



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion
Concerning the Conduct of **SOON KIM, M.D.**,
Trustee, Humboldt General Hospital,
Humboldt County,
State of Nevada,

Request for Opinion No. 10-92C

Subject.

STIPULATED AGREEMENT

1. **PURPOSE:** This stipulated agreement resolves Request for Opinion No. 10-92C before the Nevada Commission on Ethics ("Commission") concerning Soon Kim, M.D. ("Kim") and constitutes the Commission's opinion in this matter.

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

3. **PROCEDURAL STATUS AND HISTORY:**

The following events are relevant to the matter:

- a. Kim was elected to the Board in November 2008 and assumed office in January 2009.
- b. Kim is employed by the Hospital as the General Surgeon.
- c. On November 8, 2010, the Commission received a third-party request for opinion (RFO) regarding Kim's conduct filed by a private citizen. The RFO claimed that Kim violated the Ethics in Government Law set forth in NRS 281A by failing to disclose a conflict of interest, i.e., her employment contract with the Hospital, and voting on a matter involving her employment contract in violation of NRS 281A.420(1) and (3).
- d. The Commission provided Kim with proper notice of the allegations and an opportunity to file a written response. Kim was fully advised of the allegations asserted in the RFO and filed a written response to the allegations on December 27, 2010 through her attorney, Bob Dolan, Esq.
- e. The Commission's staff investigated the allegations, reviewed Kim's response and provided a report and recommendation to an investigatory panel.
- f. Pursuant to NRS 281A.440, on January 31, 2011, a two-member investigatory panel of the Commission reviewed the RFO, the staff report and recommendation and other evidence.
- g. The Panel determined that just and sufficient cause existed for the Commission to conduct a public hearing and render an opinion whether Kim violated NRS 281A.420(1) and (3) by failing to disclose that the matter being considered by the

Board involved the execution of her employment contract with the Hospital, and, further, failing to undertake the abstention analysis required by NRS 281A.420 on the record to conclude whether the independence of judgment of a reasonable person in Kim's position would have been materially affected by the matter before the Board such that her abstention would have been necessary.

- h. In lieu of a hearing regarding these alleged violations of NRS 281A, Kim now enters into this stipulation acknowledging her duty as a public officer to commit to avoid conflicts between her private interests and those of the public she serves. Accordingly, Kim agrees that an appearance of impropriety and a conflict of interest arose from voting on the matter, which involved her pecuniary interests in her employment contract, without disclosing her pecuniary interest or undertaking the abstention analysis. *See* NRS 281A.020 and 281A.420.

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

- a. **NRS 281A.020(1)** – Public Policy / Legislative Declaration

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 or herself to avoid conflicts between the private interests of the public officer or employee and those of the general public whom the public officer or employee serves.

b. NRS 281A.420 – Disclosure/Abstention

1. Disclosure

NRS 281A.420(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.

2. Abstention

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

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:

(a) It must be **presumed that the independence of judgment of a reasonable person in the public officer's situation would**

not be materially affected by the public officer's pecuniary interest or the public officer's commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to the public officer, or if the public officer has a commitment in a private capacity to the interests of others, accruing to the other persons, is not greater than that accruing to any other member of the general business, profession, occupation or group that is affected by the matter. The presumption set forth in this paragraph does not affect the applicability of the requirements set forth in subsection 1 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

(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. Because abstention by a public officer disrupts the normal course of representative government and deprives the public and the public officer's constituents of a voice in governmental affairs, the provisions of this section are intended to require abstention only in clear cases where the independence of judgment of a reasonable person in the public officer's situation would be materially affected by 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.

c. NRS 281A. 170 - Willfulness

"Willful violation" means a violation where the public officer or employee:

1. Acted intentionally and knowingly; or
2. Was in a situation where this chapter imposed a duty to act and the public officer or employee intentionally and knowingly failed to act in the manner required by this chapter.

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

a. **Kim's Public Interests:**

- (1) Kim was elected to the Board in November 2008 and assumed office in January 2009.
- (2) Kim holds a public office which constitutes a public trust to be held for the sole benefit of the people of Humboldt County.
- (3) Kim is an employee of the Hospital, serving as its General Surgeon, thereby making her a public employee as well as a public officer.

b. **Kim's Private Interests/Conduct:**

At all times relevant to this matter:

- (1) Kim served as an employee of the Hospital, subject to the conditions of her employment contract.
- (2) Kim's employment was contracted to expire on December 31, 2010. At the Board's July 27, 2010 meeting, it voted to offer to extend Kim's employment contract with the Hospital for a two-year period, beginning January 1, 2011.
- (3) Kim was provided with the proposed contract, but one month after the Board's vote to extend the offer of employment, Kim had not yet signed and returned the contract to the Hospital.
- (4) Intending to secure a General Surgeon for the Hospital before Kim's current contract expired, the Board included an item on its August 31, 2010 meeting agenda to establish a deadline for Kim to accept the offer of continued employment as the General Surgeon and return a signed agreement. If Kim were

to decline the offer, the Hospital would have sufficient time to recruit another physician to serve as the General Surgeon.

(5) The Board entertained a motion ("Motion 1") to require Kim to accept the offer by the next day, September 1, 2010, or the Board would withdraw its offer and begin recruitment for a new surgeon. Without articulating any disclosure at the time the matter was considered regarding her pecuniary interest in the offer of employment and its potential deadline, Kim voted in opposition to the motion. The motion failed due to a tie vote.

(6) The Board then entertained another motion ("Motion 2") providing a longer period of time for Kim to respond to the offer. After the motion was articulated, the Board's legal counsel advised Kim that she had a conflict of interest in the matter regarding her proposed employment contract and that she should disclose the conflict and abstain from voting. The Board's legal counsel also stated that Kim should have abstained on Motion 1 for the same reason. Kim made the necessary disclosure and abstained from voting on Motion 2.

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

- a. Each of the facts enumerated in section 5 is deemed to be true and correct.
- b. Kim admits that she failed to disclose her pecuniary interest in her offer of employment when the matter was considered by the Board in Motion 1 on August 31, 2010 and voted against the motion to require her response within one day without undertaking the abstention analysis on the record to ascertain whether the

independence of judgment of a reasonable person in Kim's position would have been materially affected by the matter before the Board such that abstention would have been necessary. *See In re Woodbury*, RFO 99-56.

- c. Kim's acts of failing to disclose her pecuniary interest in her offer of employment and failing to undertake the abstention analysis on Motion 1 constitute a single course of conduct which shall be considered a single violation of NRS 281A.420 of the Ethics in Government Law. While the amount of compensation offered or the fact of the contract was not at issue in Motion 1, the imposition of a deadline to sign the agreement, if not met, would negate the offer of employment and certainly would affect Kim's pecuniary interest.
- d. Kim's violation of NRS 281A was willful under NRS 281A.170. Kim knowingly and intentionally failed to disclose her conflict of interest and undertake the abstention analysis at the time the matter was considered involving her employment contract. In early 2009, Kim was the subject of another third-party request for opinion alleging that she failed to disclose her pecuniary interest in a reimbursement check required to be approved by the Board before voting to approve the reimbursement check.¹ After a full investigation and hearing, the Commission found one non-willful violation of NRS 281A.420.² The Commission based its decision on the following: 1) the matter

¹ *See In re Kim*, RFO 09-11C.

² The definition of willfulness applicable to RFO 09-11C before the statutory changes from Senate Bill 160 of the Nevada Legislature required that the public officer knew or should have known that his or her conduct violated the Ethics in Government Law. Because it was Kim's first meeting as a public officer and the meeting materials did not highlight specific checks, the Commission found that Kim neither knew nor should have known that by voting on the check run including hundreds of disbursements, one of which was her reimbursement check, that she was violating the Ethics Law. However, the Commission noted that she had a pecuniary interest in the check and should have disclosed that information and undertaken the abstention analysis on the record.

involving the reimbursement check was presented during Kim's first meeting as a Board member and she had not yet been informed of her ethical responsibilities under NRS 281A; 2) Kim did not notice the line item reimbursement check issued to her on the list of hundreds of checks and disbursements to be approved in a single motion; and 3) Kim was entitled to the reimbursement according to the terms of her employment contract, and, while it represented a pecuniary interest, the reimbursement was not dependent on the ultimate approval of the Board because of her contractual rights. In accordance with the Commission's decision, Kim was encouraged to, and subsequently did, attend an ethics training conducted by the Commission's Executive Director explaining the requirements of disclosure and abstention. Accordingly, Kim understood the ethical obligations of disclosure and abstention well, and knowingly and intentionally failed to make the proper disclosure in the present matter without undertaking the abstention analysis to determine whether the independence of judgment of a reasonable person in her position would have been materially affected by the matter before the Board.

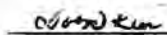
- e. Kim agrees to pay a total civil penalty (sanction) of \$1,500 pursuant to NRS 281A.480 on or before October 31, 2011 in one lump-sum payment or in monthly installment payments as negotiated with the Commission's Executive Director.
- f. This agreement applies only to the specific facts, circumstances and law related to this RFO. 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. Kim knowingly and voluntarily waives a full hearing before the Commission on the allegations against her and of any and all rights she 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. Kim knowingly and voluntarily waives her 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 during the regular meeting of the Commission on April 14, 2011.

DATED this 3rd day of May, 2011.



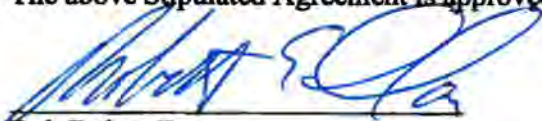
Soon Kim, M.D.

DATED this 16th day of May, 2011.




Erik Beyer, Chairman
Nevada Commission on Ethics

The above Stipulated Agreement is approved:



Bob Dolan, Esq.
Attorney for Soon Kim, M.D.



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