



# FORENSIC ACCOUNTING EXAMINATION AND ANALYSIS REPORT

THE METROHEALTH SYSTEM  
CLEVELAND, OHIO

February 22, 2023

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<sup>1</sup> Defined below.

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## I. INTRODUCTION

### A. PURPOSE OF THE REPORT

TUCKER ELLIS LLP (“Counsel”) retained BDO USA, LLP (“BDO”), on behalf of its client The MetroHealth System and its Board of Trustees (separately the “System” and “BOT”, respectively, and together referred to as the “Client”) on December 8, 2022, to perform a forensic accounting examination, and other investigative and internal control assessment procedures limited to Total Chief Executive Officer (“CEO”)<sup>2</sup> Compensation, specifically focusing on CEO cash compensation.<sup>3</sup> This report sets forth our conclusions, as well as the factors we considered in performing our analysis based upon the information available to us to date. We may update our analysis should additional information be provided. We express no legal opinion regarding the rights and liabilities of any parties.

This report is confidential and was prepared at the direction of Counsel and Client. BDO received documents related to this matter from Client personnel for its review. These documents include and are not limited to Dr. Boutros’ employment agreements, System BOT presentations and meeting minutes, detailed calculation files related to variable compensation calculations, incentive payment amounts, general ledger information, budget analyses, applicable third party contracts, emails, and other related policy and procedure documents of the Client. Documents relevant to our analysis and findings in this matter are noted, where appropriate, in the Summary of Analysis and Findings, Section VIII.

This report does not constitute a final report for use at trial. Any distribution, copying, reliance on advice or opinions, or use of this report is not authorized without our prior written consent.

### B. RELEVANT BACKGROUND INFORMATION

The System is a county hospital established and operated under Chapter 339 of the Ohio Revised Code, and located at 2500 MetroHealth Drive, Cleveland, Ohio 44109. The System is Cuyahoga County’s safety-net health system.<sup>4</sup> The System operates four hospitals, four emergency departments and over 20 health centers and 40 additional sites throughout Cuyahoga County.<sup>5</sup> The System serves more than 300,000 patients, two-thirds of whom are uninsured or covered by Medicare or Medicaid.<sup>6</sup> As of the end of fiscal year 2021, the System’s operating revenue totaled \$1.57 billion.<sup>7</sup>

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<sup>2</sup> CEO refers to Dr. Akram Boutros, MD, FACHE (“Dr. Boutros”).

<sup>3</sup> For avoidance of doubt, our scope did not include any other examination, including items such as CEO expense reports, other non-compensation cash payments, etc.

<sup>4</sup> <https://www.metrohealth.org/about-us>

<sup>5</sup> <https://www.metrohealth.org/about-us>

<sup>6</sup> <https://www.metrohealth.org/about-us>

<sup>7</sup> <https://www.metrohealth.org/about-us/annual-report>, Annual Report 2021 Final 7-11-2022 final.pdf

## *Issue*

In late November 2021, Dr. Boutros announced his intent to retire from the System at the end of December 2022 after serving as its President and CEO since 2013.

In July 2022, System employees discovered Dr. Boutros received supplemental compensation they believed was beyond the compensation called for by his employment agreement. In August/September 2022, the System completed additional inquiry and analysis that concluded Dr. Boutros received compensation through a Supplemental Performance Based Variable Compensation/Supplemental Incentive program (“SPBVC”) for which Dr. Boutros calculated, controlled, and approved compensation payments to himself. This compensation was separate and apart from the Performance Based Variable Compensation (“PBVC”) plan that the BOT approved.

Based on the identification of this issue, the BOT engaged Counsel on October 14, 2022, to further investigate the circumstances concerning the SPBVC payments made to Dr. Boutros. After Counsel’s engagement, but before the issuance of Counsel’s report, Dr. Boutros reported certain conduct to the Ohio Ethics Commission and repaid the System \$2,104,337.12 of SPBVC payments he received including interest with the assistance of Counsel.<sup>8</sup> On November 19, 2022, Counsel issued a report based on its findings to date at the request of the BOT (“Counsel’s Report”).<sup>9</sup> Counsel’s Report determined that the BOT did not approve or authorize the SPBVC payments in excess of \$1.9 million that Dr. Boutros received between 2018 and 2022, and that Dr. Boutros took actions to conceal the SPBVC payments to himself.<sup>10</sup>

As a result of the findings in Counsel’s Report, the BOT took the following actions, which included, without limitation:

- The BOT terminating Dr. Boutros; and
- The BOT commencing the implementation of certain governance structure changes, including the creation of a standalone Compensation Committee and revisions to the Board’s Executive Compensation Policy BOT-06.

Subsequent to Counsel’s Report and Dr. Boutros’ termination, Dr. Boutros initiated civil legal proceedings against the System and individual BOT members alleging, among other things, breach of contract.

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<sup>8</sup> BDO’s engagement excludes evaluating the calculation of this amount.

<sup>9</sup> The BOT released Counsel’s Report to the public on November 25, 2022.

<sup>10</sup> Payments applicable to SPBVC program calendar/plan years 2017 to 2021. The payments are made in the subsequent year (e.g., plan year 2017 payment is received in 2018).

### *Dr. Boutros Employment Agreements*

In April 2013, the System hired Dr. Boutros as its President and CEO and he began his role as CEO on June 1, 2013.<sup>11</sup> At all times relevant to our analysis Dr. Boutros had an employment agreement ("EA") in effect (see Section VII below). The two applicable EAs in effect during the period under examination, summarized below in part, were effective as of July 1, 2015 (the "2015 EA") and January 1, 2020 (the "2020 EA" and together with the 2015 EA, the "Applicable EAs"). The Applicable EAs included the following provisions:

- The BOT Chair signed each EA,<sup>12</sup> and a resolution formalized the BOT's approval of the Applicable EAs.<sup>13</sup> In addition, the BOT assigned all duties and obligations to be performed by the Executive.<sup>14</sup>
- The Executive shall perform such duties promptly and in a professional manner and in accordance with MetroHealth's rules, regulations, policies and procedures, which Executive acknowledges shall include MetroHealth's "Values".<sup>15</sup>
- Executive shall be compensated for his services as President and Chief Executive Officer at a base rate, less applicable payroll deductions and withholdings, in accordance with the System's biweekly payroll system ("Base Salary").<sup>16</sup>
- Executive shall be eligible for annual performance based variable compensation for the services rendered by him pursuant to the Agreement under a Performance Based Variable Compensation Plan (the "Performance Plan"). All awards pursuant to the Performance Plan shall be subject to the terms of such plan as determined by the Board in consultation with the Executive, from time to time. The Performance Plan will include a range of specific System performance benchmark targets with the amount of the Performance Based Variable Compensation tied to such targets.<sup>17 & 18</sup>
- The aggregate amount of Executive's Base Salary and any annual Performance Based Variable Compensation determined in accordance with the Performance Plan ("PBVC") shall be referred to as his "Total Cash Compensation".<sup>19</sup>

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<sup>11</sup> Resolution 18572; Employment Agreement between the System and Dr. Boutros.

<sup>12</sup> Thomas McDonald signed the 2015 EA, and Vanessa Whiting signed the 2020 EA.

<sup>13</sup> In their capacity as BOT Chairs, the 2015 EA approved by Resolution 18906. The 2020 EA approved by Resolution 19350.

<sup>14</sup> Applicable EAs Section 1.A

<sup>15</sup> *Id.*

<sup>16</sup> Applicable EAs Section 2.

<sup>17</sup> Applicable EAs Section 2.B.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

## *BOT Resolutions*

In addition to the Applicable EAs, the BOT approved separate resolutions over time to:

- Approve changes to Dr. Boutros' compensation:
  - Resolution 18906: Approves the 2015 EA and authorizes the BOT chairperson "to execute and deliver" an agreement consistent with the resolution.<sup>20</sup>
  - Resolution 19350: Approves the 2020 EA and authorizes the BOT chairperson "to execute and deliver" an agreement consistent with the resolution.<sup>21</sup>
- Approve an overall executive compensation strategy:
  - Resolution 18608 - Approval of Executive Compensation Methodology:<sup>22</sup>

In summary, this resolution, approved on July 24, 2013, established a range of Total Cash Compensation for the System's executive leadership. The resolution defines Total Cash Compensation as the total of base salary plus PBVC that cannot exceed 105% of the 75<sup>th</sup> percentile of each executive's comparable group. The resolution established a base salary threshold at the 50<sup>th</sup> percentile of the comparable group – only executives under the threshold could receive base salary increases.<sup>23</sup>

The PBVC component required that the BOT establish goals for the President and CEO, and the President and CEO then set goals for senior leadership. The goals involved the BOT establishing benchmarks and developing metrics for organizational performance to be applied objectively. In addition, the BOT delegated authority to the President and CEO to implement and follow the PBVC plan.

- Resolution 19108 - Approval of Modifications to Executive Compensation Methodology:<sup>24</sup>

In summary, this resolution, approved on June 28, 2017, updates and provides modifications to the previously approved executive compensation methodology adopted by the BOT. All capitalized terms consistent between Resolution 18608 and 19108 use the same definitions.

Specifically, the resolution updates (1) the Total Cash Compensation threshold increased to the 90<sup>th</sup> percentile of the comparable group with exceptions to be approved by the BOT, (2) the inclusion of a minimum "trigger" EBIDA for the PBVC to payout, and (3)

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<sup>20</sup> Resolution 18906 - Approval of Amend & Modification to CEO Emplo\_54162\_1.pdf

<sup>21</sup> Resolution 19350 - President + CEO Employment Agreement Authoriz\_56231\_1.pdf

<sup>22</sup> Resolution 18608 - Approval of Executive Compensation Methodolog\_54159\_1.pdf

<sup>23</sup> The 2015 EA established Dr. Boutros' base salary at the 38<sup>th</sup> percentile based on the comparable group data provided by Sullivan Cotter & Associates Inc. ("Sullivan Cotter"). See Compensation section of 2015 EA.

<sup>24</sup> Resolution 19108 - Approval of Modifications to Executive Compens\_54146\_1.pdf

established an updated PBVC performance range, reaffirmed the target PBVC for all levels<sup>25</sup>, including the CEO, and established the goal weighting for each approved level.

- Resolution 19219 - Approval of Modifications to Executive Compensation Methodology:  
<sup>26</sup>

In summary, this resolution, approved on July 25, 2018, updates and provides modifications to the previously approved executive compensation methodology adopted by the BOT through Resolutions 18608 and 19108. All capitalized terms consistent with Resolution 18608, 19108, and 19219 use the same definitions.

Specifically, the resolution updates (1) certain PBVC terms for funding and financial metrics, (2) updates the 457(f) SERP plan vesting to 3-year class vesting, and (3) eliminates the 90<sup>th</sup> percentile cap with the caveat that the CEO will not approve any Total Cash Compensation [in excess of the 90th percentile] for a senior executive without the approval of the Board.

#### *Performance Based Variable Compensation Plan ("PBVC")*

Since 2013, the System's compensation program included a PBVC plan authorized by the BOT to compensate the CEO and other System leaders.<sup>27</sup> The BOT explicitly approved Dr. Boutros' eligibility for the PBVC in the Applicable EAs, the resolutions approving the PBVC plan updates/modifications, and resolutions outlining the BOT's executive compensation methodology (see discussion below). In addition, the BOT approved both the PBVC plan requirements<sup>28</sup> and annually approved the System's metrics, which generated the PBVC compensation payout for eligible employees. Table 1 below shows the number of PBVC eligible employees for each plan year.

Table 1 - Total PBVC Eligible Employees by Plan Year<sup>29</sup>

Plan Year	Total PBVC Eligible Employees
2017	129
2018	127
2019	150
2020	165
2021	168

#### *Supplemental PBVC/Supplement Incentive ("SPBVC")*

<sup>25</sup> The levels approved include CEO, EVP/SVP, Service Line Leader/Chair, and Center Leader/Director. The levels establish the BOT approved PBVC eligible employees.

<sup>26</sup> Resolution 19219 - Approval of Modification to Executive Compens\_54151\_1.pdf

<sup>27</sup> The PBVC program included Director level and above employees.

<sup>28</sup> The PBVC plan requirements included the eligible employees, the payout levels for each eligible employee group (e.g., CEO, EVP/SVP, VP, and Director), and other matters to address the general function of the PBVC plan.

<sup>29</sup> Identified based on the System's PBVC calculation files for each plan year included in our examination.

In calendar year 2017, Dr. Boutros initiated and implemented the SPBVC for which he defined the eligible employee population to include himself (without BOT approval). It is our understanding Dr. Boutros controlled all aspects of the SPBVC program, including, without limitation:

- Establishing and authorizing achievements and associated weighting to calculate payouts;
- Evaluating employee performance for each achievement (Dr. Boutros evaluated his own performance for each achievement, without BOT input or knowledge);
- Approving payouts, including his own (without BOT approval); and
- Determining what, if any, SPBVC information would be provided to the BOT (no SPBVC specific information was reported to the BOT).

It is our understanding that Dr. Boutros utilized funds generated by the PBVC plan (see discussion below) to fund the SPBVC payouts (see discussion below). Beginning in 2017 and continuing for each of the subsequent years until his termination, we further understand that Dr. Boutros established the SPBVC payout determinants at year-end, including defining the achievements for which SPBVC participants would be paid.<sup>30</sup> Therefore, the determinants were backward looking (i.e., based on specific activities completed during the year), as compared to the forward looking metrics set by the BOT for the PBVC plan. Table 2 below shows the number of employees that received SPBVC payouts by plan year.

Table 2 - Total Employees Receiving the SPBVC by Plan Year<sup>31</sup>

<b>Plan Year</b>	<b>Total Employees Receiving Both PBVC and SPBVC</b>
2017	74
2018	95
2019	98
2020	132
2021	115

#### *One-Time Bonuses*

The System historically provided non-PBVC eligible employees one-time bonuses to reward particularly noteworthy achievements. This process called for Dr. Boutros and other System executives to nominate and identify employees who had significant accomplishments during the previous year. While the recipients of one-time bonuses were generally not eligible for PBVC, one-time bonuses were provided on certain occasions to PBVC-eligible leaders. We understand that if Dr. Boutros was awarded a one-time bonus, the BOT would be required to approve such bonus.

<sup>30</sup> Typically between Oct. and Dec.

<sup>31</sup> Identified based on the System's PBVC calculation files for each plan year included in our examination.



Table 3 below summarizes the PBVC, SPBVC, and one-time bonuses<sup>32</sup> (together the “incentive compensation programs”) issued for the plan years 2017 through 2021.<sup>33</sup>

Table 3 – Summary of the Incentive Compensation Programs By Plan Year<sup>34</sup>

Plan Year	PBVC	SPBVC	One-Time Bonuses	Total Incentive Payout <sup>***</sup>
2017	\$ 4,696,954.58	\$ 2,067,500.00	\$ 198,000.00	\$ 6,962,454.58
2018	5,445,114.42	1,948,504.32	235,500.00	7,629,118.74
2019	5,705,695.31	1,491,578.67	312,000.00	7,509,273.98
2020	6,756,913.55	2,063,425.46	369,900.00	9,190,239.01
2021	6,654,525.59	2,107,013.05	375,300.00	9,136,838.64

\*\*\* - Total Incentive Payout per calculation spreadsheets.

Table 3-A shows a summary of payout totals for each plan year included in the examination period received by Dr. Boutros. This table shows that on average Dr. Boutros’ SPBVC compensation increased his variable compensation by 45% per plan year.

Table 3-A – Summary of Dr. Boutros Payout Totals & Percentage of Base Salary<sup>35</sup>

Plan Year	Payout Target Percentage	Authorized PBVC Payout Percentage	Average Base Salary ^	PBVC	SPBVC	Total Variable Compensation	Total Cash Compensation	Total Variable Comp. % of Base Salary
2017	35%	44%	\$ 899,589.97	\$ 398,072.44	\$ 400,000.00	\$ 798,072.44	\$ 1,697,662.41	89%
2018	35%	52%	930,009.60	482,721.48	289,632.89	772,354.37	1,702,363.97	83%
2019	35%	47%	930,584.88	438,072.83	372,361.91	810,434.74	1,741,019.61	87%
2020	35%	49%	1,000,001.60	489,755.78	416,292.42	906,048.20	1,906,049.80	91%
2021	35%	45%	1,099,800.00	498,137.91	457,664.21	955,802.12	2,055,602.12	87%
Total			\$ 4,859,986.05	\$ 2,306,760.45	\$ 1,935,951.42	\$ 4,242,711.87	\$ 9,102,697.92	87%

^ - This is the salary utilized by Dr. Boutros and the System CFO when calculating PBVC Payouts.

<sup>32</sup> One-Time Bonuses were also referred to in the System’s documents as Top Talent Bonuses.

<sup>33</sup> Plan year 2017 to 2021 (i.e., calendar year), equals payout years 2018 to 2022.

<sup>34</sup> Based on the System prepared incentive compensation calculation files.

<sup>35</sup> Dr. Boutros’ BOT authorized PBVC payout percentage ranged from 17.5% to 52.5% of base salary. The PBVC payout percentage is based on the System’s achievement level of the BOT approved PBVC goals and targets.

## II. SCOPE OF REPORT

The scope of our engagement consisted of performing a forensic accounting investigation and internal control gap analysis consulting services to Client related to Total CEO Compensation. Our analysis of Total CEO Compensation included:<sup>36</sup>

- Analysis of Client's data, including, but not limited to, contracts and agreements, salary calculations and payments, and bonus calculations and payments;
- Assessment of Client's internal control environment related to Total CEO Compensation, including, but not limited to, applicable business processes and procedures, set-up, recording, authorization, disbursement and reporting;
- Analysis of financial data, including journal entries, budget analyses, reconciliations and reporting;
- Interviews of relevant Client and Client third-party personnel; and
- Identification of gaps in the internal control structure over Total CEO Compensation and, as identified, provide considerations/recommendations to strengthen internal controls and mitigate risks.

In addition, Client requested we summarize the results of our analysis in a formal written report.

We performed our procedures described in this report for the period January 1, 2017, through December 31, 2022, except when noted differently. Refer to the Summary of Analysis and Findings (Section VIII) for specific periods examined.

## III. CONCLUSIONS

Based on the analysis performed and as documented in this report, we present the following findings:

- A. DR. BOUTROS CONTROLLED THE CREATION, IMPLEMENTATION AND EXECUTION OF THE SPBVC PROGRAM RESULTING IN THE CONCEALMENT OF SUPPLEMENTAL COMPENSATION**
- 1. DR. BOUTROS INCLUDED HIMSELF AS AN ELIGIBLE EMPLOYEE FOR SPBVC WITHOUT BOT APPROVAL**
  - 2. DR. BOUTROS PERFORMED A SELF-EVALUATION OF HIS SPBVC ACHIEVEMENTS**
  - 3. DR. BOUTROS CALCULATED HIS OWN SPBVC COMPENSATION PAYOUT**

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<sup>36</sup> See also BOT Resolution 19545, authorizing BDO's forensic accounting examination.

4. **DR. BOUTROS APPROVED AND RECEIVED HIS SUPPLEMENTAL COMPENSATION**
- B. DR. BOUTROS' CIRCUMVENTION OF CONTROLS RESULTING IN SUPPLEMENTAL COMPENSATION**
1. **DR. BOUTROS ACTED CONTRARY TO SYSTEM ETHICS POLICY AND DELEGATIONS SET BY THE BOT**
  2. **DR. BOUTROS FAILED TO PROVIDE THE BOT WITH AN EXPLANATION OF MATERIAL CHANGE IN PBVC FUNDING APPROVAL RESOLUTION LANGUAGE**
  3. **DR. BOUTROS FAILED TO DISCLOSE HIS SPBVC COMPENSATION TO BOT & OUTSIDE PARTIES**
  4. **DR. BOUTROS FAILED TO PROVIDE THE COMPENSATION CONSULTANT WITH ACCURATE COMPENSATION INFORMATION FOR HIS ROLE RESULTING IN POTENTIAL OVER PAYMENT**
  5. **DR. BOUTROS CAPPED CERTAIN EMPLOYEE INCENTIVE PAYMENTS TO AVOID THEIR TOTAL CASH COMPENSATION EXCEEDING THE 90<sup>TH</sup> PERCENTILE OF COMPARABLE TOTAL CASH COMPENSATION**
- C. OTHER CEO COMPENSATION CONTROL WEAKNESSES RESULTING IN SUPPLEMENTAL COMPENSATION**
1. **CFO FAILED TO IMPLEMENT SEGREGATION OF DUTY CONTROLS RELATED TO CEO SPBVC COMPENSATION**
  2. **CFO DID NOT OBTAIN SUPPORTING DOCUMENTATION OR CONFIRM BOT AUTHORIZATION FOR CEO'S SPBVC COMPENSATION COMPONENT**
  3. **THE TOTAL AVAILABLE PBVC FUNDING POOL PROVIDED OPPORTUNITY FOR ESTABLISHMENT AND PAYOUT OF CEO'S SPBVC**
  4. **LACK OF FORMALIZED POLICIES AND PROCEDURES FOR PBVC AND SPBVC PROGRAMS**
  5. **INCENTIVE COMPENSATION PROGRAMS PAYOUT FOR CEO NOT SPECIFIED AND RESOLUTION WORDING CHANGES NOT IDENTIFIED**
- D. DR. BOUTROS FAILED TO IMPLEMENT AN EFFECTIVE CONTROL STRUCTURE BY EXCLUDING THE SYSTEM'S HUMAN RESOURCES FUNCTION FROM THE PBVC AND SPBVC PROCESSES**
1. **DR. BOUTROS EXCLUDED HR FROM VARIABLE COMPENSATION PLAN DEVELOPMENT**
  2. **DR. BOUTROS EXCLUDED HR FROM SPBVC METRIC ASSESSMENT AND EMPLOYEE EVALUATIONS**

E. **DR. BOUTROS FAILED TO IMPLEMENT A FORMAL STRUCTURE FOR THE SPBVC PROGRAM**

1. **SPBVC LACKED FORMAL PLAN**
2. **SPBVC UTILIZED BACKWARD LOOKING ACHIEVEMENTS FOR PAYOUT**

**IV. SYSTEM PERSONNEL RELEVANT TO THE INVESTIGATION**

The following identifies those individuals, or groups of individuals, relevant to the analysis. We conducted interviews, discussions and/or written inquiries with all of the following individuals (or representative) during the course of our analysis based on their knowledge of process, procedures, and/or information relevant to our analysis.<sup>37</sup>

- DR. NABIL CHEHADE, EVP, CHIEF CLINICAL TRANSFORMATION OFFICER
- MAUREEN DEE, BOARD OF TRUSTEES MEMBER
- GEOFF HIMES, FORMER VP OF FINANCE
- LAURA MCBRIDE, CO-GENERAL COUNSEL
- TERRY MONNOLLY, RECENTLY RETIRED BOARD OF TRUSTEES MEMBER
- JOHN MOSS, BOARD OF TRUSTEES MEMBER
- JIM MYLEN, KPMG (SYSTEM'S OUTSOURCED INTERNAL AUDIT PROVIDER)
- ALAN NEVEL, CHIEF EQUITY AND COMMUNITY ENGAGEMENT OFFICER
- JOSE PAGOAGA, SULLIVAN COTTER COMPENSATION CONSULTANT
- MICHAEL PHILLIPS, FORMER CHIEF LEGAL OFFICER ("FORMER CLO")
- CRAIG RICHMOND, EVP, CHIEF FINANCIAL & SYSTEM SERVICES OFFICER
- ROBERT ROGERS, USI (F/K/A FINDLEY DAVIES) COMPENSATION CONSULTANT
- PATRICIA SENEFF, COMPENSATION MANAGER
- DR. JB SILVERS, BOARD OF TRUSTEES VICE CHAIR

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<sup>37</sup> Dr. Boutros was not interviewed due to his initiation of litigation against the System. However, Dr. Boutros provided the BOT with documents, including a timeline he developed. See Counsel's Report at exhibits 2 and 3 for additional information. Dr. Boutros also addressed the BOT at the November 9, 2022 Board meeting.

- DEBORAH SOUTHERINGTON, VP OF HUMAN RESOURCES
- VANESSA WHITING, BOARD OF TRUSTEES CHAIR
- OTHER RELEVANT FORMER BOT MEMBERS,<sup>38</sup>
  - ARLENE ANDERSON
  - THOMAS McDONALD
  - TONY MINOR
  - BERNIE MORENO
  - MITCHELL SCHNEIDER
- RSM, SYSTEM'S EXTERNAL FINANCIAL STATEMENT AUDITOR

## **V. PROCESS & PROCEDURE DESCRIPTIONS FOR SPECIFIC BUSINESS ACTIVITIES**

As a part of our review and analysis, we conducted walkthroughs for specific processes and/or conducted interviews and/or held discussions with relevant Client personnel to gain an understanding of relevant processes and procedures. The primary purpose for those activities was to gain an understanding of the internal control environment at the System related to the processes specified below, which directly related to our examination of Total CEO Compensation.

This review was not intended to be a comprehensive internal audit, internal control review, or full process and control mapping.

With this understanding, we identified certain internal control weaknesses within the below specified business processes. The processes and procedures described below are those relevant to our findings.<sup>39</sup> Internal control weaknesses expose the System to an increased risk. The following describes a summary of the work completed for each identified process.

### **A. HUMAN RESOURCES**

Based on our discussions, during the period examined, Dr. Boutros established an organizational structure that excluded the System's Human Resources ("HR") function from participation in the design or execution of the incentive compensation programs, other than as described below. For example, during the period examined, the System either (briefly) employed a Chief Human Resources Officer, who was also excluded from providing input or oversight of the aforementioned incentive programs, or there

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<sup>38</sup> Former Trustee Brenda Kirk declined to be interviewed.

<sup>39</sup> Our analysis included review of other processes (e.g., payroll).

was no such Chief Human Resources Officer, during which times the HR function reported to another executive who appeared to have limited input or oversight of the incentive compensation programs.

The Human Resources Information System ("HRIS") included information regarding employees' base salary, benefits, and eligibility to participate in the PBVC plan. Because the HR function did not participate in the oversight or calculation of any of the incentive compensation programs, reporting from the HRIS system of those payments received by an employee is only available *after* payments are processed by payroll. Historically, HR also did not perform any analysis of the previously described incentive compensation programs.

HR had no formal knowledge of the SPBVC program. Due to HR's exclusion from the process based on Dr. Boutros' organizational design, it did not provide feedback as to the appropriateness of employee evaluations related to SPBVC achievement participation, the weighting or identification of SPBVC achievements, or participate in any other aspect of the SPBVC program. Also, as a result of HR's exclusion, the System's annual employee evaluation process excluded considerations and evaluations utilized for determining SPBVC payouts.

At the onset of the annual PBVC determination process, HR generated a listing of PBVC eligible employees based on coding associated with their job classification. This listing included pertinent information such as ID, name, title, base pay rate, any pay changes during the calendar year, and date of eligibility for the PBVC, if new. Historically, the Compensation Manager provided this listing to the VP - Finance. The Compensation Manager would then address any questions the VP-Finance or the System CFO had regarding the data. For example, questions would arise regarding variances in names from the previous year due to terminations and new hires and employees with special arrangements, such as split work assignments.

HR neither received nor reviewed the final calculations and payout amounts for the PBVC/SPBVC (see discussions below and above).

Also, in the more recent years of the examination period, HR received the compensation consultant's (Sullivan Cotter) spreadsheets from Dr. Boutros with the incumbent executives populated, along with the prior year's base salary compensation data. HR would update the executive listing, base salary and PBVC incentive award columns to ensure that the spreadsheet reflected the accurate percentage of PBVC the employees were eligible for; however, no actual paid PBVC, or SPBVC, payout data was included. After populating the spreadsheets, the completed information was sent back to Dr. Boutros. It is our understanding that prior to the foregoing, other processes were followed, including periods where the former CLO completed the salary data fields, but at no point was the SPBVC plan identified to the compensation consultant.

## B. ACCOUNTING<sup>40</sup>

At the outset of the walkthrough, the accounting team representatives stated that all PBVC and SPBVC amounts were calculated and approved at the “top level,” which we understand refers to Dr. Boutros and the System’s CFO. Once calculated, the payout information was sent to the VP-Finance, who then passed the calculations through the Controller for Payroll to process.

The accounting activities related to the incentive compensation programs were limited to:

- Budgeting the estimated annual payout amount;
- Recording the accrual and related expense to ensure accurate financial reporting;
- Reconciling affected bank accounts; and
- Calculating the System’s EBIDA for the PBVC goal.

### *Budgeting and Accrual Process*

Accounting determined the incentive compensation programs accrual amount at the beginning of the year based on the prior year’s payouts. Accounting was generally aware of the existence of both the PBVC and SPBVC programs and, for accounting purposes, treated them for payment and accrual purposes as one amount. The Controller stated there was no distinction between the PBVC and the SPBVC accrual amounts because the combined amounts were paid together in a lump sum. The accrual included PBVC, SPBVC, 457(f), and OPERS (Ohio Public Employees Retirement System).<sup>41</sup> The budget team determined the estimated total amount of the accrual. The System CFO confirmed the budgeted estimate. At year-end, Accounting reviewed the System’s EBIDA and estimated the PBVC/SPBVC payout amount to “true-up” the accrual based on known PBVC metric achievement and preliminary calculations. The journal entry recording any required adjustment was prepared, and reviewed and posted by separate individuals. The estimated payout and the payout have never been materially different, therefore, no prior period adjustments were ever necessary.

At year-end, a timing difference occurs due to the actual payout occurring in March or April.<sup>42</sup>

### *Bank Account Reconciliation*

The PBVC/SPBVC, one-time bonuses, and bi-weekly payroll is paid from a designated payroll bank account.

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<sup>40</sup> Walkthrough performed with Manager-Payroll and Controller.

<sup>41</sup> OPERS included up to the capped amount for each individual.

<sup>42</sup> After the completion of the financial statement audit.

The payroll bank account is a sweep account, which carries a zero balance. The applicable payroll amount for each period is swept out of the System's operating account and into the payroll account.

The Payroll bank accounts and Payroll general ledger accounts are reconciled by Accounting. These accounts are reconciled and reviewed monthly, and quarterly account reconciliations are approved through a software application.

#### *EBIDA and Adjusted EBIDA Calculation*

Accounting calculated the System's Adjusted EBIDA, which is used for both determining if the PBVC "trigger" threshold is met and for determining the achievement level of the applicable PBVC EBIDA metric.

### **C. PAYROLL**

The calculation and approval of PBVC and SPBVC payout amounts are completed before Payroll becomes involved. Payroll involvement is limited to processing the approved PBVC and SPBVC payouts as one lump sum. This processing is completed simultaneously with the regular payroll run, but the combined PBVC/SPBVC amount reports as a separate direct deposit.

The VP-Finance provided the combined PBVC and SPBVC incentives (referred to as "PBI" in the Payroll reporting) and top talent bonus program awards, which he received from the CFO, to the Manager of Payroll for processing. This document would come in an Excel file detailing the amount each employee was to receive (See Appendix A). The Manager of Payroll then forwarded the information to the Payroll Processor, who uploaded the amounts into the System's payroll module. The Payroll Processor uploaded the amounts for each employee. Payroll printed a report of the uploaded data, and then Payroll team double checks the report to ensure accuracy. Once completed, Payroll generated a Positive Pay report to send the bank. Positive Pay ensures the appropriate funds are distributed. The bank sent back a confirmation to ensure the total payroll amount was accurate.

Monthly payroll accruals are processed by the Payroll Coordinator.

Typically, off-cycle payroll runs are only completed for adjustments to correct mistakes in an employee's pay.

### **D. PROCEDURES ASSOCIATED WITH NON-PBVC CASH COMPENSATION PROVIDED TO DR. BOUTROS**

#### **1. Annual Salary Adjustments**

Based on the 2015 EA, Dr. Boutros' base salary was to be adjusted each year to approximate the 38<sup>th</sup> percentile of total cash compensation levels in comparison with peer health systems, as determined by



a nationally recognized compensation consultant. Beginning in 2020, the 2020 EA commenced and required Dr. Boutros' base salary to be reassessed by the BOT at least every two years.

Included in the BOT's determination of any adjustment to Dr. Boutros' base salary was its assessment, along with Finley Davies/USI's input, of Sullivan Cotter's annual Executive Compensation Report. After the BOT determined if a base salary adjustment was appropriate, which included input from Dr. Boutros, a PAR was then completed including the base salary change. The PAR was then either signed by the BOT Chair – Tom McDonald or Vanessa Whiting – or authorized via email and signed by General Counsel to effectuate the change.

Dr. Boutros controlled all cash compensation information reported to Sullivan Cotter (see discussion below) for its annual report, which notably excluded the cash compensation related to the SPBVC. This exclusion significantly understated the total cash compensation of Dr. Boutros for the BOT's consideration of his potential salary adjustment.

## **2. 2017 One-Time Bonus to Dr. Boutros**

On May 11, 2017, Dr. Boutros provided a letter to Board Chair Thomas McDonald recommending certain executives be awarded bonus payments. Dr. Boutros' letter states the awards were for exceptional performance in the pursuit of the System's successful bond issuance. In reviewing relevant files, we identified an unsigned letter under Mr. McDonald's name to Dr. Boutros and the CLO agreeing with Dr. Boutros' proposed payments for each executive. The letter also approves a \$40,000 one-time bonus payment to Dr. Boutros for his contribution to the successful bond issuance. The CLO confirmed during his interview that Mr. McDonald, as the BOT Chair, supported the payments, and that the one-time bonus to Dr. Boutros had been discussed with the Board in executive session, but that no BOT resolution was completed for Dr. Boutros' one-time bonus payment.

## **VI. THE PBVC AND SPBVC PROGRAMS PROCESS OVERVIEW**

### **A. PERFORMANCE BASED VARIABLE COMPENSATION PLAN ("PBVC")**

Since 2013, the System's compensation strategy included a discretionary PBVC plan authorized by the BOT. In 2017<sup>43</sup> the approved PBVC plan included significant modifications, as suggested by Dr. Boutros and Sullivan Cotter. These modifications to the PBVC plan included, without limitation:

- Updating the financial "trigger" for PBVC payout;<sup>44</sup>
- Updating the performance payout levels to 50% (Minimum)-100% (Target)-150% (Maximum);

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<sup>43</sup> Resolution 19108

<sup>44</sup> The financial "trigger" is the minimum level of Net EBIDA that must be achieved before the PBVC will payout. Net EBIDA means the EBIDA calculated including the estimated PBVC payout.

- Changing the Total Cash Compensation pay cap for non-CEO senior executives to the 90<sup>th</sup> percentile; and
- Changing to a sliding scale payout progression.

In addition, the BOT reaffirmed the pool of eligible System employees based on its approval of the levels to which the PBVC applied and each level's target payout percentage. The eligible pool included all employees at the level of Director and above.

As part of the BOT presentation in 2017 related to the PBVC updates, Dr. Boutros and Sullivan Cotter, with support from other System employees, created "The MetroHealth System 2017 PBVC Management Recommendations – Addendum".<sup>45</sup> This PBVC plan document describes, in detail, the plan metrics and structure. Importantly, the proposed modifications included the separation of the funding and performance metrics, specifically stating:<sup>46</sup>

"The **FUNDING METRIC** would determine the level of performance that management needs to meet its obligation to financial roadmap for organization success. This metric would serve as the on-off switch for the PBVC, as well as determine the amount available for distribution. The **PERFORMANCE METRICS**, as discussed in the preceding pages, would determine how the funds are distributed based on the achievements."

The document provides examples to demonstrate the implementation and function of the separated funding and performance metrics.

The PBVC plan document neither provides for the application/use of unused PBVC funds for other incentives (e.g., SPBVC, one-time bonuses, etc.) nor any other reference or discussion of supplemental incentives. Resolution 19219 included additional modifications to the PBVC plan, however, the structure of the program remained the same.

The BOT established performance metrics annually which assisted in both determining the total PBVC funding amount and determining the payouts for eligible employees. The metrics recognized a multidimensional approach including financial, strategic, quality, and operational goals. Typically, the BOT determined PBVC metrics in February or March of the plan year, following the assessment of performance indicators and full-year financial close for the prior year. The amount funded for the PBVC was based on the actual System performance compared to the minimum, target, and maximum performance levels on a sliding scale. It is our understanding that Dr. Boutros, the CLO and the System CFO combined to create the addendum to accompany the BOT resolution for PBVC funding. The approved resolution charged Dr. Boutros with effectuating the disbursement of funds. Table 4 below summarizes the requested funding compared to payout totals per the PBVC calculation spreadsheets.

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<sup>45</sup> 2017 PBVC PROGRAM Addendum2.pdf

<sup>46</sup> 2017 PBVC PROGRAM Addendum2.pdf, p.10

Table 4 – Summary of BOT Authorized Funding Compared to Payout Totals

Plan Year	PBVC	SPBVC	One-Time Bonuses	Total Incentive Payout***	"Not to Exceed" Funding (Per BOT Resolution)
2017	\$ 4,696,954.58	\$ 2,067,500.00	\$ 198,000.00	\$ 6,962,454.58	\$ 7,029,497.00
2018	5,445,114.42	1,948,504.32	235,500.00	7,629,118.74	7,800,000.00
2019	5,705,695.31	1,491,578.67	312,000.00	7,509,273.98	8,600,000.00
2020	6,756,913.55	2,063,425.46	369,900.00	9,190,239.01	9,500,000.00
2021	6,654,525.59	2,107,013.05	375,300.00	9,136,838.64	10,000,000.00

\*\*\* - Total Incentive Payout per calculation spreadsheets.

Table 5 – Total Available PBVC Funding Based on System Achievement Compared to BOT Authorized Funding

Plan Year	Total Available PBVC Funding Based on System Achievement	"Not to Exceed" Funding (Per BOT Resolution)
2017	\$ 7,029,497.10	\$ 7,029,497.00
2018	11,171,933.33	7,800,000.00
2019	9,627,420.33	8,600,000.00
2020	10,321,236.80	9,500,000.00
2021	14,429,215.00	10,000,000.00

Table 5 above shows the total PBVC funding available based on the System achievements compared to the BOT authorized funding. Based on the modifications approved in 2017, the System's EBIDA achievements as flowed through the new Funding Mechanism resulted in "Total Available PBVC Funding Based on System Achievement" that significantly exceeded the PBVC payout requirements. For example, for Plan Year 2018, the PBVC payout requirements totaled \$5,445,114.42 (Table 4), but the funding mechanism allowed for PBVC funding in the amount of \$11,171,933.33 (Table 5). Dr. Boutros requested (and received BOT approval for) the lesser "not to exceed" funding in the amount of \$7,800,000 (Table 5), but a significant differential remained. Dr. Boutros neither identified nor reported any of the differentials to the BOT.

The significant differential between the PBVC payout total and "available" funding, along with other issues described below, provided the opportunity for Dr. Boutros to implement the SPBVC and obtain additional compensation for himself without BOT knowledge or approval.

Beginning in 2017 each PBVC plan year followed a consistent process which included, without limitation:

- System executives provided suggested metrics and associated targets to the BOT;
- The chairperson of the applicable BOT committees met and worked with the applicable System executive to establish the appropriate metrics;
- The BOT reviewed and discussed the metrics and targets suggested by the executives;
- The BOT passed a resolution approving the finalized metrics and targets;<sup>47</sup>
- The System executives periodically updated the BOT on metric achievement, as required;
- System executives determined the year-end metric achievement;
- System executives presented metric achievement levels to the BOT;
- The BOT approved the metric achievement based on reported results from the System's executives;
- After completion of the year-end external audit, Dr. Boutros and the System's CFO, calculated PBVC payment for the eligible employees;<sup>48 & 49</sup>
- The BOT approved a resolution for the PBVC funding pool based on metric achievement and results presented, typically introduced by the Board chairs and details presented by Dr. Boutros;<sup>50</sup>
- Dr. Boutros approved the calculated payouts;
- The CFO provided the listing of employees and their calculated PBVC/SPBVC payout,<sup>51</sup> or one-time bonuses, to his staff, which included Payroll, to effectuate payment; and

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<sup>47</sup> Between January and March of each year.

<sup>48</sup> Based on our interviews with System Human Resources personnel, they provided the population of eligible employees, with their associated PBVC eligible target payout percentage, based on the BOT approved levels.

<sup>49</sup> Dr. Boutros and CFO performed the calculations to determine the PBVC and SPBVC payout amounts.

<sup>50</sup> Based on our understanding, Mike Phillips (former CLO for the System through 2020) prepared the addendum confidentiality disclaimer, Dr. Boutros and CFO prepared the PBVC chart, and Dr. Boutros prepared the narrative statement associated with the chart.

<sup>51</sup> The listing provided by the CFO to his staff to process combined the PBVC and SPBVC amounts together in one column.

- Annually, the applicable executive was provided either a listing of each employee's PBVC/SPBVC total award to communicate or a letter for each employee with the letter listing their PBVC, SPBVC, or one-time bonus payout amounts.<sup>52</sup>

#### **B. SUPPLEMENTAL PBVC/SUPPLEMENTAL INCENTIVE ("SPBVC")**

As opposed to the PBVC plan, no plan document describing the goals, structure, implementation, or BOT resolution(s) approving the creation or adoption of the plan, exist for the SPBVC. Dr. Boutros implemented the SPBVC sometime in late 2017 with the initial payments made in April 2018. The following represents our understanding of the SPBVC based on interviews, review of available email communications, and review of documentation:

- Dr. Boutros defined the eligible pool of SPBVC recipients;<sup>53</sup>
- At year-end,<sup>54</sup> Dr. Boutros identified specific System achievements that occurred during the year and associated weighting for use in calculating the SPBVC;
- Dr. Boutros requested input from certain senior executives regarding the achievements and weights to be included in the SPBVC;
- Dr. Boutros determined/approved the final achievements and weights for use in calculating the SPBVC;
- Dr. Boutros provided a listing to his direct reports of the employees under their purview for evaluation and to determine the participation level of each employee in the SPBVC achievements;
- Dr. Boutros requested each executive provide him with scoring<sup>55</sup> for each employee under their purview that participated in one or more of the achievements;
- Dr. Boutros evaluated both himself and his direct reports to determine applicable scoring level;
- Dr. Boutros and the CFO made the calculations for the PBVC and SPBVC payouts;
- Dr. Boutros approved the calculated payouts;

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<sup>52</sup> See Appendices B & C for an example of the notification form provided to employees. The form letter provided to each employee receiving the PBVC and SPBVC, shows the amounts separately. It is our understanding the letters were originally distributed from either Dr. Boutros and/or CFO, depending on the applicable year. The form letters ceased being provided in the most recent plan years examined without explanation.

<sup>53</sup> Based on our review of the calculations, Dr. Boutros defined the eligible employee pool as exactly the same population eligible for the PBVC, which included himself.

<sup>54</sup> Based on available information this is typically during the fourth quarter of the year (i.e., Oct. – Dec.).

<sup>55</sup> 0-25-50-75-100 percent for each item.

- The CFO provided the listing of employees and their calculated PBVC/SPBVC payout,<sup>56</sup> or one-time bonuses, to his staff, which included Payroll, to effectuate payment; and
- Annually, the applicable executive was provided either a listing of each employee's PBVC/SPBVC total award to communicate or a letter for each employee with the letter listing their PBVC, SPBVC, or one-time bonus payout amounts.<sup>57</sup>

## VII. SUMMARY OF CEO EMPLOYMENT AGREEMENTS

As a part of our procedures, we reviewed the applicable employment agreements of Dr. Boutros. The following summarizes relevant provisions contained in those agreements, along with differences in the included provisions between the 2015 EA and 2020 EA:

Provision of Dr. Boutros Employment Agreements	2015 EA <sup>58</sup>	2020 EA <sup>59</sup>
1. Employment: Term	Three-year period (3) year period of time ending on the third anniversary of the Effective Date ("Initial Term")  Agreement shall be automatically extended in one-year increments for not more than two additional one-year periods beyond the third anniversary (each, an "Extended Term")	
	<b>Executive shall perform the duties and obligations of the position of President and Chief Executive Officer, as assigned by the Board of Trustees of the System ("Board")</b>  <b>The Executive shall perform such duties promptly and in a professional manner and in accordance with MetroHealth's rules, regulations, policies and procedures, which Executive acknowledges shall include MetroHealth's "Values" in the form attached hereto as Exhibit A-1, as they may be amended from time to time. [emphasis added]</b>	

<sup>56</sup> The listing provided by the CFO to his staff to process combined the PBVC and SPBVC amounts together in one column.

<sup>57</sup> See Appendices B & C for an example of the notification form provided to employees. The form letter provided to each employee receiving the PBVC and SPBVC, shows the amounts separately. It is our understanding the letters were originally distributed from either Dr. Boutros and/or CFO, depending on the applicable year.

<sup>58</sup> Agreement effective July 1, 2015.

<sup>59</sup> Agreement effective January 1, 2020.

Provision of Dr. Boutros Employment Agreements	2015 EA <sup>58</sup>	2020 EA <sup>59</sup>
2. Compensation	<p>A. Base Rate</p> <p>\$869,000 per annum, paid bi-weekly</p> <p>Effective for entire 2015 year through one-time catchup adjustment</p> <p>Base Salary applied for calculation of contribution provided in Section 3.B (457f Compensation)</p> <p>38th percentile to Total Cash Compensation based on Sullivan Cotter analysis (Target Base Salary)</p> <p>Base Salary reset based on anniversary of Agreement to the Target base Salary as determined by a nationally recognized independent compensation consultant ("Compensation Consultant").</p> <p>Board will select the Compensation Consultant, in consultation with Executive</p>	<p>A. BASE RATE</p> <p>Base Salary for 2020 was confirmed by the Board based upon the 2015 Agreement, paid bi-weekly</p> <p>38th percentile to Total Cash Compensation based on Sullivan Cotter analysis (Target Base Salary)</p> <p>Base Salary will be reassessed by the Board at least every two (2) years at the Target Base Salary</p> <p>Target base Salary as determined by a nationally recognized independent compensation consultant ("Compensation Consultant")</p> <p>Board will select the Compensation Consultant, in consultation with Executive</p>
	<p>B. Performance Based Variable Compensation Plan (PBVC)</p> <p>All awards pursuant to the Performance Plan shall be subject to the terms of such plan as determined by the Board in consultation with the Executive, from time to time. The Performance Plan will include a range of specific System performance benchmark targets with the amount of the Performance Based Variable Compensation tied to such targets.</p>	
	Total Cash Compensation = Base Salary + PBVC	
3. Retirement Plans	Executive will be eligible to participate in the Ohio Public Employees Retirement System ("OPERS") and for contributions to OPERS under the terms and conditions of OPERS and the System's policies, with the understanding that the System's contribution shall be at the rate of 14% of Executive's compensation under current law (as such compensation is limited under OPERS to reflect tax code restrictions).	

Provision of Dr. Boutros Employment Agreements	2015 EA <sup>58</sup>	2020 EA <sup>59</sup>
	<p>A. The System will establish a new Section 457(f) plan for Executive effective for contributions attributable to 2016 and subsequent years. The plan is intended to qualify as an unfunded, non-qualified, deferred compensation plan maintained by a government organization for which the benefits are subject to a substantial risk of forfeiture within the meaning of Code Section 457(f).</p> <p>B. For each year during the Term of Executive's employment hereunder, and including the contribution for calendar year 2015, System shall make an annual contribution credit equal to twenty percent <b>(20%) of Executive's Total Cash Compensation for such year.</b> [emphasis added]</p>	<p>A. The System will establish a new Section 457(f) plan for Executive effective for contributions attributable to 2019 and subsequent years. The plan is intended to qualify as an unfunded, non-qualified, deferred compensation plan maintained by a government organization for which the benefits are subject to a substantial risk of forfeiture within the meaning of Code Section 457(f).</p> <p>B. For each year during the Term of Executive's employment hereunder, and including the contribution for calendar year 2019, System shall make an annual contribution credit equal to twenty five percent <b>(25%) of Executive's Total Cash Compensation for such year.</b> [emphasis added]</p>
<p>4. Health Insurance, Other Benefits, Perquisites, Liability Insurance, Etc.</p>	<p>During the Term, the System shall provide Executive and Executive's spouse and eligible dependents (as dependents are defined by the System for such purposes) with medical, prescription drug, dental and vision insurance coverage (hereafter "Group Health Insurance Benefits") in amounts and on terms as determined from time to time by the System similar to the Group Health Insurance Benefits afforded by the System to its other senior executive officers.</p> <p>Executive will be entitled to any and all other benefits (including, without limitation, coverage for officer liability and medical malpractice) customarily provided by the System to its senior executive officers (or, in the case of malpractice coverage, its medical practitioners) consistent with the System's policies and practices.</p>	
<p>5. Expenses, Reimbursements, In-Kind Benefits.</p>	<p>Executive shall be reimbursed in accordance with the System's policies for all reasonable and necessary out-of-pocket expenses incurred by Executive in the performance of Executive's duties while actively employed by the System under this Agreement.</p>	



Provision of Dr. Boutros Employment Agreements	2015 EA <sup>58</sup>	2020 EA <sup>59</sup>
Authorized Signor	Tom McDonald – BOT Chair	Vanessa Whiting – BOT Chair

## VIII. SUMMARY OF ANALYSIS AND FINDINGS

Based on our application of forensic accounting and other investigative procedures, we determined the following:

- A. **DR. BOUTROS CONTROLLED THE CREATION, IMPLEMENTATION AND EXECUTION OF THE SPBVC PROGRAM RESULTING IN THE CONCEALMENT OF SUPPLEMENTAL COMPENSATION**
  - 1. **DR. BOUTROS INCLUDED HIMSELF AS AN ELIGIBLE EMPLOYEE FOR SPBVC WITHOUT BOT APPROVAL**
  - 2. **DR. BOUTROS PERFORMED A SELF-EVALUATION OF HIS SPBVC ACHIEVEMENTS**
  - 3. **DR. BOUTROS CALCULATED HIS OWN SPBVC COMPENSATION PAYOUT**
  - 4. **DR. BOUTROS APPROVED AND RECEIVED HIS SUPPLEMENTAL COMPENSATION**
- B. **DR. BOUTROS' CIRCUMVENTION OF CONTROLS RESULTING IN SUPPLEMENTAL COMPENSATION**
  - 1. **DR. BOUTROS ACTED CONTRARY TO SYSTEM ETHICS POLICY AND DELEGATIONS SET BY THE BOT**
  - 2. **DR. BOUTROS FAILED TO PROVIDE THE BOT WITH AN EXPLANATION OF MATERIAL CHANGE IN PBVC FUNDING APPROVAL RESOLUTION LANGUAGE**
  - 3. **DR. BOUTROS FAILED TO DISCLOSE HIS SPBVC COMPENSATION TO BOT & OUTSIDE PARTIES**
  - 4. **DR. BOUTROS FAILED TO PROVIDE THE COMPENSATION CONSULTANT WITH ACCURATE COMPENSATION INFORMATION FOR HIS ROLE RESULTING IN POTENTIAL OVER PAYMENT**
  - 5. **DR. BOUTROS CAPPED CERTAIN EMPLOYEE INCENTIVE PAYMENTS TO AVOID THEIR TOTAL CASH COMPENSATION EXCEEDING THE 90<sup>TH</sup> PERCENTILE OF COMPARABLE TOTAL CASH COMPENSATION**
- C. **OTHER CEO COMPENSATION CONTROL WEAKNESSES RESULTING IN SUPPLEMENTAL COMPENSATION**
  - 1. **CFO FAILED TO IMPLEMENT SEGREGATION OF DUTY CONTROLS RELATED TO CEO SPBVC COMPENSATION**

2. **CFO DID NOT OBTAIN SUPPORTING DOCUMENTATION OR CONFIRM BOT AUTHORIZATION FOR CEO'S SPBVC COMPENSATION COMPONENT**
  3. **THE TOTAL AVAILABLE PBVC FUNDING POOL PROVIDED OPPORTUNITY FOR ESTABLISHMENT AND PAYOUT OF CEO'S SPBVC**
  4. **LACK OF FORMALIZED POLICIES AND PROCEDURES FOR PBVC AND SPBVC PROGRAMS**
  5. **INCENTIVE COMPENSATION PROGRAMS PAYOUT FOR CEO NOT SPECIFIED AND RESOLUTION WORDING CHANGES NOT IDENTIFIED**
- D. **DR. BOUTROS FAILED TO IMPLEMENT AN EFFECTIVE CONTROL STRUCTURE BY EXCLUDING THE SYSTEM'S HUMAN RESOURCES FUNCTION FROM THE PBVC AND SPBVC PROCESSES**
1. **DR. BOUTROS EXCLUDED HR FROM VARIABLE COMPENSATION PLAN DEVELOPMENT**
  2. **DR. BOUTROS EXCLUDED HR FROM SPBVC METRIC ASSESSMENT AND EMPLOYEE EVALUATIONS**
- E. **DR. BOUTROS FAILED TO IMPLEMENT A FORMAL STRUCTURE FOR THE SPBVC PROGRAM**
1. **SPBVC LACKED FORMAL PLAN**
  2. **SPBVC UTILIZED BACKWARD LOOKING ACHIEVEMENTS FOR PAYOUT**

We discuss our summary analysis and findings in detail below.

A. **DR. BOUTROS CONTROLLED THE CREATION, IMPLEMENTATION AND EXECUTION OF THE SPBVC PROGRAM RESULTING IN THE CONCEALMENT OF SUPPLEMENTAL COMPENSATION**

Our procedures included analyzing the Applicable EAs, BOT resolutions, BOT delegations of authority, interviewing employees and BOT members, analyzing PBVC/SOBVC calculations, payroll files, reviewing applicable process, policies, procedures, and available communications, and reviewing other applicable BOT materials.

Our analysis revealed that Dr. Boutros controlled the creation, implementation and execution of the SPBVC program resulting in the concealment of his receipt of supplemental compensation between 2018 and 2022.

1. **DR. BOUTROS INCLUDED HIMSELF AS AN ELIGIBLE EMPLOYEE FOR SPBVC WITHOUT BOT APPROVAL**

Dr. Boutros defined the population of eligible SPBVC employees and included himself without approval from the BOT. Dr. Boutros defined the SPBVC eligible employee population consistent with the PBVC

eligible population,<sup>60</sup> although the PBVC and SPBVC programs are separate, including, importantly, that the BOT approved the PBVC eligible employee population but did not approve the SPBVC eligible employee population. As discussed above, the PBVC plan underwent rigorous approvals, and its metrics were thoroughly vetted and approved by the BOT annually. The PBVC plan includes no reference to any other incentive and/or supplemental variable compensation plan.

Our review identified no documentation presented to the BOT, or approvals from the BOT, referencing approval of Dr. Boutros to participate as an eligible employee in any plan other than the PBVC. At all times during the period 2017 through 2022, the BOT retained exclusive authority to approve all forms of compensation for Dr. Boutros. In an interview conducted by Counsel on October 17, 2022, Dr. Boutros acknowledged that he could not take any action regarding his own compensation without authorization from the BOT. Furthermore, our interviews determined the BOT was unaware of Dr. Boutros' inclusion in any supplemental incentive program.

The CFO confirmed that during the process of determining the amount of SPBVC to be awarded to each employee, Dr. Boutros provided the CFO the list of SPBVC eligible employees, which included all the same employees eligible for the PBVC program.<sup>61</sup> The CFO also confirmed Human Resources provided the list of PBVC eligible employees only.<sup>62</sup> The only individuals who had access and viewed the SPBVC eligible list every year were the CFO and Dr. Boutros.<sup>63</sup>

## **2. DR. BOUTROS PERFORMED A SELF-EVALUATION OF HIS SPBVC ACHIEVEMENTS**

Under the SPBVC program, while less formal than the PBVC program, non-CEO employees received an SPBVC payout after their supervisor evaluated their performance against the SPBVC metrics. However, based on our analysis and interviews, neither the BOT nor any other executive performed an evaluation of Dr. Boutros' participation in completing the SPBVC achievements utilized for purposes of determining his SPBVC payout amount.

## **3. DR. BOUTROS CALCULATED HIS OWN SPBVC COMPENSATION PAYOUT**

Based on our analysis, Dr. Boutros and the System's CFO controlled the detailed calculation and made the calculations for both the PBVC and SPBVC, which included Dr. Boutros as a recipient. After calculating the amount of PBVC for each employee, the System CFO and Dr. Boutros then calculated the amount of SPBVC to be awarded to those employees Dr. Boutros defined as eligible for the SPBVC and for which the employee's supervisor provided Dr. Boutros/the CFO feedback for the employee related to

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<sup>60</sup> Defined in the BOT's approved PBVC plan.

<sup>61</sup> Although Dr. Boutros defined the same employees eligible for the SPBVC as for the PBVC, because of the SPBVC achievements chosen by Dr. Boutros for which an employee could receive compensation, some, typically between 30-50, eligible employees received no SPBVC payout.

<sup>62</sup> We confirmed the HRIS only includes an indicator identifying PBVC eligible employees.

<sup>63</sup> A 2018 email shows that the former COO received the 2017 plan year detailed PBVC/SPBVC payout calculation file that included Dr. Boutros.

the SPBVC achievements (See discussion above). The SPBVC calculation methodology utilized the PBVC amount as the starting point for calculating the SPBVC payout for each employee (i.e., the SPBVC payout could not exceed the PBVC payout). The PBVC utilized the employee's base salary as the starting point.

We reviewed the spreadsheets calculating the SPBVC for each of the plan years 2017 to 2021 and confirmed that Dr. Boutros was included in the calculation to receive SPBVC payments. We also confirmed that the file with the incentive compensation programs data provided by the CFO to the VP-Finance for payroll to process included the PBVC and SPBVC total from the detailed calculation spreadsheets for Dr. Boutros.

#### **4. DR. BOUTROS APPROVED AND RECEIVED HIS SUPPLEMENTAL COMPENSATION**

We identified no documentation approving or authorizing Dr. Boutros to receive any form of compensation other than those types of compensation included in the Applicable EAs. Additionally, we identified no documentation delegating the BOT's authority to approve Dr. Boutros' compensation, or for Dr. Boutros to approve his own compensation. Contradictorily, Dr. Boutros sought the approval of the BOT for, or the BOT previously approved, all forms of compensation other than the SPBVC, including the 2020 EA, base salary adjustments, and PBVC.

We confirmed Dr. Boutros approved the PBVC and SPBVC payouts, then the System CFO conveyed the summary listing of PBVC/SPBVC and one-time bonus<sup>64</sup> data to the VP-Finance to effectuate payment.

We then confirmed Dr. Boutros received his SPBVC payments, which were combined with PBVC payout amounts, by reviewing Dr. Boutros' payroll detail for the years 2018 to 2022.

#### **B. DR. BOUTROS' CIRCUMVENTION OF CONTROLS RESULTING IN SUPPLEMENTAL COMPENSATION**

Our analysis included analyzing the Applicable EAs, BOT resolutions, BOT delegations of authority, interviewing employees and BOT members, analyzing applicable process, policies, and procedures, payroll information, supporting calculation files, gathering and assessing available information related to the implementation and application of the SPBVC program, analysis of available communications and reviewing other applicable BOT materials.

Based on our analysis of the foregoing, we identified the following findings regarding Dr. Boutros' circumvention of controls resulting in supplemental compensation being paid to Dr. Boutros.

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<sup>64</sup> The summary files reviewed also included the terms PBI (performance based incentive) or TTI (top-talent incentive).

## 1. DR. BOUTROS ACTED CONTRARY TO SYSTEM ETHICS POLICY AND DELEGATIONS SET BY THE BOT

Dr. Boutros violated the System's code of ethics and compliance (the "Code"). The Code specifically states under Conflict of Interest, that "we do not use our position, or knowledge gained in our position, for personal benefit-apart from our normal compensation." In this case, Dr. Boutros, in violation of this policy, used his position as CEO to design an incentive program, the SPBVC, where he was a beneficiary of that plan and failed to disclose this to the BOT or receive their authorization.

Based on BOT Resolution 19284 dated March 27, 2019, the BOT delegated Dr. Boutros the authority to establish wage and salary schedules, grant fringe benefits, provide extra holiday leave and personal holidays, and provide employee recognition awards for System employees. However, a condition to this delegated authority required Dr. Boutros to disclose to the BOT any compensation decisions that impacted the annual budget by \$5 million, and **regularly report to the BOT all material changes to employee salary, compensation, and benefits**. Based on our interviews of System BOT members, Dr. Boutros never disclosed the existence of the SPBVC program, a material change in employee compensation, to the BOT as required by Resolution 19284. In addition, the prior BOT resolution, Resolution 18664, regarding delegation of authority also did not delegate to Dr. Boutros the BOT's authority to set and approve his compensation.

## 2. DR. BOUTROS FAILED TO PROVIDE THE BOT WITH AN EXPLANATION OF MATERIAL CHANGE IN PBVC FUNDING APPROVAL RESOLUTION LANGUAGE

During our analysis of BOT resolutions, we identified that the BOT resolution approving the annual funding for the PBVC plan, the wording of the resolution materially changed between 2018 and 2019.<sup>65</sup>

The 2018 resolution, 19185, stated:

Based upon these 2017 results below the **total Performance Based Variable Compensation** to be distributed will not exceed \$7,029,497 and this amount has been fully accrued in the calculation of the System's financial results as reflected in its audited financial statements. Performance Based Variable Compensation payments will average approximately 18.1% of base salary. [emphasis added]<sup>66</sup>

<sup>65</sup> The PBVC funding resolution wording remained consistent from 2019 through 2022. The BOT resolution for 2023 was not reviewed, and we understand that no SPBVC was paid for the 2022 plan year.

<sup>66</sup> See Table 1-A, Dr. Boutros' incentive programs percentage of total cash compensation averaged 87% during the years examined.

Whereas, the 2019 resolution, 19270, stated:

Based upon these 2018 results above, **the total incentive program funding** shall not exceed \$7,800,000. This amount has been fully accrued in the calculation of the System's financial results as reflected in its audited financial statements.

**Incentive program payments (PBVC, onetime recognition, supplemental incentives) shall be distributed to eligible employees based on corporate and individual performance.** The average incentive payment is approximately 20.5% of the base salary. The President and Chief Executive Officer, or his designee, are hereby authorized to take necessary actions consistent with this resolution. [emphasis added]<sup>67</sup>

Dr. Boutros failed to provide the BOT an explanation for the above material change in language or additional language changed in Resolution 19495. Neither the CLO nor the CFO could explain why the term "supplemental incentive" was used versus "supplemental PBVC".<sup>68</sup> Both indicated Dr. Boutros presented these resolutions to the BOT and would have drafted the language identified above.

### **3. DR. BOUTROS FAILED TO DISCLOSE HIS SPBVC COMPENSATION TO BOT & OUTSIDE PARTIES**

The BOT annually reviewed and approved the metrics used for the PBVC program as well as the PBVC funding pool. The resolutions included detailed tables with PBVC goals used to measure the System's performance against the BOT approved metrics. Dr. Boutros assisted in preparing the information provided in the tables from the resolutions. As identified above, none of the resolutions included or referred to metrics used for the SPBVC program, and none included the term "SPBVC" or "Supplemental PBVC".

Based on the interviews and analysis of documentation, Dr. Boutros regularly met with BOT members regarding various topics, including bi-weekly meetings with the BOT Chair. Based on the interviews of members of the BOT, Dr. Boutros neither disclosed the existence of the SPBVC program nor did he disclose that he received compensation payments related to the SPBVC.

Dr. Boutros had a number of opportunities to disclose the SPBVC program and that he received payouts between 2018 and July/August 2022, when the issue was discovered. In addition to his bi-weekly meetings with the BOT Chair, Dr. Boutros had numerous other meetings, including, without limitation, BOT meetings. Furthermore, Dr. Boutros also engaged in two separate employment agreement negotiations with the BOT – one in 2020, resulting in the 2020 EA, and another in 2021. As part of these negotiations Dr. Boutros presented his compensation information, submitted and/or replied to contract terms, but failed to present information or include in any responses identifying that he received the

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<sup>67</sup> *Id.*

<sup>68</sup> As noted above the supplemental incentive was referred to using different terms interchangeably. We also noted that the term SPBVC was commonly known internally by other executives.

SPBVC payouts as part of his compensation, nor did he attempt to negotiate into his revised agreement the concept of the SPBVC.

In addition, Dr. Boutros failed to disclose his full compensation, the additional \$400,000 in SPBVC, in response to a public records request by the Plain Dealer in April 2018. Dr. Boutros provided this same incomplete and misleading information to the BOT.

**4. DR. BOUTROS FAILED TO PROVIDE THE COMPENSATION CONSULTANT WITH ACCURATE COMPENSATION INFORMATION FOR HIS ROLE RESULTING IN POTENTIAL OVER PAYMENT**

Sullivan Cotter compiled compensation data for System executives, including Dr. Boutros, and provided a report with comparisons of System executive compensation to other health systems. Sullivan Cotter provided forward looking compensation modeling based on inputs provided by the System. Each year, Sullivan Cotter requested compensation data from Dr. Boutros. The emails described the types of compensation Sullivan Cotter requested for their analysis. "Incentive Compensation" was explicitly stated in these requests. During his interview, Mr. Pagoaga stated that all incentive compensation should be disclosed to Sullivan Cotter for their analysis if there is an established program and the incentive program is expected to occur on a regular basis. Mr. Pagoaga advised that the SPBVC program information was never disclosed by Dr. Boutros and should have been provided to Sullivan Cotter each year.

Rob Rogers, USI (f/k/a Findley Davies), analyzed the Sullivan Cotter compensation data and comparable groups used to assess System executive compensation levels.

Based on our interviews, neither Sullivan Cotter nor Findley Davies independently verified the actual total compensation amounts paid to executives, including Dr. Boutros, as this was not within the scope of their engagements. Both parties relied on information provided pursuant to Sullivan Cotter's data request sent to Dr. Boutros and completed by HR, which was unaware of the existence of the SPBVC program. Because of that limitation, HR only updated the base salary and updated/added PBVC target payout percentages. Dr. Boutros then returned the completed file to Sullivan Cotter.

Furthermore, the BOT relied on the above information when evaluating Dr. Boutros' total cash compensation compared to market comparables, which included determining the propriety of Dr. Boutros' base salary adjustments. As a result of Dr. Boutros excluding a material amount, such as the SPBVC, when the BOT assessed his total cash compensation to determine if a base salary adjustment should be approved, this assessment was based on incomplete information potentially resulting in higher base salary adjustments for Dr. Boutros.

**5. DR. BOUTROS CAPPED CERTAIN EMPLOYEE INCENTIVE PAYMENTS TO AVOID THEIR TOTAL CASH COMPENSATION EXCEEDING THE 90<sup>TH</sup> PERCENTILE OF COMPARABLE TOTAL CASH COMPENSATION**

During our review we identified BOT resolutions related to the approved Executive Compensation Methodology for the System that included the requirement that executive total compensation not exceed the 90<sup>th</sup> percentile of comparable compensation based on the analysis of the System's compensation consultants. To the extent an executive's total cash compensation exceeded the 90<sup>th</sup> percentile, the exceedance required BOT approval. In addition, our analysis of the PBVC/SPBVC calculation files utilized by Dr. Boutros identified that Dr. Boutros tracked the 90<sup>th</sup> percentile threshold for himself and other senior executives.

As a result of the analysis, we determined that Dr. Boutros capped executive compensation just below the 90<sup>th</sup> percentile, thereby avoiding discussing any executive whose compensation exceeded the 90<sup>th</sup> percentile with the BOT. In addition, the BOT would only become aware of an executive exceeding the 90<sup>th</sup> percentile if Dr. Boutros informed them of such exceedance.

Contradictorily, Table 6 below demonstrates Dr. Boutros' cash compensation exceeded the 90<sup>th</sup> percentile in plan year 2018, but he neither capped his own compensation nor reported it to the BOT. In addition, Table 6 demonstrates that Dr. Boutros kept his cash compensation (base salary + PBVC + SPBVC) just below the 90<sup>th</sup> percentile threshold in each of the other plan years.

Table 6 - Summary of Total Cash Compensation for Dr. Boutros During Plan Years 2017 - 2021

Plan Year	Approved Base Salary	Approved PBVC	SPBVC	Total Cash Compensation	Total Cash Comp P90 from Sullivan Cotter Reports	Dr. Boutros Total Cash Comp. Percent. Of P90
2017	\$ 899,589.97	\$ 398,072.44	\$ 400,000.00	\$ 1,697,662.41	\$ 1,760,300.00	96.4%
2018	930,009.60	482,721.48	289,632.89	1,702,363.97	1,600,500.00	106.4%
2019	930,584.88	438,072.83	372,361.91	1,741,019.62	1,848,400.00	94.2%
2020	1,000,001.60	489,755.78	416,292.42	1,906,049.80	1,910,600.00	99.8%
2021	1,099,800.00	498,137.91	457,664.21	2,055,602.12	2,069,400.00	99.3%
<b>Totals</b>	<b>\$ 4,859,986.05</b>	<b>\$ 2,306,760.45</b>	<b>\$ 1,935,951.43</b>	<b>\$ 9,102,697.93</b>		



**C. OTHER CEO COMPENSATION CONTROL WEAKNESSES RESULTING IN SUPPLEMENTAL COMPENSATION**

Our analysis included analyzing the Applicable EAs, BOT resolutions, BOT delegations of authority, interviewing employees and BOT members, analyzing applicable process, policies, and procedures, payroll information, supporting calculation files, gathering and assessing available information related to the implementation and application of the SPBVC program, and reviewing other applicable BOT materials.

Based on our analysis of the foregoing, we identified the following internal control failures leading to Dr. Boutros receiving supplemental compensation in the form of SPBVC payouts and the resulting inflated 457(f) benefits.

**1. CFO FAILED TO IMPLEMENT SEGREGATION OF DUTY CONTROLS RELATED TO CEO SPBVC COMPENSATION**

Based on our analysis and understanding of the SPBVC process:

- Dr. Boutros established the SPBVC eligible employee population, which included himself;
- Dr. Boutros developed and approved the SPBVC achievements and associated weighting;
- Dr. Boutros performed his own performance assessment for calculating his SPBVC payout;
  - None of the interviewees, including the CFO and former CLO, provided Dr. Boutros with an assessment of his performance for use in the SPBVC program.
- As a result, Dr. Boutros solely determined the amount of SPBVC payment he received without input from the BOT or any System senior executive.
  - This included the exclusion of the HR function performing duties and responsibilities we would typically expect be performed (see discussion below).

Our analysis determined that only the CFO participated in determining the SPBVC calculations with Dr. Boutros. The CFO confirmed he established no controls for the SPBVC program. The CFO is the financial control gatekeeper for the System and, as such, should have implemented controls to ensure proper segregation of duties related to the SPBVC program.

**2. CFO DID NOT OBTAIN SUPPORTING DOCUMENTATION OR CONFIRM BOT AUTHORIZATION FOR CEO'S SPBVC COMPENSATION COMPONENT**

During our interview of the System CFO, he stated that he assumed the BOT approved Dr. Boutros' participation in the SPBVC program. He explained that, even though he received no documentation or information approving Dr. Boutros' participation in, or eligibility for, the SPBVC, he did not discuss or bring this issue to the attention of the BOT, or other appropriate executive (e.g., the CLO). During the

period examined, the only current System executive in a position to discuss/notify the BOT, or other executive (e.g., the CLO), of Dr. Boutros' participation in the SPBVC was the CFO.<sup>69</sup>

The CFO assumed Dr. Boutros' eligibility for the SPBVC program based on his eligibility for the PBVC and the fact that Dr. Boutros utilized the same eligible employee population for the SPBVC included in the PBVC. The CFO further assumed the BOT approved Dr. Boutros' participation in the SPBVC. However, the CFO routinely met with the Finance Committee Chair and other BOT members and committees, thus access to the BOT was not an impediment. In addition, it is our understanding that the CFO regularly raised issues or questions to the attention of the CLO, or his subordinates, regarding the need for BOT approval on issues.

Our review of BOT materials, including presentations, resolutions, and available meeting minutes identified no information showing the BOT approved Dr. Boutros to receive any compensation other than that provided in the Applicable EAs.

Furthermore, both compensation consultants stated they neither received any information regarding the SPBVC, nor had any knowledge of the SPBVC's existence.<sup>70</sup> Mr. Pagoaga, Sullivan Cotter, stated he could not recall an instance where the board of directors, or similar oversight body, of an entity was not required to approve both performance/variable incentives and/or all CEO compensation. Rob Rogers, USI, acknowledged that the circumstance involving Dr. Boutros was the only occasion in his career where he encountered the absence of an approval "paper trail" for payments made to a CEO.

### **3. THE TOTAL AVAILABLE PBVC FUNDING POOL PROVIDED OPPORTUNITY FOR ESTABLISHMENT AND PAYOUT OF CEO'S SPBVC**

Our analysis revealed that the funds utilized to pay the SPBVC to employees resulted from the PBVC plan. Table 7 below shows that for the years examined the funding pool generated by the achievement of the PBVC metrics, including EBIDA achievement, far exceeded the actual dollars required to make the necessary PBVC payouts to eligible employees. The excess funding pool provided the opportunity for Dr. Boutros to utilize the available excess funds to pay other incentives (e.g., SPBVC) without BOT approval or knowledge.

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<sup>69</sup> A 2018 System email from former System Chief Operating Officer, shows he was also aware Dr. Boutros received the SPBVC. The former System COO and Chief of Staff declined to be interviewed.

<sup>70</sup> Both compensation consultants noted this was highly unusual.

Table 7 – Summary of Excess PBVC Funding Pool Dollars Based on Metric Achievement

Year	PBVC	"Not to Exceed" Funding (Per BOT Resolution)	Total Available PBVC Funding Based on System Achievement
2017	\$ 4,696,954.58	\$ 7,029,497.00	\$ 7,029,497.10
2018	5,445,114.42	7,800,000.00	11,171,933.33
2019	5,705,695.31	8,600,000.00	9,627,420.33
2020	6,756,913.55	9,500,000.00	10,321,236.80
2021	6,654,525.59	10,000,000.00	14,429,215.00

#### 4. LACK OF FORMALIZED POLICIES AND PROCEDURES FOR PBVC AND SPBVC PROGRAMS

During our analysis we determined no formal policy(ies) and/or procedure(s) existed covering the governance, administration, and processing for the PBVC or SPBVC programs. Additionally, this would define interactions between relevant departments and the BOT Compensation Committee, or similar committees, and assist in monitoring incentive compensation programs.

#### 5. INCENTIVE COMPENSATION PROGRAMS PAYOUT FOR CEO NOT SPECIFIED AND RESOLUTION WORDING CHANGES NOT IDENTIFIED

Based on our analysis, Dr. Boutros did not disclose, and the BOT did not inquire further regarding aspects of the incentive compensation programs payout for the CEO or the modified resolution wording. Inquiry is the primary means by which the BOT can test the veracity of information provided to them by the System's executives.

Regarding the incentive compensation programs funding, the BOT approved funds for the purpose of effectuating total payouts, but they did not authorize the funds to be used for a SPBVC payout to Dr. Boutros. Dr. Boutros did not disclose to the BOT that his total payout included both the PBVC and SPBVC. In addition, the actual amount of PBVC and SPBVC payouts as to each participating employee, including executives, and were also not requested by, or disclosed to, the BOT.

Additionally, Dr. Boutros did not provide (nor did he direct any system executive to provide) to provide his incentive compensation payouts to the BOT. Furthermore, the BOT did not request the CEO's actual incentive compensation payments, as it relied on information from the compensation consultants.

**D. DR. BOUTROS FAILED TO IMPLEMENT AN EFFECTIVE CONTROL STRUCTURE BY EXCLUDING THE SYSTEM'S HUMAN RESOURCES FUNCTION FROM THE PBVC AND SPBVC PROCESSES**

**1. DR. BOUTROS EXCLUDED HR FROM VARIABLE COMPENSATION PLAN DEVELOPMENT**

Based on our analysis, including interviews, the variable/performance incentive programs established by Dr. Boutros, excluded the System's HR function. While HR knew of the PBVC program, their role in the administration was non-material and more clerical. Furthermore, the HR department was unaware of the existence of the SPBVC program.

The exclusion of HR in these types of plans/programs can both increase risks to the System (e.g., misapplication) and cause potential new employee offers to be misleading in that the offer excludes the potential for the additional compensation.<sup>71</sup> Risks to the System could include the inability to assess wage reporting considerations/risks, providing an unclear picture of employee total rewards (HR has responsibility for this function), identify inequities in the application of the program, and an inability to assess general plan/program risks.

**2. DR. BOUTROS EXCLUDED HR FROM SPBVC METRIC ASSESSMENT AND EMPLOYEE EVALUATIONS**

During our analysis we determined that for the SPBVC, that System executives provided the performance assessment for eligible employees directly to Dr. Boutros and the CFO, at the direction of Dr. Boutros and/or the CFO. Additionally, Dr. Boutros defined the achievements applied by the SPBVC program to determine payouts and provided those directly to System executives for their input.

HR should control any subjective employee assessment resulting in compensation to ensure the proper and consistent application of assessments. Additionally, Legal should be involved to ensure requisite legal aspects are addressed.

**E. DR. BOUTROS FAILED TO IMPLEMENT A FORMAL STRUCTURE FOR THE SPBVC PROGRAM**

During our analysis, we reviewed emails, documentation, and calculation files relevant to the establishment, implementation, and operation of the SPBVC program. The following describes those issues identified related to the SPBVC program, not previously discussed.

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<sup>71</sup> During our interview of the HR employees, both noted that the misleading offer letters were an issue.

## **1. SPBVC LACKED FORMAL PLAN**

During our analysis, we identified no information establishing a formal plan for the SPBVC similar to that for the PBVC plan. The lack of a formal plan included, without limitation, the following, which exposes the System to risk, including fraud risk:

- No formal funding mechanism;
- No formal eligible employee listing (see discussion above);
- No formal metrics or weighting – all measurements for payout and weighting were ad hoc decisions annually determined at the end of the fiscal year by Dr. Boutros;
- No formal/structure employee assessment method, which was critical because the SPBVC goals were evaluated subjectively, not objectively, as with the PBVC plan; and
- No formal calculation methodology.

Both Dr. Boutros and the CFO failed to implement or require the formalization of the SPBVC program, including instituting appropriate internal controls.

## **2. SPBVC UTILIZED BACKWARD LOOKING ACHIEVEMENTS FOR PAYOUT**

Our review of the SPBVC program documentation available determined that the program utilized weighted, backward looking achievements to determine payout amounts, which were determined at year-end. Alternatively, the PBVC plan applied formally approved forward looking metrics (i.e., goals) to determine payout amounts, which were determined at the beginning of the year by the BOT.

Our analysis identified that at the end of a performance year (between October and December), Dr. Boutros requested input from certain executives regarding specific achievements he identified to use as measures for determining SPBVC awards and the weights allocated to each measure.

The use of backward looking measures allows the individual, or group, defining the measures the ability to subjectively select those items most beneficial to themselves. In addition, because the measures are backward looking the assessment of each employee's participation for determining an award is subjective. Comparatively, the PBVC utilized forward looking, objectively measured metrics.

## IX. RECOMMENDATIONS

Based on the analysis performed and the findings noted in this report, we provide the following best practice recommendations. In addition, we have categorized the items to identify the group to which the recommendation is directed.

The following best practice recommendations for consideration are directed to both the System's management and BOT.

- A. **CONDUCT TRAINING TO ENSURE ALL SYSTEM EMPLOYEES AND BOT MEMBERS UNDERSTAND THEIR ROLE IN AN EFFECTIVE INTERNAL CONTROL ENVIRONMENT**
- B. **THE SYSTEM SHOULD REVIEW AND ASSESS ITS ORGANIZATIONAL INFORMATIONAL REPORTING AND UPDATE THE RELATED BOT REPORTING**

This could include the System's management evaluating its processes and procedures for BOT reporting to ensure complete and accurate information is provided.

The following best practice recommendations for consideration are directed to the BOT.

- C. **THE BOT SHOULD CONSIDER EVALUATING ITS DELEGATION OF AUTHORITY REGARDING COMPENSATION PROGRAMS AND PERFORM AN ASSESSMENT OF GOVERNANCE AND OVERSIGHT FUNCTION RELEVANT TO COMPENSATION PROGRAMS TO STRENGTHEN THE SYSTEM'S ORGANIZATIONAL CONTROL ENVIRONMENT**

This should include the BOT reserving the authority to authorize and control all variable/incentive executive compensation programs. Consistent with this recommendation, the BOT should evaluate the SPBVC program and determine its continued use.

- D. **BOT SHOULD CONSIDER REVISING THE PBVC PLAN DOCUMENT TO SPECIFY ACCEPTABLE PBVC AVAILABLE FUNDS USAGE AND FURTHER DEFINE CONTROLS RELATED TO THE PLAN**

This could include, the BOT evaluating the separation of the PBVC funding metric from the performance metrics to align PBVC available funding with payouts.

- E. **ANNUALLY, THE BOT SHOULD RECEIVE REPORTING IDENTIFYING THE ACTUAL TOTAL CEO COMPENSATION PAID, INCLUDING ALL CASH AWARDS**

**F. THE BOT SHOULD CONSIDER IMPLEMENTING A FORMAL COMPENSATION COMMITTEE<sup>72</sup>**

We note, the BOT authorized the formation of a formalized Compensation Committee and is currently implementing this committee.

During the period reviewed, the responsibility for CEO compensation fell within the Executive Committee. A standalone, focused compensation committee provides oversight and governance to an entity's compensation programs, including CEO and other executive compensation.

The compensation committee should have defined responsibilities with regard to executive compensation practices within the System. This would allow for increased transparency to the BOT members, including overseeing a performance compensation program for employees beyond the CEO.

Furthermore, a compensation committee focused on executive compensation can mitigate risks through monitoring and governance oversight actions and also develop expertise related to executive compensation matters.

**G. BOT SHOULD RECEIVE SPECIFIC INFORMATION REGARDING VARIABLE/INCENTIVE EXECUTIVE COMPENSATION PLANS**

The BOT should receive an annual summary identifying the total incentive program funding, actual/estimated PBVC program payout total amount, and other incentive payouts (e.g., SPBVC, One-Time Bonuses) separately. This information should include a detailed listing of all executive actual payouts for all incentive compensation programs.

To the extent the BOT continues to employ compensation consultants, the BOT should control those relationships and require the reporting of actual total cash compensation amounts.

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<sup>72</sup> We noted during the period examined, the BOT's Executive Committee had some duties consistent with a compensation committee (e.g., reviewing and approving the CEO's compensation).

The following best practice recommendations for consideration are directed to the System's management.

**H. THE SYSTEM'S HUMAN RESOURCES FUNCTION SHOULD BE INCLUDED IN ALL COMPENSATION RELATED PROGRAMS TO ENSURE PROPER MONITORING, REPORTING AND COMPLIANCE**

We noted that the System has begun the process of updating the Human Resources functional design for oversight and control of all compensation programs.

**I. ALL CHANGES OR UPDATES TO RESOLUTIONS SHOULD BE IDENTIFIED AND EXPLAINED TO THE BOT**

**J. THE SYSTEM SHOULD CONSIDER IMPLEMENTING A CONTROL FRAMEWORK FOR VARIABLE/INCENTIVE EXECUTIVE COMPENSATION TO ENSURE PROPER SEGREGATION OF DUTIES**

This could include, the System developing and implementing formal policy(ies) and/or procedure(s) related to both executive compensation and variable/incentive executive compensation programs.

**K. THE SYSTEM SHOULD CONSIDER PERIODIC AUDITS OF INCENTIVE COMPENSATION PROGRAM GOAL ACHIEVEMENT LEVELS TO ENSURE ACCURACY AND COMPLIANCE WITH PROGRAM REQUIREMENTS**

**L. THE SYSTEM SHOULD CONSIDER PERIODIC AUDITS OF EXECUTIVE COMPENSATION TO ENSURE COMPLIANCE WITH APPLICABLE CONTROLS, POLICIES, PROCEDURES, REGULATORY REQUIREMENTS, AND EMPLOYMENT AGREEMENTS**

**M. THE SYSTEM SHOULD CONSIDER IMPLEMENTING A FORMAL FRAUD RISK ASSESSMENT PROGRAM CONSISTENT WITH COSO FRAUD RISK MANAGEMENT GUIDANCE<sup>73</sup>**

**N. THE SYSTEMS RISK CONTROL MATRIX SHOULD BE REVIEWED FOR COMPLETENESS AND INCLUDE VARIABLE/INCENTIVE EXECUTIVE COMPENSATION PROGRAMS TO ENSURE ANNUAL RISK EVALUATION**

Currently the System's risk control matrix is maintained by its outsourced internal audit provider.

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<sup>73</sup> Committee of Sponsoring Organizations ("COSO"). <https://www.coso.org/SitePages/Home.aspx>



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**X. APPENDICES**

Appendix A	Example - Payroll File for PBVC/SPBVC/One-Time Bonus Payouts
Appendix B	Example of Employee (Dr. Boutros) Variable Compensation Statement
Appendix C	Example of Employee Performance Payment Statement

**APPENDIX A**  
**Example - Payroll File for PBVC/SPBVC/One-Time Bonus Payouts**

CO	YEAR	EMP #	Amount	PAY CODE
1	2020	22061	\$ 810,434.74	PBI
1	2020	24599	283,470.39	PBI
1	2020	19262	265,672.59	PBI
1	2020	24072	238,693.81	PBI
1	2020	30628	213,765.54	PBI
1	2020	25524	166,780.98	PBI
1	2020	3619	132,648.61	PBI
1	2020	30666	118,788.36	PBI
1	2020	582	114,528.36	PBI
1	2020	30065	113,823.84	PBI
1	2020	6711	113,253.10	PBI
1	2020	5217	110,742.05	PBI
1	2020	1927	108,708.10	PBI
1	2020	13138	106,443.64	PBI
1	2020	30181	106,124.33	PBI
1	2020	32559	101,955.00	PBI
1	2020	7912	99,108.32	PBI
1	2020	21481	92,874.09	PBI
1	2020	30492	86,965.17	PBI
1	2020	30429	86,131.53	PBI
1	2020	31798	85,201.72	PBI
1	2020	31356	84,780.80	PBI
1	2020	2688	84,281.42	PBI
1	2020	311	84,075.44	PBI
1	2020	3617	83,761.81	PBI
1	2020	23443	80,502.76	PBI
1	2020	30291	80,294.22	PBI
1	2020	10422	77,264.81	PBI
1	2020	12140	76,858.73	PBI
1	2020	20767	75,932.03	PBI
1	2020	670	75,565.95	PBI
1	2020	32607	74,848.15	PBI
1	2020	744	74,391.26	PBI
1	2020	33013	73,227.99	PBI
1	2020	6887	71,315.43	PBI
1	2020	32832	66,261.87	PBI
1	2020	5378	64,230.36	PBI
1	2020	17366	57,456.22	PBI
1	2020	6070	57,057.41	PBI
1	2020	11492	56,204.80	PBI
1	2020	3727	55,561.07	PBI
1	2020	30494	53,632.18	PBI
1	2020	32591	53,117.68	PBI
1	2020	33539	52,955.75	PBI
1	2020	19302	52,686.37	PBI
1	2020	30325	50,275.32	PBI
1	2020	23436	49,271.77	PBI
1	2020	25975	48,706.74	PBI
1	2020	20542	47,982.55	PBI
1	2020	2585	47,701.07	PBI
1	2020	20966	45,963.22	PBI
1	2020	30631	44,141.73	PBI
1	2020	7728	40,118.94	PBI
1	2020	15631	38,715.00	PBI
1	2020	23951	38,176.09	PBI
1	2020	7703	34,643.26	PBI
1	2020	790	34,458.04	PBI
1	2020	32092	33,730.00	PBI
1	2020	14007	31,259.55	PBI
1	2020	23576	29,776.62	PBI
1	2020	4155	28,811.22	PBI
1	2020	33311	23,907.85	PBI
1	2020	6631	23,335.08	PBI
1	2020	436	21,785.78	PBI

**APPENDIX A**  
**Example - Payroll File for PBVC/SPBVC/One-Time Bonus Payouts**

CO	YEAR	EMP #	Amount	PAY CODE
1	2020	22697	21,532.98	PBI
1	2020	19730	21,497.04	PBI
1	2020	19890	21,402.31	PBI
1	2020	34258	20,495.57	PBI
1	2020	33077	20,289.98	PBI
1	2020	34046	20,175.20	PBI
1	2020	18716	19,703.76	PBI
1	2020	20523	19,675.05	PBI
1	2020	31812	19,598.13	PBI
1	2020	20616	19,234.80	PBI
1	2020	33469	18,410.24	PBI
1	2020	19513	18,313.65	PBI
1	2020	33155	18,023.59	PBI
1	2020	21738	17,987.27	PBI
1	2020	32422	17,574.65	PBI
1	2020	19072	17,163.35	PBI
1	2020	32205	17,128.90	PBI
1	2020	23329	16,911.30	PBI
1	2020	34352	16,593.95	PBI
1	2020	20773	16,124.09	PBI
1	2020	15187	16,067.17	PBI
1	2020	31786	15,986.06	PBI
1	2020	10901	15,982.20	PBI
1	2020	33439	15,909.32	PBI
1	2020	20667	15,695.00	PBI
1	2020	33196	15,443.15	PBI
1	2020	13469	15,221.99	PBI
1	2020	31625	15,164.22	PBI
1	2020	8373	15,019.07	PBI
1	2020	873	15,000.00	TTI
1	2020	10429	15,000.00	TTI
1	2020	23838	15,000.00	TTI
1	2020	19022	14,823.76	PBI
1	2020	13939	14,810.64	PBI
1	2020	32909	14,576.25	PBI
1	2020	19859	14,382.24	PBI
1	2020	26140	14,185.91	PBI
1	2020	32945	14,082.90	PBI
1	2020	13521	14,040.11	PBI
1	2020	24585	14,018.22	PBI
1	2020	31844	13,683.54	PBI
1	2020	11937	13,594.82	PBI
1	2020	32715	13,442.26	PBI
1	2020	13007	13,372.57	PBI
1	2020	25315	13,371.09	PBI
1	2020	4954	13,128.19	PBI
1	2020	19491	13,104.81	PBI
1	2020	16869	12,739.11	PBI
1	2020	33243	12,638.41	PBI
1	2020	20704	12,507.29	PBI
1	2020	20710	12,127.74	PBI
1	2020	15288	12,062.98	PBI
1	2020	24130	12,026.12	PBI
1	2020	17926	12,024.30	PBI
1	2020	16322	11,744.80	PBI
1	2020	2198	11,607.77	PBI
1	2020	17799	11,599.24	PBI
1	2020	18978	11,599.24	PBI
1	2020	21365	11,544.97	PBI
1	2020	2941	11,461.40	PBI
1	2020	19567	11,373.08	PBI
1	2020	24508	11,367.92	PBI
1	2020	33028	11,357.06	PBI
1	2020	23964	11,071.60	PBI
1	2020	31767	11,035.42	PBI
1	2020	18697	10,820.22	PBI
1	2020	24265	10,766.79	PBI
1	2020	33619	10,592.89	PBI
1	2020	5814	10,389.36	PBI
1	2020	1159	10,265.85	PBI
1	2020	4295	10,000.00	TTI

**APPENDIX A**  
**Example - Payroll File for PBVC/SPBVC/One-Time Bonus Payouts**

CO	YEAR	EMP #	Amount	PAY CODE
1	2020	6284	10,000.00	TTI
1	2020	11188	10,000.00	TTI
1	2020	21130	10,000.00	TTI
1	2020	24044	10,000.00	TTI
1	2020	17612	9,859.66	PBI
1	2020	33794	9,733.86	PBI
1	2020	30614	9,300.51	PBI
1	2020	33359	9,264.68	PBI
1	2020	21787	9,181.12	PBI
1	2020	33453	9,094.55	PBI
1	2020	32756	9,040.90	PBI
1	2020	984	8,971.62	PBI
1	2020	34076	8,579.54	PBI
1	2020	12048	8,401.26	PBI
1	2020	33470	8,376.87	PBI
1	2020	24562	8,270.14	PBI
1	2020	19839	8,062.44	PBI
1	2020	33041	8,000.00	TTI
1	2020	23640	7,935.02	PBI
1	2020	6078	7,740.73	PBI
1	2020	16127	7,507.75	PBI
1	2020	22556	7,500.00	TTI
1	2020	22731	7,500.00	TTI
1	2020	25304	7,500.00	TTI
1	2020	32067	7,203.42	PBI
1	2020	6136	7,049.54	PBI
1	2020	3066	7,000.00	TTI
1	2020	31845	6,500.00	TTI
1	2020	31712	6,000.00	TTI
1	2020	1920	5,000.00	TTI
1	2020	13079	5,000.00	TTI
1	2020	5762	5,000.00	TTI
1	2020	5811	5,000.00	TTI
1	2020	14992	5,000.00	TTI
1	2020	15763	5,000.00	TTI
1	2020	22551	5,000.00	TTI
1	2020	22907	5,000.00	TTI
1	2020	23517	5,000.00	TTI
1	2020	23549	5,000.00	TTI
1	2020	24426	5,000.00	TTI
1	2020	26119	5,000.00	TTI
1	2020	31537	5,000.00	TTI
1	2020	31949	5,000.00	TTI
1	2020	33240	5,000.00	TTI
1	2020	33849	5,000.00	TTI
1	2020	19612	4,500.00	TTI
1	2020	7986	4,000.00	TTI
1	2020	14163	4,000.00	TTI
1	2020	23439	4,000.00	TTI
1	2020	26134	4,000.00	TTI
1	2020	3080	3,500.00	TTI
1	2020	4581	3,500.00	TTI
1	2020	12652	3,500.00	TTI
1	2020	31796	3,500.00	TTI
1	2020	13123	3,000.00	TTI
1	2020	14038	3,000.00	TTI
1	2020	16183	3,000.00	TTI
1	2020	17182	3,000.00	TTI
1	2020	19023	3,000.00	TTI
1	2020	19862	3,000.00	TTI
1	2020	22126	3,000.00	TTI
1	2020	22745	3,000.00	TTI

**APPENDIX A**  
**Example - Payroll File for PBVC/SPBVC/One-Time Bonus Payouts**

CO	YEAR	EMP #	Amount	PAY CODE
1	2020	23483	3,000.00	TTI
1	2020	32926	3,000.00	TTI
1	2020	1178	2,500.00	TTI
1	2020	32941	2,500.00	TTI
1	2020	33536	2,500.00	TTI
1	2020	33663	1,500.00	TTI
1	2020	34569	1,500.00	TTI
1	2020	1200	1,000.00	TTI
1	2020	2786	1,000.00	TTI
1	2020	2898	1,000.00	TTI
1	2020	13622	1,000.00	TTI
1	2020	16539	1,000.00	TTI
1	2020	23466	1,000.00	TTI
1	2020	24359	1,000.00	TTI

<b>TOTAL</b>	<u>\$ 7,387,377.08</u>
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<b>TOTAL PER 2019 PBVC Calculation File</b>	<u>7,509,273.98</u>
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<b>Variance between Actual payout and PBVC Calculation File</b>	<u>\$ (121,896.90)</u>
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## 2019 Performance-Based Variable Compensation Statement

Based on the combination of organizational performance and individual achievement during 2019, you are eligible for the following performance-based compensation (PBVC):

### EMPLOYEE DEMOGRAPHICS

**Employee:** Akram Boutros

**Organizational/Individual Split:** 100% / 0%

**Target PBVC Level:** 35%

**Salary:** \$930,585

**Organizational Achievement:** 134.5% of 100%

**Individual Achievement:** 100.0% of 0%

**Composite Achievement:** 134.5%

**% of Base Achievement:** 47.1%

**Performance-Based Variable Compensation:** **\$438,073**

In addition, Senior Management is pleased to inform you that in recognition of your contribution to our collective extraordinary financial achievement in 2019, you will be receiving supplemental performance compensation.

**Supplemental Performance Compensation:** **\$372,362**

**Total PBVC \$810,435**

Your excellent performance supports MetroHealth's Mission, Vision and Values.

This compensation will be paid on March 31, 2020.

Only Client & Counsel may rely upon BDO's advice, opinions, or reports without BDO's written consent



## **2019 Performance Bonus**

Senior Management is pleased to inform you that in recognition of your contribution to our collective extraordinary financial achievement in 2019, you will be receiving additional performance bonus.

### **EMPLOYEE DEMOGRAPHICS**

**Employee:** [REDACTED]

**2019 Performance Bonus: \$1,000**

The Performance Bonus is not subject to OPERS contributions and is not calculated from your hourly rate.

Your excellent performance supports MetroHealth's Mission, Vision and Values.

This bonus will be paid on March 31, 2020