



NAILAH K. BYRD
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Cleveland, Ohio 44113

Court of Common Pleas

ANSWER OF...
January 30, 2023 13:16

By: MARK I. WALLACH 0010948

Confirmation Nbr. 2762674

AKRAM BOUTROS, M.D.

CV 22 971808

vs.

Judge: JENNIFER O'DONNELL

THE METROHEALTH SYSTEM BOARD OF
TRUSTEES, ET AL.

Pages Filed: 22

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

AKRAM BOUTROS, M.D.,

Plaintiff,

vs.

THE METROHEALTH SYSTEM, *et al.*,

Defendants.

CASE NO. CV-22-971808

JUDGE JENNIFER O'DONNELL

**DEFENDANTS' ANSWER TO FIRST
AMENDED COMPLAINT**

Now come Defendants The MetroHealth System (“MetroHealth”), The MetroHealth System Board of Trustees (the “Board”), and individuals Vanessa L. Whiting, J.B. Silvers, Inajo Davis Chappell, John Moss, Ezelle H. Walker, Maureen Dee, John Hairston, Jr., Robert Hurwitz, and John Corlett (collectively referred to as the “Defendants”), by and through undersigned counsel, and hereby submit their Answer to the Plaintiff’s First Amended Complaint (the “Complaint”) filed by Plaintiff Akram Boutros, M.D. (“Plaintiff”). In support of their Answer, Defendants state the following:

INTRODUCTION

1. Defendants deny the allegations set forth in Paragraph 1 of the Complaint. The Board conducted a transparent and thorough search for its next CEO of which Dr. Boutros was intimately aware from its inception in December 2021. Dr. Boutros never claimed that the search was illegal. To the contrary, Dr. Boutros, who received bi-weekly updates on the search process from the Search Committee Chair, was engaged in the selection of the Board’s consultants, made recommendations regarding the process along the way, was present at the Board’s meeting at which the replacement CEO was approved, on his own initiative traveled to Chicago to meet and welcome the replacement CEO after her hiring was approved, and participated in her transition. It

is only now, after the Board terminated Dr. Boutros' employment for cause for awarding himself over \$1.9 million in unauthorized bonuses, that Dr. Boutros attempts to deflect from his own conduct by creating false stories of retaliation.

2. Defendants deny the allegations set forth in Paragraph 2 of the Complaint. Defendants deny that Dr. Boutros' termination was illegal and that he has any claims against MetroHealth, the Board, or any of the Board's members. The unambiguous language of the Board's resolutions authorizing a performance-based incentive program stated that "the Board will set goals for the System and for the President and Chief Executive Officer and the President and Chief Executive Officer will set goals for senior leadership." In direct contravention of the Board's exclusive and expressly stated authority, Dr. Boutros unilaterally determined certain year-end, rearward-looking goals, evaluated himself against those goals, and awarded himself over \$1.9 million in bonuses based on his self-evaluation. Dr. Boutros has admitted that he never asked for the Board to consider setting these supplemental goals or to evaluate his performance based on those goals, nor did he make any effort to inform the Board that he had crafted his own supplemental bonus program. To the contrary, he concealed it. Once the Board concluded that Dr. Boutros had engaged in such conduct, it appropriately and properly terminated Dr. Boutros' employment for breach of his employment agreement for cause (including acts of dishonesty).

3. Defendants deny the allegations set forth in Paragraph 3 of the Complaint. The Board approved retaining Tucker Ellis LLP as special counsel "for services as may be required" via a Board resolution on October 28, 2020, and its engagement was again ratified at the Board's November 21, 2022, in order to eliminate any questions about its retention. Further, the Board publicly voted on Dr. Boutros' termination during an open session in its November 21, 2022 meeting.

4. Defendants deny the allegations in Paragraph 4 of the Complaint. Defendants further note that Dr. Boutros was President and Chief Executive Officer of MetroHealth during the same two-year period as he now claims the Board followed a “pattern of non-compliance” with the Open Meetings Act (“OMA”), and yet he never raised any such concern regarding sustained compliance failure until after he was terminated by the Board for cause for, among other things, acts of dishonesty.

5. In response to the allegations in Paragraph 5 of the Complaint, Defendants note that the law speaks for itself. Defendants deny all allegations against Defendants set forth in Paragraph 5 of the Complaint. Defendants deny that the OMA invalidates MetroHealth’s engagement of Tucker Ellis, much less the facts revealed by Tucker Ellis and reported to the Board. Defendants further deny that Dr. Boutros’ termination was unlawful under the OMA.

6. Defendants admit that Dr. Boutros purports to bring this lawsuit under ORC 121.22 but deny that they acted in violation of the law and deny that Dr. Boutros is entitled to any relief whatsoever.

PARTIES

7. Defendants admit that Dr. Boutros was employed as President and CEO of The MetroHealth System from 2013 until his termination for cause on November 21, 2022. Defendants further admit that during Dr. Boutros’ tenure, and with the dedication and determination of its employees, MetroHealth accomplished transformational change. Defendants further state that Dr. Boutros’ accomplishments do not excuse his misconduct in awarding himself \$1.9 million in unauthorized bonuses, and that the Board concluded that its fiduciary duty required that it take action once it concluded that such misconduct had occurred. Defendants deny all remaining allegations set forth in Paragraph 7 of the Complaint.

8. Defendants admit that, pursuant to O.R.C. 339.06, the Board has the authority for the management and control of MetroHealth. Defendants further admit that the current members of the Board are those listed in Paragraph 8 of the Complaint. Defendants admit that, when it is necessary for the Board to act, the Board can adopt a resolution, rule, or formal action only during public meetings, and that such a resolution, rule, or formal action can only be adopted at an open meeting of the Board. Defendants further state, however, that, given the scope and effect of ORC Chapter 339 and the delegations of authority the Board has made pursuant to ORC Chapter 339, formal action by the Board is required only in certain circumstances. Further, Defendants state that the Board's committees serve important fact-finding purposes, and that to the extent that Paragraph 8 of the Complaint alleges that the Board is not authorized to create and/or utilize committees accordingly, those allegations are denied.

9. Defendants deny that the System is an "independent subdivision of Cuyahoga County Government," but admit the remaining allegations contained in Paragraph 9 of the Complaint.

FACTUAL BACKGROUND

10. Defendants admit that the Ohio Open Meetings Act requires that public bodies adopt resolutions, rules, or formal actions in open meetings and that the deliberations regarding the adoption of such resolutions, rules, or formal actions must occur in open meetings unless such deliberations are conducted in an executive session for a purpose specifically authorized by the OMA. Defendants deny the remaining allegations in Paragraph 10 of the Complaint.

11. Paragraph 11 of the Complaint fails to assert any allegations against Defendants, and therefore no response is required. To the extent that any allegations set forth in Paragraph 11 are directed against Defendants, these allegations are denied.

12. Paragraph 12 of the Complaint fails to assert any allegations against Defendants, and therefore no response is required. To the extent that any allegations set forth in Paragraph 12 are directed against Defendants, these allegations are denied.

13. Paragraph 13 of the Complaint fails to assert any allegations against Defendants, and therefore no response is required. To the extent that any allegations set forth in Paragraph 13 are directed against Defendants, these allegations are denied.

14. Paragraph 14 of the Complaint fails to assert any allegations against Defendants, and therefore no response is required. To the extent that any allegations set forth in Paragraph 14 are directed against Defendants, these allegations are denied.

15. In response to the allegations set forth in Paragraph 15 of the Complaint, Defendants state that Article V. Section 4 of the MetroHealth Board of Trustees Bylaws speaks for itself. Paragraph 15 of the Complaint fails to assert any allegations against Defendants, and therefore no response is required. To the extent that any allegations set forth in Paragraph 15 are directed against Defendants, these allegations are denied.

16. Paragraph 16 of the Complaint fails to assert any allegations against Defendants, and therefore no response is required. To the extent that any allegations set forth in Paragraph 16 are directed against Defendants, these allegations are denied. MetroHealth further states in response to the allegations set forth in Paragraph 16 of the Complaint that ORC Section 121.22(G) speaks for itself.

17. Paragraph 17 of the Complaint fails to assert any allegations against Defendants, and therefore no response is required. To the extent that any allegations set forth in Paragraph 17 are directed against Defendants, these allegations are denied. MetroHealth further states in response to the

allegations set forth in Paragraph 17 of the Complaint that ORC Section 121.22(H) speaks for itself.

18. Paragraph 18 of the Complaint fails to assert any allegations against Defendants, and therefore no response is required. To the extent that any allegations set forth in Paragraph 18 are directed against Defendants, these allegations are denied.

19. Defendants deny the allegations set forth in Paragraph 19 of the Complaint. Defendants further note that Dr. Boutros created and proposed the agendas for all Board meetings and served as the executive lead for all Board meetings, including identifying materials and information that he believed should be discussed in executive session.

20. Defendants deny that the executive sessions convened by the Board during the meetings listed in Paragraph 20 of the Complaint were in violation of ORC Section 121.22(G). Defendants further state that the Supreme Court of Ohio recently confirmed that public bodies may introduce a motion that includes all topics it might reasonably discuss during an executive session (dismissively referred to as a “laundry list” in Paragraph 20 of the Complaint), and that there is no rule that every topic listed in a motion must be discussed in the session. *State ex rel. Hicks v. Clermont Cty. Bd. Of Commrs.*, 2022-Ohio-4237.

21. Defendants deny the allegations set forth in Paragraph 21 of the Complaint.

22. Defendants deny the allegations set forth in Paragraph 22 of the Complaint.

23. Defendants deny the allegations set forth in Paragraph 23 of the Complaint. There are no such March 24, 2021, minutes of the Governance Committee.

24. Defendants deny the allegations set forth in Paragraph 24 of the Complaint.

25. In response to the allegations set forth at Paragraph 25 of the Complaint, Defendants admit that the Board undertook a search for a new CEO following Dr. Boutros' notice that he would depart MetroHealth at the end of 2022. Defendants further admit that a Search Committee of the Board worked on the search for Dr. Boutros' successor. Defendants deny all remaining allegations set forth in Paragraph 25 of the Complaint.

26. Defendants admit that the Board's Search Committee held meetings on February 14, 2022, March 7, 2022, March 21, 2022, April 4, 2022, May 2, 2022, May 16, 2022, and June 6, 2022. Defendants further admit that at each of these meetings, the Search Committee voted to enter into executive session and note that it did so for the authorized purpose of discussing "the employment of a public official" and "trade secrets." Defendants deny that "information required to be kept confidential by law" is an improper purpose for executive session; such a purpose is authorized under ORC Section 121.22(G)(5). Defendants further deny that the Search Committee's stated purpose for entering into executive sessions was limited to "information required to be kept confidential by law," as noted above. Defendants deny all remaining allegations set forth in Paragraph 26.

27. In response to the allegations set forth in Paragraph 27, Defendants state that the law speaks for itself. Further, Defendants deny that the OMA requires a public body to preemptively identify the statute(s) or regulation(s) requiring confidentiality. Defendants deny all remaining allegations set forth in Paragraph 27.

28. In response to the allegations set forth at Paragraph 28 of the Complaint, Defendants deny that MetroHealth's engagement of consultants to support the search process for Dr. Boutros' successor was in violation of the OMA. As Dr. Boutros is aware, ORC Section 339.06 expressly permits county hospitals to hire consultants as necessary to assist in the management of a county hospital's

functions. The consultants engaged to assist in the search for Dr. Boutros' successor were procured consistent with Ohio law and MetroHealth policy. Defendants further deny that Board Chair Whiting's act of signing the contracts with such consultants was a violation of the Board's bylaws. Although Defendants admit that the Board's bylaws delegated certain authority to Dr. Boutros in his role as CEO, Defendants deny that such delegation in any way abrogated the Board's inherent statutory authority over the "entire management and control" of MetroHealth as set forth in ORC 339.06. Dr. Boutros' warped view of the Board's delegation is unsupported by any applicable law or practice, but it is emblematic of the attitude of an executive that had come to baselessly believe that he held the ultimate authority at MetroHealth, and not the Board that hired him.

29. Defendants deny the allegations set forth in Paragraph 29 of the Complaint. Dr. Boutros' suggestion that he became "aware" of the consultants' contracts in late July or early August 2022 is purely false, as he was actively engaged in the process for their retention and, for one, their selection. Dr. Boutros' suggestion that he alerted anyone to any other "illegal proceedings" is also false.

30. Defendants deny the allegations contained in Paragraph 30 of the Complaint. Defendants' investigation of Dr. Boutros' unauthorized bonuses was initiated after actual payroll data was reviewed in connection with the CEO search process and was not (and could not have been) initiated in response to "challenge[s]" that Dr. Boutros never made.

31. Defendants deny the allegations against Defendants set forth in Paragraph 31 of the Complaint. Defendants deny any noncompliance with the OMA and admit that the OMA fulfills an important public function. Further, despite now claiming to have been aware of a two year "pattern of non-compliance," Dr. Boutros raised purported concerns regarding the OMA only after he was aware that the Board was scrutinizing the \$1.9 million in unauthorized bonuses he had awarded himself.

Dr. Boutros' actions are not an effort to vindicate the public interest but rather to deflect from his own misconduct.

32. Defendants deny the allegations contained in Paragraph 32 of the Complaint. As noted above, Dr. Boutros' extra bonuses were identified through the search process and, when confronted, Dr. Boutros admitted that he had not discussed the supplemental bonus with the Board and had never disclosed to the Board the amount he awarded himself.

33. In response to the allegations set forth at Paragraph 33 of the Complaint, Defendants admit that the Board engaged in a fact-finding investigation with regards to Dr. Boutros' unauthorized bonuses and that the Board used appropriately procured attorneys to assist in its efforts. Defendants deny that its actions were in violation of the OMA and all remaining allegations set forth at Paragraph 33 of Complaint are denied.

34. Defendants admit that Board Chair Whiting and Vice Chair J.B. Silvers met with Dr. Boutros on October 11, 2022, to discuss their concerns regarding Dr. Boutros' unauthorized bonuses. Defendants further admit that Board Chair Whiting informed Dr. Boutros that Mansour Gavin LPA had been asked to provide initial feedback on the propriety of Dr. Boutros' actions, but otherwise deny the characterization of this conversation as alleged in Paragraph 34 of the Complaint.

35. Defendants admit the allegations contained in Paragraph 35 of the Complaint.

36. Defendants admit the allegations contained in Paragraph 36 of the Complaint.

37. Defendants admit that Paragraph 37 accurately quotes a portion of an October 15, 2022, e-mail from MetroHealth's legal counsel to Dr. Boutros' legal counsel, but deny that the e-mail confirms a violation of the OMA. To the contrary, as stated in the email, the Board does have

inherent authority to engage legal counsel as expressly provided for in ORC 336.06. And, in any event, the Board had previously authorized the engagement of Mr. McCaffrey's law firm, Tucker Ellis LLP, "for services as may be required" via Board resolution. Defendants deny all remaining allegations set forth at Paragraph 37 of the Complaint.

38. Defendants deny that its retention of legal counsel or its investigation of Dr. Boutros' unauthorized bonuses was in violation of applicable law. As Dr. Boutros and his counsel were informed at the time, there was no Special Investigation Committee. The Board as a whole engaged in fact-finding over the course of multiple meetings in October and November 2022, all of which were publicly noticed and included appropriate executive sessions. Defendants deny all remaining allegations set forth at Paragraph 38 of the Complaint.

39. Defendants admit that Dr. Boutros made such a request at the November 9, 2022, meeting, despite having already been informed that there was no such committee. Defendants further state that at the November 9, 2022, meeting Dr. Boutros was again informed that there was no such committee. Defendants deny all remaining allegations set forth at Paragraph 39 of the Complaint.

40. Defendants admit that the publicly posted notice for the Board's October 20, 2022, meeting stated that "[t]he purpose of this meeting is to consider the employment and compensation of a public employee. It is anticipated that the majority of the meeting will take place in executive session." Defendants deny all remaining allegations set forth at Paragraph 40 of the Complaint.

41. Defendants admit that Paragraph 41 of the Complaint accurately quotes excerpts from the minutes of the Board's October 20, 2022, special meeting. Defendants deny the remaining allegations contained in Paragraph 41 of the Complaint.

42. Defendants admit that John McCaffrey attended Board meetings on October 20, 2022, October 26, 2022, November 2, 2022, and November 9, 2022, and that Mr. McCaffrey stated as such in his November 19, 2022, report to the Board. Defendants further state that Mr. McCaffrey attended such Board meetings at the request of the Board to provide an update as to the status of his investigation on Dr. Boutros' compensation and to report facts he had developed to date. Defendants deny the remaining allegations contained in Paragraph 42 of the Complaint.

43. Defendants admit that Paragraph 43 of the Complaint accurately quotes excerpts from the minutes of the Board's October 26, 2022, regular meeting. Defendants deny the remaining allegations contained in Paragraph 43 of the Complaint.

44. Defendants admit that Mr. McCaffrey was present for the Board's executive session at its October 26, 2022, regular meeting, but deny that the executive session was unlawful. Defendants deny all remaining allegations set forth at Paragraph 44 of the Complaint.

45. Defendants admit that the publicly posted notice for the Board's November 2, 2022, special meeting stated that "[t]he purpose of this meeting is to consider the employment and compensation of a public employee. It is anticipated that the majority of the meeting will take place in executive session." Defendants deny all remaining allegations set forth at Paragraph 45 of the Complaint.

46. Defendants admit that Paragraph 46 of the Complaint accurately quotes excerpts from the minutes of the Board's November 2, 2022, special meeting. Defendants deny the remaining allegations contained in Paragraph 46 of the Complaint.

47. Defendants admit that Mr. McCaffrey was present for the Board's executive session at its November 2, 2022, special meeting, but deny that the executive session was unlawful.

48. Defendants admit that the publicly posted notice for the Board's November 9, 2022, special meeting stated that "[t]he purpose of this meeting is to consider the employment and compensation of a public employee. It is anticipated that the majority of the meeting will take place in executive session." Defendants deny all remaining allegations set forth at Paragraph 48 of the Complaint.

49. Defendants deny the allegations contained in Paragraph 49 of the Complaint, and state that the minutes from the Board's November 9, 2022, special meeting indicate that the Board also entered into executive session to consider "the appointment, employment, discipline and compensation of a public employee, and other matters subject to attorney-client privilege...."

50. Defendants admit that Mr. McCaffrey was present for the Board's executive session at its November 9, 2022, special meeting, but deny that the executive session was unlawful.

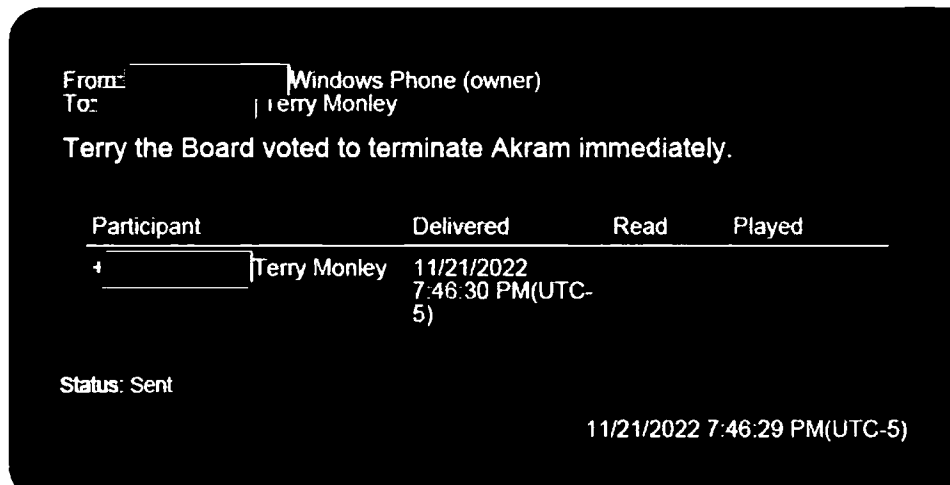
51. Defendants admit that Mr. McCaffrey delivered to the Board a report regarding Dr. Boutros' unauthorized bonuses on November 19, 2022. Defendants deny that the Board's meetings, Mr. McCaffrey/Tucker Ellis LLP's engagement, or Mr. McCaffrey's report were illegal.

52. Defendants deny the allegations contained in Paragraph 52 of the Complaint.

53. Defendants admit that the minutes from the Board's November 21, 2022, regular meeting reflect that it entered into executive session at 4:28 P.M. and that Mr. McCaffrey was invited to participate in its executive session, as is permitted by law. Defendants deny that the Board's executive session, and any formal action that followed the executive session, were illegal. Defendants deny all remaining allegations set forth at Paragraph 53 of the Complaint.

54. Defendants deny the allegations contained in Paragraph 54 of the Complaint. As the Board's minutes make abundantly clear, the Board did not vote to terminate Dr. Boutros' employment until after 7:30 P.M., when it had reconvened in an open session. After a vote in open session, the

Board recessed to allow legal counsel to prepare a Board resolution that would memorialize the Board's action and delegate authority to the Board chair to enter negotiations with an interim CEO. The Board then reconvened and unanimously voted in favor of the resolution shortly before 8:15 P.M. The allegation that Chair Whiting sent Board member Terry Monnolly a text message regarding a Board vote at 5:46 P.M. is false and a disturbing misrepresentation. A forensic review of Chair Whiting's cellular phone confirms that the text message referenced in Paragraph 54 of the Complaint was sent at 7:46 P.M. – two hours later than alleged, and consistent with the time the Board voted as documented by its meeting minutes:



55. Defendants deny the allegations contained in Paragraph 55 of the Complaint.

56. Defendants admit that Ms. Rajki called Mr. Monnolly in response to a text message she had received from him while the Board was in executive session and that she informed him that the Board was in executive session and that if he was feeling well enough he could join if he wished to. Mr. Monnolly, who had received treatment a few hours prior, declined to do so. Defendants deny all remaining allegations set forth at Paragraph 56 of the Complaint.

57. Defendants deny that the times stated in the minutes of the Board's November 21, 2022, meeting are inaccurate. To the contrary, all times are accurate.

58. Defendants deny the allegations contained in Paragraph 58 of the complaint. There is no discrepancy between the actual, verified time of Chair Whiting's text – 7:46 P.M. – and the meeting minutes from November 21, 2022. The meeting minutes are accurate and the Board's process was consistent with the law. To the extent there are any "serious questions" about whether inaccuracy in this matter is "intentional," it is with respect to the Complaint's directly contradicted allegation of the timing of Chair Whiting's text message to Terry Monnolly and the purported screenshot that was included in the Complaint in support of the same.

COUNT ONE

(Violation of R.C. 121.22(A) and (H) - Purported Hiring of John McCaffrey)

59. Defendants incorporate by reference their response to all the foregoing paragraphs of the Complaint as if fully re-written herein.

60. Defendants admit the allegations contained in Paragraph 60 of the Complaint.

61. Defendants admit the allegations contained in Paragraph 61 of the Complaint.

62. Defendants admit that the Board approved retaining Tucker Ellis LLP as special counsel "for services as may be required" via a Board resolution on October 28, 2020. The Board further admits that it requested that Tucker Ellis LLP provide services, through General Counsel and John McCaffrey, on or before October 14, 2022, to assist in the investigation of Dr. Boutros' unauthorized bonuses. Defendants deny any remaining allegations contained in Paragraph 62 of the Complaint.

63. Defendants deny the allegations contained in Paragraph 63 of the Complaint.

64. Defendants deny the allegations contained in Paragraph 64 of the Complaint.

65. Defendants admit that the Executive Committee meeting on October 12, 2022, was the only Board committee meeting between October 11, 2022, and October 14, 2022. Defendants further admit that the Executive Committee meeting agenda for its October 12, 2022, meeting states “none” under the heading “recommendation/resolution approvals.” To the extent that Paragraph 65 of the Complaint alleges that Tucker Ellis LLP’s engagement was improper, those allegations are denied.

66. Defendants deny the allegations contained in Paragraph 66 of the Complaint. Dr. Boutros cannot avoid the appropriate and necessary review of his supplemental compensation by the Board or any investigator or consultants retained to conduct such reviews.

67. Defendants deny the allegations contained in Paragraph 67 of the Complaint. Dr. Boutros cannot avoid the facts as he has already admitted them to be regarding his self-awarded supplemental compensation, including those admissions made during the Board’s November 9, 2022, Special Meeting.

COUNT TWO

(Violation of R.C. 121.22(A) and (H) – Purported Establishment of Board Sub-Committee to Investigate Plaintiffs Compensation)

68. Defendants incorporate by reference its response to all the foregoing paragraphs of the Complaint as if fully re-written herein.

69. Defendants admit the allegations contained in Paragraph 69 of the Complaint.

70. Defendants admit the allegations contained in Paragraph 70 of the Complaint.

71. Defendants deny the allegations contained in Paragraph 71 of the Complaint.

72. Defendants deny the allegations contained in Paragraph 72 of the Complaint. As Dr. Boutros and his counsel have been repeatedly informed, there was no Special Investigation Committee.

73. Defendants deny the allegations contained in Paragraph 73 of the Complaint. As Dr. Boutros and his counsel have been repeatedly informed, there was no Special Investigation Committee.

74. Defendants deny the allegations contained in Paragraph 74 of the Complaint. The only formal action that followed from the investigation into Dr. Boutros' unauthorized bonuses was Dr. Boutros' termination. That action was taken by the full Board.

COUNT THREE

(Violation of R.C. 121.22(G) – Executive Session at Regular Meetings)

75. Defendants incorporate by reference its response to all the foregoing paragraphs of the Complaint as if fully re-written herein.

76. Defendants admit the allegations contained in Paragraph 76 of the Complaint.

77. Defendants admit the allegations contained in Paragraph 77 of the Complaint.

78. Defendants deny that the executive sessions convened by the Board during the meetings listed in Paragraph 78 of the Complaint were in violation of the OMA.

79. Defendants deny the allegations contained in Paragraph 79 of the Complaint.

80. In response to the allegations set forth in Paragraph 80 of the Complaint, Defendants state that the law speaks for itself. To the extent that the allegations contained in Paragraph 80 of the

Complaint assert that the requirements of the OMA are more extensive than the plain text of ORC 121.22(H), or that Defendants violated the OMA, those allegations are denied.

COUNT FOUR

(Violation of R.C. 121.22(G) - Executive Session at Special Meetings)

81. Defendants incorporate by reference its response to all the foregoing paragraphs of the Complaint as if fully re-written herein.

82. Defendants admit the allegations contained in Paragraph 82 of the Complaint.

83. Defendants admit the allegations contained in Paragraph 83 of the Complaint.

84. Defendants deny that the executive sessions convened by the Board during the special meetings listed in Paragraph 84 of the Complaint were in violation of the OMA.

85. In response to the allegations set forth in Paragraph 85 of the Complaint, Defendants state that the law speaks for itself. To the extent that the allegations contained in Paragraph 85 of the Complaint assert that the requirements of the OMA are more extensive than the plain text of ORC 121.22(H), or that Defendants violated the OMA, those allegations are denied.

COUNT FIVE

(Violation of R.C. 121.22(G) – Executive Session at Committee Meetings)

86. Defendants incorporate by reference its response to all the foregoing paragraphs of the Complaint as if fully re-written herein.

87. Defendants admit the allegations contained in Paragraph 87 of the Complaint.

88. Defendants admit the allegations contained in Paragraph 88 of the Complaint.

89. Defendants deny that the executive sessions convened during the Board committee meetings listed in Paragraph 89 of the Complaint were in violation of the OMA.

90. Defendants deny the allegations contained in Paragraph 90 of the Complaint.

91. Defendants deny the allegations contained in Paragraph 91 of the Complaint. There was no Governance Committee meeting on March 24, 2021.

92. In response to the allegations set forth in Paragraph 92 of the Complaint, Defendants state that the law speaks for itself. To the extent that the allegations contained in Paragraph 92 of the Complaint assert that the requirements of the OMA are more extensive than the plain text of ORC Section 121.22(H), or that Defendants violated the OMA, those allegations are denied.

COUNT SIX

(Violation of R.C. 121.22(F) - Exceeding Stated Purpose at Special Meetings)

93. Defendants incorporate by reference its response to all the foregoing paragraphs of the Complaint as if fully re-written herein.

94. Defendants admit the allegations contained in Paragraph 94 of the Complaint.

95. Defendants admit the allegations contained in Paragraph 95 of the Complaint.

96. Defendants deny the allegations contained in Paragraph 96 of the Complaint.

97. Defendants deny that the special meetings listed in Paragraph 97 of the Complaint violated the OMA in any respect.

98. In response to the allegations set forth in Paragraph 98 of the Complaint, Defendants state that the law speaks for itself. To the extent that the allegations contained in Paragraph 98 of the

Complaint assert that the requirements of the OMA are more extensive than the plain text of ORC Section 121.22(H), or that Defendants violated the OMA, those allegations are denied.

99. Defendants deny that Dr. Boutros is entitled to any of the relief requested in the unnumbered “WHEREFORE” clause following Paragraph 98, including subparts (i) through (viii), and respectfully requests that the Court dismiss the Complaint in its entirety and enter judgment in favor of Defendants and against Plaintiff.

AFFIRMATIVE DEFENSES

1. Plaintiff fails to state a claim upon which relief may be granted.
2. Plaintiff mischaracterizes the requirements of the Open Meetings Act.
3. The law does not require that every topic a public body states in a motion to adjourn to executive session that might reasonably be discussed must be discussed in that session. *State ex rel. Hicks v. Clermont Cty. Bd. of Commrs.*, 2022-Ohio-4237.
4. Defendants provided proper notice of public meetings.
5. Defendants properly adopted all resolutions and took formal actions at meetings open to the public.
6. Defendants properly determined to hold executive sessions under the provisions of the Open Meetings Act.
7. Defendants properly took formal action to terminate Dr. Boutros in an open public meeting of the Board.
8. Defendants properly pursued an investigation into Dr. Boutros actions to award himself unauthorized bonuses in excess of \$1.9 million.

9. Defendants properly retained Tucker Ellis LLP as special counsel pursuant to Chapter 339 of the Ohio Revised Code, the Board's Bylaws and policies, and MetroHealth procedures.
10. Defendants reserve the right to assert additional affirmative defenses as discovery is ongoing, including the defense that Plaintiff fraudulently misrepresented material facts.
11. Defendants expressly reserve the right to plead additional defenses as may become available throughout the course of discovery.
12. To the extent the Court determines that Defendants did not act consistently with the OMA in all respects, Dr. Boutros should not receive an award of attorneys' fees because Defendants reasonably believed that they were not violating or threatening to violate the OMA and that their conduct served the public policy that underlies the authority that Defendants believed permitted such conduct.

WHEREFORE, having fully answered, Defendants pray that Plaintiff's Complaint be dismissed, that judgment be entered in their favor and against the Plaintiff, that the Court issue an Order stating that Defendants be awarded their costs and attorneys' fees, and any further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Mark I. Wallach

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John Hairston, Jr., Robert Hurwitz,
and John Corlett*

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of January 2023, a copy of the foregoing *Defendants' Answer to Complaint* was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ Mark I. Wallach
Mark I. Wallach (Reg. No. 0010948)
One of the Attorneys for Defendants