personal preference to terminate Rees' employment in violation of NRS 281A.400(2) or to seek other employment or contracts in violation of NRS 281A.400(10), as identified in paragraphs 2(a) and (d) above. **Those allegations are dismissed.**

4. **RELEVANT STATUTES:** The following Nevada Revised Statutes are relevant to the allegations that give rise to this stipulated agreement:

a. **Commitment in a Private Capacity**

NRS 281A.420(8) provides:

8. As used in this section:

(a) "Commitment in a private capacity to the interests of others" means a commitment to a person:

(1) Who is a member of the public officer's or employee's household;

(2) Who is related to the public officer or employee by blood, adoption or marriage within the third degree of consanguinity or affinity;

(3) Who employs the public officer or employee or a member of the public officer's or employee's household;

(4) With whom the public officer or employee has a substantial and continuing business relationship; or

(5) Any other commitment or relationship that is substantially similar to a commitment or relationship described in subparagraphs (1) to (4), inclusive, of this paragraph.

(b) "Public officer" and "public employee" do not include a State Legislator.

(Emphasis added.)

b. **Using Position in Government to Secure Unwarranted Preference**

NRS 281A.400(2), provides:

2. A public officer or employee shall not use the public officer's or employee's position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public officer or employee, any business entity in which the public officer or employee has a significant pecuniary interest, or any person to whom the public officer or employee has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281A.420.

(b) "Unwarranted" means without justification or adequate reason.

c. Using Position in Government to Seek other Employment/Contract

NRS 281A.400(10) provides:

10. A public officer or employee shall not seek other employment or contracts through the use of the public officer's or employee's official position.

d. Disclosure/Participation

NRS 281A.420(1) provides, in relevant part:

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

(a) Regarding which the public officer or employee has accepted a gift or loan;

(b) In which the public officer or employee has a pecuniary interest; or

(c) Which would reasonably be affected by the public officer's or employee's commitment in a private capacity to the interest of others,
- without disclosing sufficient information concerning the gift, loan, interest or commitment to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the public officer's or employee's pecuniary interest, or upon the persons to whom the public officer or employee has a commitment in a private capacity. Such a disclosure must be made at the time the matter is considered. If the public officer or employee is a member of a body which makes decisions, the public officer or employee shall make the disclosure in public to the chair and other members of the body. . . .

(Emphasis added.)

e. Participation/Advocacy⁵

NRS 281A.420(3) and (4), provide:

3. Except as otherwise provided in this section, **in addition to the requirements of subsection 1**, 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 the public officer's situation would be materially affected by:

- (a) The public officer's acceptance of a gift or loan;
- (b) The public officer's pecuniary interest; or
- (c) The public officer's commitment in a private capacity to the interests of others.

4. In interpreting and applying the provisions of subsection 3:

...

(b) The Commission must give appropriate weight and proper deference to the public policy of this State which favors the right of a public officer to perform the duties for which the public officer was elected or appointed and to vote or otherwise act upon a matter, provided the public officer has properly disclosed the public officer's acceptance of a gift or loan, the public officer's pecuniary interest or the public officer's commitment in a private capacity to the interests of others in the manner required by subsection 1. . . .

(Emphasis added.)

5. **FINDINGS/STIPULATIONS OF FACT:**

a. Evenson's Public Interests – Board Member:

- 1) The Pershing County Board of Commissioners appointed Evenson to the Board to fill a vacancy in 2006.
- 2) Evenson resigned his position on July 3, 2010 due to a serious knee injury.

⁵ NRS 281A.420 was amended in 2009. The record reflects that Evenson was not aware of the 2009 amendments.

b. Evenson's Private Interests:

- 1) During all times relevant to the allegations herein, Evenson served as a member of the Board.
- 2) As of August, 4, 2009, Evenson had a pecuniary interest and commitment in a private capacity to the interests of certain relatives within the third degree of consanguinity, including certain household members, regarding the discount policy considered by the Board.

c. Hospital Interests:

- 1) At all times relevant to this RFO, Rees served as the Hospital's Chief Executive Officer. The circumstances giving rise to many of the allegations in the RFO stem from distrust, disagreement and discontentment between Rees and Evenson regarding their respective duties and responsibilities as the Hospital's Chief Executive Officer -Administrator and member of the Board, respectively, including the formulation of policy and administration of the financial viability of the Hospital.
- 2) On August 4, 2009, the Board discussed and adopted a discount policy for patients with outstanding balances to receive a 25 percent discount if their balances were paid in full on or before October 15, 2009.
- 3) The purpose of the discount policy was to create revenue for the Hospital and offer an incentive for patients to pay off their outstanding balances at a discounted rate.

4) As a member of the Board, Evenson participated in the discussion and advocated the passage of the discount policy without disclosing his pecuniary interests or commitments in a private capacity to the interests of others relevant to the matter before the Board.

6. **TERMS:** Based on the foregoing, Evenson and the Commission agree as follows:

- a. Each of the facts enumerated in section 5 is deemed to be true and correct.
- b. Evenson's failure to disclose his pecuniary interest and commitment in a private capacity to the interests of his relatives within the third degree of consanguinity, including certain of his household members, as described above constitutes a violation of NRS 281A.420(1)⁶. Evenson's pecuniary interests and interests of those to whom he had a commitment were or could reasonably have been affected by the policy considered by the Board.
- c. As a result of his conflicts of interest, Evenson's participation and advocacy for the matter without disclosing that he had a conflict of interest, and placing his analysis on the record whether he could participate independently from his interests, constitutes a violation of NRS 281A.420(3)⁷.
- d. Evenson's pecuniary interests and the interests of the persons to whom he had a commitment in a private capacity would reasonably be affected by the matter before the Board. Likewise, Evenson's participation, advocacy and approval of the policy

⁶ This violation stems from the Commission's investigation as identified in footnote 2 above.

⁷ Id.


- would have materially been affected by his pecuniary interest and commitment in a private capacity to the interests of his relatives (and household members).
- e. Evenson's conduct was not willful. Evenson did not knowingly and intentionally fail to disclose his pecuniary interest or commitments in a private capacity to the interests of his relatives/household members or participate and advocate for the policy without such a disclosure. He believed there was no conflict of interest because of the nature of the matter under consideration and his intent not to personally benefit from the matter presented. Likewise, Evenson had no specific information at the time of the discussion regarding whether his relatives and/or household members would take benefit from the Board's action. Regardless of his intentions otherwise, the public could not know that Evenson was acting independently from his conflicts of interest without a proper disclosure.
 - f. The Commission does not find a preponderance of evidence to substantiate the allegations that Evenson violated NRS 281A.400(2) or 281A.400(10), as described in section 3(g)(2)(a) and (d), by using his position as a member of the Board to secure unwarranted preferences to terminate Rees' employment or seek other employment or contracts. Accordingly, those allegations are dismissed.
 - g. This agreement applies only to the specific facts, circumstances and law related to this Request for Opinion. Any facts or circumstances that are in addition to or differ from those contained in this agreement may create an entirely different resolution of this matter.

7. **WAIVER:**

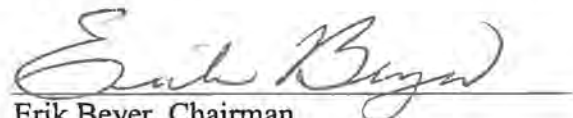
- a. Evenson retained legal counsel in this matter and knowingly waived a full hearing before the Commission on the allegations against him and of any and all rights he may be accorded pursuant to NRS Chapter 281A, the regulations of the Commission (NAC Chapter 281A), the Nevada Administrative Procedures Act (NRS Chapter 233B), and the laws of the State of Nevada.
- b. Evenson knowingly and voluntarily waives his right to any judicial review of this matter as provided in NRS 281A, 233B or any other provision of Nevada law.

8. **ACCEPTANCE:** We, the undersigned parties, have read this agreement, understand each and every provision therein, and agree to be bound thereby. The parties orally agreed to be bound by the terms of this agreement at the regular meeting of the Commission on September 9, 2010. Once executed, this agreement shall be considered adopted and incorporated as the Opinion of the Commission. Subject to the provisions of section 6(g) set forth herein, this agreement will be the final disposition of this matter and shall be binding upon all parties.


DATED this 21st day of April, 2011.



Steve Evenson

DATED this 3rd day of May, 2011.


Erik Beyer, Chairman
Nevada Commission on Ethics

The above Stipulated Agreement is approved:


Alice Campos Mercado, Esq.
Lemons Grundy & Eisenberg
Attorney for Steve Evenson


Yvonne M. Nevarez-Goodson, Esq.
Commission Counsel
Nevada Commission on Ethics