



OHIO AUDITOR OF STATE  
**KEITH FABER**





THE METROHEALTH SYSTEM  
CUYAHOGA COUNTY

TABLE OF CONTENTS

TITLE	PAGE
Report.....	1

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# OHIO AUDITOR OF STATE KEITH FABER



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To the Board of Trustees:

## **Background**

The Auditor of State (AOS), Special Investigations Unit (SIU) conducted a criminal investigation and special audit of The MetroHealth System (MH) predicated on allegations that Dr. Akram Boutros, former Chief Executive Officer (CEO) of MH, received unauthorized bonus payments.

The investigation began on December 14, 2022, after the Cuyahoga County Prosecutor's Office requested that the AOS investigate the allegations of the unauthorized bonus payments. Likewise, the President of the Cuyahoga County Council requested that the AOS conduct a forensic audit of MH's compensation and bonus system. In November 2022, the Board of MH terminated the employment of Dr. Boutros, based on the results of an internal investigation conducted by Tucker Ellis LLP. The internal investigation concluded that Dr. Boutros paid himself \$1.9 million in supplemental performance based variable compensation (SPBVC) over a five-year period, without Board approval. On October 31, 2022, prior to his termination, Dr. Boutros repaid the SPBVC bonuses, including interest, at a total of \$2.1 million.

After the information obtained from interviews and preliminary examination of hundreds of records from MH was considered, a special audit was declared by the Auditor of State.

This engagement was conducted in accordance with the [Auditor of State Special Investigations Unit, Quality Standards](#).

## **Suspect**

Dr. Boutros was hired by the Board of MH as CEO on June 1, 2013 and terminated as CEO on November 21, 2022.

## **Special Audit Results**

The objective of the special audit was to assist the county prosecutor in collecting information regarding the alleged unauthorized bonus payments received by Dr. Boutros during the period January 1, 2018 to December 31, 2022, so the prosecutor could determine whether criminal charges were warranted. A finding for recovery was not assessed since the SPBVC bonuses were repaid prior to the inception of the special audit.

Dr. Boutros introduced the concept of performance based variable compensation (PBVC) when he started with MH in 2013 and the program was approved by the Board shortly thereafter. SPBVC was first paid in 2018, for the 2017 program year. Dr. Boutros led efforts in determining the goals and related weights for SPBVC and obtained feedback from his direct reports on the goals and weights. The direct reports would evaluate their staff according to the goals and send the information to Dr. Boutros to further review, approve, and adjust, if necessary. An overall rating was calculated by multiplying the employee's rating per goal by the weight of that goal, and then summing the results. The overall rating was then multiplied by the base PBVC payment amount to determine the payment amount for SPBVC. This process occurred for the SPBVC payments issued from 2019 to 2022. For 2018, the payments for SPBVC were based on arbitrary percent allocations and dollar amounts, and funds available to pay employees after the base PBVC

payment amounts were determined,<sup>1</sup> while also ensuring they did not significantly exceed the base PBVC payment. For example, Dr. Boutros received a base PBVC payment of \$398,072 and a SPBVC payment of \$400,000 in 2018.

According to MH's records, the following table presents data about the base PBVC and SPBVC payments:

<b>Employee / Dollars</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
# Receiving Base PBVC	126	127	150	164	166
Dollar Amount	\$4,696,955	\$5,445,114	\$5,705,695	\$6,756,914	\$6,654,526
# Receiving SPBVC	78	95	98	132	115
Dollar Amount	\$2,067,500	\$1,948,504	\$1,491,579	\$2,063,425	\$2,107,013

Board members reported to SIU they were neither aware that Dr. Boutros received SPBVC nor that he evaluated himself for the SPBVC goals and related payments. The special audit and investigation revealed the following:

- **Resolutions Approved by the Board:** While SPBVC was first paid in 2018, the resolution passed by the Board references only total PBVC. Conversely, language was added in the addendums to the annual resolutions beginning in 2019 to specify the components of the maximum bonus payment being approved by the Board, as follows: "PBVC, one-time recognition, supplemental incentives." During SIU's interviews, some Board members interpreted "supplemental incentives" to apply only to staff and not Dr. Boutros, while others were not able to explain the intent of that language. One Board member noted that the Board did not focus on this language because the focus was on the system's metrics and achievement, which was contained in a chart above this language. An Interview with the former Chief Financial Officer (CFO) indicated he was fully aware of the SPBVC and Dr. Boutros' participation.

In addition, resolutions 18608 passed on July 24, 2013, 19108 passed on June 28, 2017, and 19219 passed on July 25, 2018 state the following under PBVC: "The Board will set goals for the System and for the President and Chief Executive Officer and the President and Chief Executive Officer will set goals for senior leadership." The Board set goals for Dr. Boutros equivalent to the system goals. According to interviews with SIU, the Board generally felt that the system goals were sufficient to evaluate the performance of Dr. Boutros, despite Dr. Boutros being responsible for presenting the attainment of the system goals to the Board. Lastly, in all three resolutions under Board approval, it states "Board will delegate authority to the President and Chief Executive Officer to implement and follow this Performance-Based Variable Compensation plan, as amended annually."

- **Compensation Consultants:** MH used Sullivan Cotter to complete compensation studies each year, including comparisons to peer hospitals and covering senior management positions. Additionally, the Board hired Findley Davies to assess management compensation, as an independent source for the Board because Sullivan Cotter was engaged to work directly with Dr. Boutros and other management of MH. However, neither Sullivan Cotter nor Findley Davies reviewed total compensation for Dr. Boutros or any other staff, as their respective studies did not include SPBVC. Additionally, the Board did not question the absence of "supplemental incentives" in their studies, despite some Board members interpreting "supplemental incentives" from the annual resolutions to apply to staff other than Dr. Boutros (see above Resolutions Approved by the Board).
- **Disclosure of SPBVC to Consultants:** In two separate emails in August 2019, Dr. Boutros explained the SPBVC program to a representative at Sullivan Cotter. Dr. Boutros' first email also included two other representatives at Sullivan Cotter, a representative at Findley Davies, and MH's Chief Legal Officer (CLO) at that time.

<sup>1</sup> Resolution 19185 set a cap of \$7,029,497 and base PBVC payments amounted to \$4,696,955, leaving \$2,332,542 available for other incentive/bonus payments, including SPBVC.

- Disclosure of Total Compensation to Committee: Minutes from a meeting of the Board's Executive/Personnel Committee on February 27, 2019 note that Dr. Boutros presented MH's achievements with respect to the 2018 organizational goals. A set of slides provided to SIU by Dr. Boutros, titled "Performance Based Variable Compensation" with a subtitle of "2018 Executive Awards" disclosed salary and total cash compensation for Dr. Boutros and 15 other executives for 2017 and 2018. The total cash compensation includes SPBVC for Dr. Boutros and the 15 other executives. However, the presentation did not specifically mention SPBVC nor disclose payment amounts solely for SPBVC; and, while Dr. Boutros contends these were the slides representative of his presentation to the Board mentioned above, it is disputed by MH as to whether this set of slides was actually presented at the meeting as the minutes lack specificity regarding what was presented and there were no attachments provided with the minutes. It would only be apparent that the total cash compensation includes more for Dr. Boutros than base PBVC by using the defined formula to determine that payment amount (35% of base salary X System Accomplishment Factor = base PBVC).
- Employee PBVC Statements: In 2020, employees were provided with a "2019 Performance-Based Variable Compensation Statement," including one for Dr. Boutros; however, these statements were not signed, and we were unable to determine who prepared these statements or whether or not Dr. Boutros could have prepared his own statement. After disclosing the base PBVC payment amount and related achievement factors, the employee statements included the following for employees also receiving a SPBVC payment: "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." It would then disclose the SPBVC payment amount for the employee.
- Employment Contract: Dr. Boutros advised that he interpreted his contract to entitle him to receive all benefits received by senior executives, including the SPBVC benefits. These were not contractual rights but were benefits which he believed he was entitled to by virtue of the contract language without specifically advising the Board. MetroHealth has acknowledged that Dr. Boutros had the authority to provide these benefits to the senior executives. MetroHealth disputes that the contract language cited by Dr. Boutros covered the SPBVC benefits. However, in that contract law provides that any ambiguities in contract language is interpreted in favor of the party which did not draft the contract, we conclude that Dr. Boutros was not unreasonable in his interpretation of the contract language.

As previously noted, the purpose of the special audit was to assist the Cuyahoga County Prosecutor's Office in determining if criminal acts had been committed related to the bonus payments. Therefore, we do not need to determine whether the Board or Boutros is correct on the interpretation of this part of the contract. Instead, we need to determine if Boutros' interpretation was not unreasonable. If his interpretation was not unreasonable then, even if he was incorrect, the State would be unable to prove, beyond a reasonable doubt, that Dr. Boutros obtained these funds from MetroHealth either "without the consent of the owner" or "by deception." This means that we do not need to reach a conclusion as to which interpretation of this clause in the contract is legally correct. The manner in which the contract was drafted creates the ambiguity which makes Boutros' interpretation, and thus his actions, not unreasonable and, therefore, not criminal.

- Payroll System: The total compensation for Dr. Boutros, like any other employee, was available in MH's payroll system and the CFO was aware of Dr. Boutros receiving SPBVC. However, the payroll system reflected only one figure that included the total PBVC payment (base plus supplemental), in the "PERF BON" pay code. As a result, it would only be apparent that the pay code includes more than the base PBVC amount for Dr. Boutros by applying the defined formula that determines that amount, as noted above, but a detailed review of his compensation would have identified the SPBVC.

## **Findings**

Based on the special audit procedures and investigation, the Auditor of State was not able to determine whether Dr. Boutros had proper authorization to receive the SPBVC, as there was reasonable doubt based on the information gathered. We concluded that while Dr. Boutros did not share the development and

management of the SPBVC program directly with the Board, he did share information with Findley Davies, which was tasked with reviewing executive compensation matters and reporting directly to the Board. However, we were unable to identify any supporting documentation for overt authorization by the Board for Dr. Boutros' participation in the SPBVC. Additionally, our work concluded the Board did not effectively oversee the CEO's compensation as his total compensation was processed through the payroll system, which appears not to have been reviewed by either the Board or the compensation consultants, thus directly contributing to its unawareness about the SPBVC program.

### **Prosecution**

At the conclusion of the special audit and investigation, an investigative report was presented to the Cuyahoga County Prosecutor.

On April 9, 2024, we held an exit conference with the following individuals representing MH:

Laura McBride, Senior Vice President, General Counsel  
Corey Clay, Associate General Counsel  
John McCaffrey, Outside Counsel

The attendees were informed they had five business days to respond to this special audit report. A response was provided by Ms. McBride and was evaluated in the final preparation of this report.



Keith Faber  
Auditor of State  
Columbus, Ohio

October 3, 2024<sup>2</sup>

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<sup>2</sup> As of the date of this report, there is a pending investigation by MetroHealth's outside counsel, which will be reviewed and considered as part of the next financial audit, if applicable.



# OHIO AUDITOR OF STATE KEITH FABER



## THE METROHEALTH SYSTEM SPECIAL AUDIT

CUYAHOGA COUNTY

### AUDITOR OF STATE OF OHIO CERTIFICATION

This is a true and correct copy of the report, which is required to be filed pursuant to Section 117.26, Revised Code, and which is filed in the Office of the Ohio Auditor of State in Columbus, Ohio.



Certified for Release 11/12/2024

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This report is a matter of public record and is available online at  
[www.ohioauditor.gov](http://www.ohioauditor.gov)