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Court of Common Pleas

AMENDED COMPLAINT \$75
December 15, 2022 15:41

By: JASON R. BRISTOL 0072989

Confirmation Nbr. 2727620

AKRAM BOUTROS, M.D.

CV 22 971808

vs.

Judge: JENNIFER O'DONNELL

THE METROHEALTH SYSTEM BOARD OF
TRUSTEES, ET AL.

Pages Filed: 27

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

AKRAM BOUTROS, M.D.)	Case No.: CV-22-971808
)	
Plaintiff,)	Judge Jennifer O'Donnell
)	
v.)	
)	<u>FIRST AMENDED COMPLAINT</u>
THE METROHEALTH SYSTEM)	<u>FOR VIOLATIONS OF OHIO</u>
BOARD OF TRUSTEES,)	<u>OPEN MEETINGS ACT</u>
)	(With Jury Demand)
and)	
)	
THE METROHEALTH SYSTEM)	
)	
)	
Defendants.)	

For his first amended complaint against Defendants the MetroHealth Board of Trustees, Vanessa L. Whiting, J.B. Silvers, Inajo Davis Chappell, John Corlett, Maureen Dee, John M. Hairston, Jr., Robert Hurwitz, John M. Moss, E. Harry Walker and The MetroHealth System, Plaintiff Akram Boutros, M.D. states and alleges as follows:

INTRODUCTION

1. The MetroHealth Board of Trustees violated the law in its hiring of a replacement for outgoing Chief Executive Officer, Plaintiff Akram Boutros. When Dr. Boutros brought the illegality to the attention of Board Chair Vanessa L. Whiting, she caused the Board to retaliate by trumping up bogus charges against him for taking supposedly unauthorized bonuses and then terminating his employment on that basis.

2. Dr. Boutros' illegal firing gives him claims against MetroHealth, its Board, and certain of its members. He will file a separate lawsuit to recover damages for this retaliation and other misconduct.

3. This lawsuit addresses the Board's repeated violations of R.C. 121.22, Ohio's Open Meetings Law, in orchestrating and executing Dr. Boutros' discharge. The Board flouted the statute's requirements by secretly hiring counsel to investigate Dr. Boutros and to produce a "report," by allowing that investigation and its culminating "report" to proceed without proper authorization, and by contemplating and implementing his termination without the mandatory public notice and deliberation.

4. These violations of the Open Meetings Law follow a pattern of non-compliance with the statute that the Board sustained over the course of at least the last two years.

5. Ohio law holds as a nullity any action taken by a public body in violation of the Open Meeting Law. This rule invalidates the findings of the unlawful investigation of Dr. Boutros undertaken by the attorneys the MetroHealth Board improperly and secretly hired. It also nullifies the Board's unlawful termination of Dr. Boutros' employment.

6. Dr. Boutros brings this lawsuit under R.C. 121.22 for declaratory and injunctive relief to rescind the actions taken by the Board in violation of the statute and to require the Board to comply with all statutory requirements in the future. Dr.

Boutros also seeks an award of civil forfeiture and his court costs and reasonable attorney fees pursuant to the statute.

PARTIES

7. Plaintiff Akram Boutros, M.D. was the President and CEO of Defendant MetroHealth System from 2013 until November 21, 2022. He has a 25-year record of successful hospital leadership at academic medical centers, community hospitals and specialty hospitals. Under Dr. Boutros' leadership, the MetroHealth System underwent an unprecedented positive transformation in virtually all respects.

8. Defendant The MetroHealth System Board of Trustees, in accordance with applicable provisions of the Ohio Revised Code, has the authority and responsibility for the management and control of the MetroHealth System. It can take action only during public meetings, and it cannot delegate any of its responsibilities or actions to any committee of the Board. It can act only through resolutions passed during public meetings. Current members of the Board of Trustees are Chair Vanessa L. Whiting, Vice Chair J.B. Silvers, Inajo Davis Chappell, John Corlett, Maureen Dee, John M. Hairston, Jr., Robert Hurwitz, John M. Moss and E. Harry Walker.

9. Defendant The MetroHealth System is an independent subdivision of Cuyahoga County Government, and as such, is considered a public agency subject to Ohio's Open Meetings Act and Ohio ethics law. It was established as a county hospital and operates and is governed by Chapter 339 of the Ohio Revised Code. It is the

governing authority for an integrated system of health care facilities and programs operated by the organization.

FACTUAL BACKGROUND

Ohio's Open Meetings Act

10. Ohio's Open Meetings Act ("OMA" or "the act"), R.C. 121.22, requires public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter of the meeting is specifically excepted by law, and only in accordance with the strict terms of the statute.

11. According to the Ohio Attorney General, the Open Meetings Act applies to more than "meetings" held in the traditional sense of the word – that is, those held in a meeting room with the public body at the front addressing the public. Instead, the OMA asks whether the majority of the members have held or will hold a prearranged discussion or deliberation of public business. If the answer is "yes," the OMA applies to those discussions or deliberations and the public body must comply with the act.

12. If, for example, members of a public body such as the MetroHealth Board of Trustees are discussing public business via email or text, the law can consider that to be a "meeting," subject to the legal standards of the OMA. A public body cannot circumvent the Open Meetings Act by holding back-to-back or serial meetings attended by fewer than a majority of its members, with the same topics of public business discussed at each. Such deliberate "round-robin" meetings violate the OMA.

13. The OMA recognizes two types of meetings: regular meetings and special meetings, and the rules that apply to each differ. Nevertheless, under the act “[a]ll meetings of any public body are declared to be public meetings open to the public at all times.” R.C. 121.22(C). Pursuant to R.C. 121.22(F), a public body such as the MetroHealth Board of Trustees is required “to establish a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings and the time, place, and *purpose* of all special meetings.” (emphasis added)

14. Pursuant to R.C. 121.22(F), the “purpose” of a special meeting must be clearly set forth in the required notice of the special meeting, and the special meeting, along with any executive session during the special meeting, must adhere to the noticed “purpose.”

15. Article V, Section 4 of the MetroHealth Board of Trustees Bylaws also restricts the Board’s ability to conduct business at a special meeting other than in conformance with the notice. It provides:

Special meetings of the Board shall be held upon the call of the Chairperson of the Board or upon the request, in writing, of any three Trustees. Pursuant to such notice, the Chairperson shall call a special meeting of the Board within ten days of the receipt of such request. Written notice of a special meeting shall be transmitted to each Trustee at least forty-eight (48) hours before the date of such special meeting. This notice shall state the business for which the special meeting has been called, and *no business other than that stated in the notice shall be transacted at such special meeting.*

(emphasis added)

16. A public body such as the MetroHealth Board of Trustees may exclude the public from discussions and deliberations that are held in “executive session,” but only under strict procedures and guidelines. Section 121.22(G) provides, in relevant part:

Except as provided in divisions (G)(8) and (J) of this section, the members of a public body may hold an executive session only after a majority of a quorum of the public body determines, by a roll call vote, to hold an executive session and only at a regular or special meeting for the sole purpose of the consideration of any of the following matters:

(1) To consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official, or the investigation of charges or complaints against a public employee, official, licensee, or regulated individual, unless the public employee, official, licensee, or regulated individual requests a public hearing. Except as otherwise provided by law, no public body shall hold an executive session for the discipline of an elected official for conduct related to the performance of the elected official's official duties or for the elected official's removal from office. If a public body holds an executive session pursuant to division (G)(1) of this section, the motion and vote to hold that executive session shall state which one or more of the approved purposes listed in division (G)(1) of this section are the purposes for which the executive session is to be held, but need not include the name of any person to be considered at the meeting.

* * *

(3) Conferences with an attorney for the public body concerning disputes involving the public body that are the subject of pending or imminent court action;

* * *

(5) Matters required to be kept confidential by federal law or regulations or state statutes;

* * *

(7) In the case of a county hospital operated pursuant to Chapter 339. of the Revised Code, a joint township hospital operated pursuant to Chapter 513. of the Revised Code, or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, to consider trade secrets, as defined in section 1333.61 of the Revised Code;

* * *

If a public body holds an executive session to consider any of the matters listed in divisions (G)(2) to (8) of this section, the motion and vote to hold that executive session shall state which one or more of the approved matters listed in those divisions are to be considered at the executive session.

17. The requirements of the OMA are strict and the law expressly provides that “[a] resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body.” R.C. 121.22(H). Likewise,

A resolution, rule, or formal action adopted in an open meeting that results from deliberations in a meeting not open to the public is invalid unless the deliberations were for a purpose specifically authorized in division (G) or (J) of this section and conducted at an executive session held in compliance with this section. A resolution, rule, or formal action adopted in an open meeting is invalid if the public body that adopted the resolution, rule, or formal action violated division (F) of this section.

R.C. 121.22(H).

18. The law further provides that there is no “cure” or “ratification” of an action taken in violation of the OMA. Moreover, a public body such as the MetroHealth Board of Trustees cannot immediately follow presentations and discussions held behind closed doors in executive session with an open vote. This is so because taking formal action as contemplated by the OMA involves more than

merely tallying votes on an issue. It involves all of the discussions and deliberations on that issue leading up to the vote, and that deliberative process must be transparent to the public to ensure accountability. The OMA prevents a public body from acting upon fruit of the poisonous tree.

Defendant MetroHealth Board of Trustees' Repetitive Violations of The Open Meetings Act Under the Leadership of Chair Whiting

19. The MetroHealth Board of Trustees has a long history of violating the OMA under the leadership of Chair Whiting.

20. At regular meetings held on January 27, 2021, March 24, 2021, May 26, 2021, August 25, 2021, October 27, 2021, November 22, 2021, January 26, 2022, February 23, 2022, March 23, 2022, May 25, 2022, June 22, 2022, August 24, 2022, October 26, 2022, and November 21, 2022, the Board held executive sessions in violation of R.C. 121.22(G) by referencing “laundry lists” of reasons for the executive session that include matters not specifically authorized by the statute such as “personnel matters,” “information subject to the attorney-client privilege” and “matters required to be kept confidential by law.” None of these stated reasons comports with the strict requirements of R.C. 121.22(G).

21. At special meetings held May 2, 2022, July 20, 2022, July 22, 2022, September 6, 2022, October 20, 2022,¹ November 2, 2022 and November 9, 2022, the

¹ The special meeting of the Board held on October 20, 2022 was scheduled on October 19, 2022. This violated Article V, Section 4 of the MetroHealth Board of Trustees Bylaws for failing to provide the required notice. Per the bylaws, “[w]ritten notice of a special meeting shall be transmitted to each Trustee at least forty-eight (48) hours before the date of such special meeting.” In the past two years, all special meetings were called “upon the call of the Chairperson of the Board,” Vanessa Whiting.

Board likewise held executive sessions in violation of R.C. 121.22(G) by referencing “laundry lists” of reasons for the executive session that included matters not specifically authorized by the statute, in particular, “information subject to the attorney-client privilege,” which is not an enumerated, proper purpose under R.C. 121.22(G).

22. Committees of the MetroHealth Board of Trustees convened executive sessions on February 10, 2021, February 24, 2021, April 28, 2021, November 10, 2021, January 26, 2022, February 9, 2022, February 14, 2022, March 7, 2022, March 23, 2022, April 4, 2022, May 11, 2022, May 12, 2022, June 6, 2022, June 22, 2022, August 10, 2022, October 12, 2022, October 26, 2022, all in violation of R.C. 121.22(G) by including among the reasons for executive session such impermissible grounds as “personnel matters,” “information subject to the attorney-client privilege” and “matters required to be kept confidential by law.”

23. The Board also violated the OMA through its committees, by failing to adhere to the stated purposes of calling executive session. For example, the March 24, 2021 minutes of the Governance Committee recount that “Ms. Whiting stated the Governance Committee met in Executive Session for trade secrets, noting there was discussion surrounding succession planning for the Board and a matrix to evaluate the needs of the Board.” These alleged “trade secrets” were not among the reasons stated for the executive session at issue.

24. The MetroHealth Board of Trustees has also engaged in a pattern and practice of violating R.C. 121.22(F), as well as Article V, Section 4 of its own Bylaws.

The special meetings of May 2, 2022, July 20, 2022, July 22, 2022, September 6, 2022, October 20, 2022, November 2, 2022 and November 9, 2022, all identified as reasons to go into executive session at least one purpose that is not shown as the purpose of the special meeting on the notice issued to the public.

The Board Of Trustees' Violations Of The Open Meetings Act Pervades The Hiring Of Plaintiff's Replacement As CEO

25. After Plaintiff announced that he would be leaving MetroHealth at the end of 2022, the Board of Trustees undertook a search for a new CEO. That process commenced on February 14, 2022 and involved a Board of Trustees Search Committee. All the work of the Search Committee was conducted in Executive Session, and every such Executive Session violated R.C. 121.22(G).

26. The MetroHealth Board of Trustees Search Committee convened executive sessions on February 14, 2022, February 28, 2022, March 7, 2022, March 21, 2022, April 4, 2022, May 2, 2022, May 16, 2022 and June 6, 2022. In each instance, the Search Committee claimed that the purpose for executive session was to discuss "information required to be kept confidential by law." That is not a proper purpose.

27. Section 121.22(G)(5) does refer to "[m]atters required to be kept confidential by federal law or regulations or state statutes." The MetroHealth Board of Trustees, however, has never explained or identified what federal law or regulation, or what Ohio statute, *requires* deliberations concerning the hiring of a county hospital system CEO to be kept confidential.

28. The search process was further tainted because the MetroHealth Board of Trustees never engaged in public discussion or passed a resolution approving the

hiring of consultants to support the search process for a new CEO. Instead, Board Chair Whiting signed all the contracts with consultants in violation of the act and in violation of Article XI, Section 1 of the MetroHealth Board of Trustee Bylaws, which states that

The President and Chief Executive Officer shall act as the duly authorized representative of the Board in all matters in which the Board has not formally designated some other person to so act.

Dr. Boutros did not authorize or sign agreements with either of the Committee's search consultants and did not delegate this authority to any other executive. Under the circumstances, Chair Whiting unlawfully obligated The MetroHealth System to hundreds of thousands of dollars of expense without proper Board authorization or Board resolution.

29. When Dr. Boutros became aware of these illegal proceedings surrounding the search for his successor, in late July or early August 2022, he alerted Chair Whiting, Board member E. Harry Walker and MetroHealth Co-General Counsel Laura McBride. Dr. Boutros believed it was his duty to bring to light any unlawful or unethical conduct at the institution, and to ensure that the new CEO was lawfully engaged.

30. Within days after Dr. Boutros challenged her on these matters, Board Chair Whiting took it upon herself to begin questioning certain bonuses that Dr. Boutros had been receiving since 2018 along with hundreds of other MetroHealth executives and managers and which were approved by the Board.

31. Dr. Boutros was not merely raising some technical violation. The Open Meeting Act ensures that the public can review and scrutinize the actions of tax-funded entities like MetroHealth. The Board's noncompliance jeopardized both the legitimacy and validity of any ensuing action it took in hiring a new CEO. In calling Chair Whiting out for the Board's statutory breaches, Dr. Boutros was protecting the Board from its own incompetence while vindicating the public interest.

32. Whiting apparently cared about neither. Rather than requiring adherence to the Open Meetings Act, she chose to attack the messenger who alerted her to the problem. The cause-and-effect connection between the two incidents is inescapable: Whiting attempted to whip up a controversy from contemporaneously created MetroHealth business records which at all times had been available to the Board of Trustees concerning bonus payments which the Board had, in fact, approved by resolution.

The Board Of Trustees' Violations Of The Open Meetings Act And Other Laws Pervade Their "Investigation" Of Plaintiff's Compensation

33. The MetroHealth Board of Trustees claims to have launched an "investigation" into the Plaintiff's compensation, including hiring an attorney and law firm to conduct the investigation, but did so entirely in violation of the OMA.

34. In a meeting with Dr. Boutros on October 11, 2022, Board Chair Whiting claimed that the law firm of Mansour Gavin LPA had already been retained to conduct an internal investigation into the compensation issue. According to Whiting, however, she was dissatisfied with the results of their work and she shopped for other counsel.

35. On October 14, 2022, attorney John McCaffrey of the law firm Tucker Ellis LLP, sent an email to an attorney for Dr. Boutros in which McCaffrey claims to “represent a Special Investigation Committee of the [MetroHealth] Board.”

36. Dr. Boutros’ counsel responded to McCaffrey on October 15, 2022, stating “At this time Dr. Boutros is willing to meet with you after you provide me with the Board of Trustees’ action authorizing your indicated review.”

37. McCaffrey’s response, also on October 15, 2022, confirmed a violation of the OMA. He wrote:

There is no formal written “Board of Trustee Action” authorizing the engagement of legal counsel to review the issue of compensation paid to the CEO over the past several years. The Board has inherent authority to engage legal counsel (and in fact has previously engaged my firm on matters). The Board has the authority to conduct such a review without any written action.

38. Not only was there no “formal written” action authorizing the hiring of legal counsel, but there was no notice of any meeting where the establishment of a “Special Investigation Committee” was to be discussed or presented, and there are no minutes of any meeting – or record of any other kind – reflecting the establishment or formation of such a committee, what it was charged with investigating, or who served on it.

39. Dr. Boutros requested the names of the members of the so-called “Special Investigation Committee” at a public meeting on November 9, 2022, and the MetroHealth Board of Trustees summarily denied his request.

40. The MetroHealth Board of Trustees held a special meeting on October 20, 2022 whose stated purpose was “to consider the employment and compensation of a public employee.” No other purpose for the meeting was stated.

41. At that meeting, the Board of Trustees entered executive session, in violation of R.C. 121.22(G), for the purpose of considering the “appointment, employment, discipline or compensation of a public employee” and “information subject to the attorney-client privilege.” The Executive Session violated R.C. 121.22(G) because it did not conform to the stated purpose of the special meeting, because the executive session was not considering the “appointment” or the “discipline” of a public employee, and because “information subject to the attorney-client privilege” is not a proper purpose under the statute.

42. McCaffrey, whose retention is a legal nullity, was present at and participated in the illegal Executive Session of October 20, 2022. McCaffrey admits at page 7 of his November 19, 2022 “Report to the Board of Trustees of the MetroHealth System,” released to the public on November 25, 2022, that “[t]he BOT was provided regular updates as to the progress of the ongoing investigation during special meetings conducted in executive session.... [including on] Oct. 20th, Oct. 26th, Nov. 2nd and Nov. 9th.”

43. On October 26, 2022, the Board of Trustees held a regular meeting and voted to enter executive session, in violation of R.C. 121.22(G), for the purpose of considering the “appointment, employment, discipline or compensation of a public employee” and “information subject to the attorney-client privilege.” In fact, the

appointment of a public employee was not under consideration, and information subject to the attorney client privilege is not a proper purpose under the act.

44. McCaffrey, as alleged above by his own admission, was present at and participated in this unlawful executive session.

45. On November 2, 2022, the Board of Trustees held a special meeting whose stated purpose was “to consider the employment and compensation of a public employee.” No other purpose was stated.

46. At that meeting, the Board of Trustees entered executive session, in violation of R.C. 121.22(G), for the purpose of considering the “appointment, employment, discipline and compensation of a public employee” and “information subject to the attorney-client privilege.” The Executive Session violated R.C. 121.22(G) because it did not conform to the stated purpose of the special meeting, because the executive session was not considering the “appointment” or the “discipline” of a public employee, and because “information subject to the attorney-client privilege” is not a proper purpose under the statute.

47. McCaffrey, as alleged above by his own admission, was present at and participated in this unlawful executive session.

48. On November 9, 2022, the Board of Trustees held a special meeting whose stated purpose was “to consider the employment and compensation of a public employee.” No other purpose was stated.

49. At that meeting, the Board of Trustees entered executive session, in violation of R.C. 121.22(G), for the purpose of “receiving the benefit of matters

required to be kept confidential pursuant to the attorney-client privilege.” The Executive Session violated R.C. 121.22(G) because it did not conform to the stated purpose of the special meeting and because no federal law or regulation or state statute required confidentiality for matters involving the attorney-client privilege.

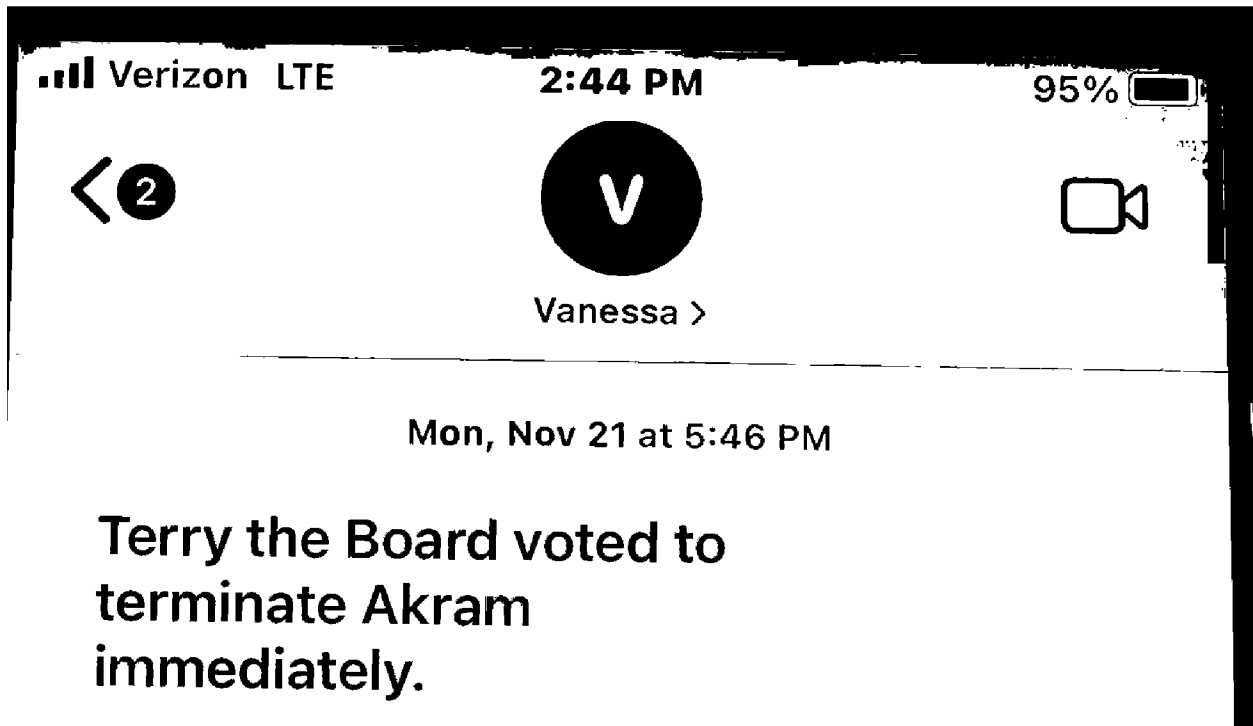
50. McCaffrey, as alleged above by his own admission, was present at and participated in this unlawful executive session.

51. The Board of Trustees’ illegal meetings and McCaffrey’s illegal participation culminated in McCaffrey and Tucker Ellis LLP’s illegal “Report to the Board of Trustees of the MetroHealth System” which was finalized and delivered to the Board on November 19, 2022.

52. Any actions taken in reliance on the illegal report, or on McCaffrey’s illegal presentations and participation in Board of Trustee meetings concerning the continued employment of Plaintiff Akram Boutros, are void and a nullity.

53. That includes the November 21, 2022 regular meeting at which the Board of Trustees voted to terminate Dr. Boutros’ employment “for cause.” Beginning at approximately 4:31 p.m. during that meeting, the Board entered executive session. Beginning at approximately 4:46 p.m., McCaffrey entered the executive session, presumably to present his report.

54. Within an hour, the Board had voted to terminate Dr. Boutros’ employment, adopting a resolution that had already been prepared in advance. At 5:46 p.m., Chair Whiting texted board member Terry Monnolly, who had been omitted from the executive session despite a request to join, as follows:



55. This evidence demonstrates that the Board deliberated and voted on this matter entirely in executive session, in violation of the law.

56. Mr. Monnolly then received a phone call at 6:12 p.m. from Co-General Counsel Sonja Rajki telling him that the Board was just about to exit executive session, but he could join if wished to.

57. The approved minutes of the November 21, 2022 meeting inaccurately state that the executive session ended at 7:30 p.m., and the vote to terminate occurred in open session, between 7:30 and 7:38 p.m., and then again on Resolution No. 19538 sometime after 8:11 p.m. and 8:15 p.m.

58. According to the Board's version of events, the consideration of Dr. Boutros' termination after a decade of outstanding service to the system, was reduced to – at most – 12 minutes of public deliberation and voting. The unexplained discrepancy between Whiting's text message and the official minutes reveals an

explicit conflict in the Board's minutes and Chair Whiting's text message to Mr. Monnolly. This level of conflict raises serious questions about whether the inaccuracy in the minutes was intentional.

COUNT ONE

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

59. Plaintiff incorporates by reference all the foregoing paragraphs of the Complaint as if fully re-written herein.

60. Defendant MetroHealth Board of Trustees constitutes a “public body” as defined in R.C. 121.22(B)(1).

61. As members of a “public body,” the individual Defendants, when acting in their official capacity, are subject to the requirements and mandates of R.C. 121.22.

62. On or prior to October 14, 2022, Defendant Board of Trustees purported to hire John McCaffrey of Tucker Ellis LLP to assist in or conduct an investigation into Plaintiff Akram Boutros' compensation as CEO of The MetroHealth System.

63. Defendant Board of Trustees took this action without noticing a meeting, without passing a resolution for such purpose as required by R.C. 121.22(A) and (H), and without otherwise complying in any respect with the requirements of R.C. 121.22.

64. In fact, the Board of Trustees never scheduled a meeting for the hiring of McCaffrey and Tucker Ellis LLP until November 21, 2022.

65. The Executive Meeting of October 12, 2022 was the only Board of Trustee meeting scheduled between October 11, 2022, when Board Chair Whiting and Vice Chair J.B. Silvers met with Dr. Boutros, and October 14, 2022, when

McCaffrey announced to Dr. Boutros' counsel that he and Tucker Ellis LLP had been hired by the Board. The agenda for that October 12, 2022 Executive Committee meeting reveals that the Executive Committee did not recommend or approve the hiring of McCaffrey and Tucker Ellis LLP. Under the heading "Recommendation/Resolution Approvals" on the October 12, 2022 Executive Committee Agenda, it states "None."

66. As a consequence of the Board's violation of Ohio's Open Meetings Act, McCaffrey and Tucker Ellis LLP were not lawfully engaged to assist in or conduct any investigation into Plaintiff's compensation.

67. Any actions taken by McCaffrey or Tucker Ellis LLP while unlawfully engaged by The Board of Trustees are void and a nullity. They are fruit from a poisonous tree and are of no legal value.

COUNT TWO

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

68. Plaintiff incorporates by reference all the foregoing paragraphs of the Complaint as if fully re-written herein.

69. Defendant MetroHealth Board of Trustees constitutes a "public body" as defined in R.C. 121.22(B)(1).

70. As members of a "public body," the individual Defendants, when acting in their official capacity, are subject to the requirements and mandates of R.C. 121.22.

71. On or prior to October 14, 2022, Defendant Board of Trustees purported to establish a “Special Investigation Committee” to investigate Plaintiff Akram Boutros’ compensation.

72. The Board of Trustees established this committee without following any of the requirements of the Open Meetings Act. The committee exists with no evidence that it was discussed, presented or authorized at any meeting of the Board or any properly constituted Committee of the Board, and with no record of what it was authorized to investigate and who serves on it.

73. As a consequence of the Board’s violation of Ohio’s Open Meetings Act, the “Special Investigation Committee” was not lawfully constituted.

74. Any actions taken by the “Special Investigation Committee” are void and a nullity.

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

75. Plaintiff incorporates by reference all the foregoing paragraphs of the Complaint as if fully re-written herein.

76. Defendant MetroHealth Board of Trustees constitutes a “public body” as defined in R.C. 121.22(B)(1).

77. As members of a “public body,” the individual Defendants, when acting in their official capacity, are subject to the requirements and mandates of R.C. 121.22.

78. At regular meetings held on January 27, 2021, March 24, 2021, May 26, 2021, August 25, 2021, October 27, 2021, November 22, 2021, January 26, 2022, February 23, 2022, March 23, 2022, May 25, 2022, June 22, 2022, August 24, 2022,

October 26, 2022, and November 21, 2022, Defendant MetroHealth Board of Trustees held executive sessions in violation of R.C. 121.22(G), as specifically alleged above, and by referencing “laundry lists” of reasons for the executive session that include matters not specifically authorized by the statute such as “personnel matters,” “information subject to the attorney-client privilege” and “matters required to be kept confidential by law.”

79. None of these stated reasons comports with the strict requirements of R.C. 121.22(G).

80. Pursuant to R.C. 121.22(H), any resolution, rule or formal action of any kind taken by the MetroHealth Board of Trustees in violation of R.C. 121.22(G) is invalid.

COUNT FOUR
(Violation of R.C. 121.22(G) – Executive Session at Special Meetings)

81. Plaintiff incorporates by reference all the foregoing paragraphs of the Complaint as if fully re-written herein.

82. Defendant MetroHealth Board of Trustees constitutes a “public body” as defined in R.C. 121.22(B)(1).

83. As members of a “public body,” the individual Defendants, when acting in their official capacity, are subject to the requirements and mandates of R.C. 121.22.

84. At special meetings held May 2, 2022, July 20, 2022, July 22, 2022, September 6, 2022, October 20, 2022, November 2, 2022 and November 9, 2022, Defendant MetroHealth Board of Trustees held executive sessions in violation of R.C. 121.22(G), as specifically alleged above, and by referencing “laundry lists” of reasons

for the executive session that included matters not specifically authorized by the statute, in particular, “information subject to the attorney-client privilege,” which is not an enumerated, proper purposes under R.C. 121.22(G).

85. Pursuant to R.C. 121.22(H), any resolution, rule or formal action of any kind taken by the MetroHealth Board of Trustees in violation of R.C. 121.22(G) is invalid.

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

86. Plaintiff incorporates by reference all the foregoing paragraphs of the Complaint as if fully re-written herein.

87. Defendant MetroHealth Board of Trustees constitutes a “public body” as defined in R.C. 121.22(B)(1).

88. As members of a “public body,” the individual Defendants, when acting in their official capacity, are subject to the requirements and mandates of R.C. 121.22.

89. Committees of Defendant MetroHealth Board of Trustees convened executive sessions on February 10, 2021, February 24, 2021, April 28, 2021, November 10, 2021, January 26, 2022, February 9, 2022, February 14, 2022, March 7, 2022, March 23, 2022, April 4, 2022, May 11, 2022, May 12, 2022, June 6, 2022, June 22, 2022, August 10, 2022, October 12, 2022, October 26, 2022, all in violation of R.C. 121.22(G), as specifically alleged above, and by including among the reasons for executive session such impermissible grounds as “personnel matters,” “information subject to the attorney-client privilege” and “matters required to be kept confidential by law.”

90. The MetroHealth Board of Trustees also violated the OMA through its committees by failing to adhere to the stated purposes of calling executive session.

91. The March 24, 2021 minutes of the Governance Committee report that “Ms. Whiting stated the Governance Committee met in Executive Session for trade secrets, noting there was discussion surrounding succession planning for the Board and a matrix to evaluate the needs of the Board.” These alleged “trade secrets” were not among the reasons stated for the executive session at issue, in violation of R.C. 121.22(G).

92. Pursuant to R.C. 121.22(H), any resolution, rule or formal action of any kind taken by the MetroHealth Board of Trustees in violation of R.C. 121.22(G) is invalid.

COUNT SIX
(Violation of R.C. 121.22(F) – Exceeding Stated Purpose at Special Meetings)

93. Plaintiff incorporates by reference all the foregoing paragraphs of the Complaint as if fully re-written herein.

94. Defendant MetroHealth Board of Trustees constitutes a “public body” as defined in R.C. 121.22(B)(1).

95. As members of a “public body,” the individual Defendants, when acting in their official capacity, are subject to the requirements and mandates of R.C. 121.22.

96. Defendant MetroHealth Board of Trustees has engaged in a pattern and practice of violating R.C. 121.22(F), as well as Article V, Section 4 of its own bylaws, as specifically alleged above, and by considering matters at a special meeting, or

during an executive session during a special meeting, other than those stated as the “purpose” of the special meeting.

97. The special meetings of May 2, 2022, July 20, 2022, July 22, 2022, September 6, 2022, October 20, 2022, November 2, 2022 and November 9, 2022, all identified as reasons to go into executive session at least one purpose that is not shown as the purpose of the special meeting on the notice issued to the public, in violation of the R.C. 121.22(F) and (G).

98. Pursuant to R.C. 121.22(H), any resolution, rule or formal action of any kind taken by the MetroHealth Board of Trustees in violation of R.C. 121.22(G) is invalid.

WHEREFORE, Plaintiff Akram Boutros, M.D., prays that judgment be entered in his favor for the following relief:

(i) On Count One, a judgment declaring any actions taken by McCaffrey or Tucker Ellis LLP while unlawfully engaged by The Board of Trustees are void and a nullity;

(ii) On Count Two, a judgment declaring any actions taken by a purported “Special Investigation Committee” of the MetroHealth Board of Trustees in regards to Plaintiff’s compensation are void and a nullity;

(iii) A judgment declaring any actions taken by the MetroHealth Board of Trustees based on the existence or findings of McCaffrey and Tucker Ellis LLP’s November 19, 2022 “Report to the Board of Trustees of The MetroHealth

System” are void and a nullity, including but not limited to, the “for-cause” termination of Plaintiff as President and CEO on November 21, 2022;

(iv) On Counts Three, Four, Five and Six, a judgment declaring that any resolution, rules or formal actions taken by Defendants in violation of R.C. 121.22 are void and a nullity;

(v) On Counts One, Two, Three, Four, Five and Six, a preliminary injunction pursuant to R.C. 121.22(I)(1) compelling the Defendants to comply with the provisions of R.C. 121.22;

(vi) On Counts One, Two, Three, Four, Five and Six, a judgment requiring Defendants to pay civil forfeiture as set forth in R.C. 121.22(I)(2)(a) for each distinct violation or threatened violation of the Act;

(vii) An award of court costs and reasonable attorney's fees pursuant to R.C. 121.22(I)(2)(a); and

(viii) Any further relief, legal or equitable, to which he may be entitled.

/s/ Jason R. Bristol

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JURY DEMAND

Plaintiff demands a trial by jury on all eligible claims and issues.

/s/ Jason R. Bristol

Jason R. Bristol (0072989)

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing was filed with the Court's electronic filing systems this 15th day of December, 2022, and service will be made by the Court's automated system. Copies were also sent by e-mail to all Defendants in care of:

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