

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

STUART MCKINNON & MICHAEL COX,

Plaintiffs,

File No. _____

Hon. _____

v

KALKASKA COUNTY BOARD OF COMMISSIONERS,
KALKASKA MEMORIAL HEALTH CENTER,
KALKASKA COUNTY HOSPITAL AUTHORITY,
KALKASKA MEMORIAL HEALTH CENTER
BOARD OF TRUSTEES, KEVIN ROGOLS,
NELSON JERRY CANNON, KARL KLIMEK,
TRACY NICHOL, BRUCE ZENNER, and
R. TROY STOBERT,

Defendants.

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*There is no other pending or resolved civil action
arising out of the transaction or occurrence alleged in this Complaint.*

VERIFIED COMPLAINT & JURY DEMAND

NOW COME Plaintiffs, by and through their undersigned counsel, who hereby state as follows for their Verified Complaint:

THE PARTIES, VENUE & JURISDICTION

1. Plaintiff Stuart McKinnon resides in the Township of Rapid River, County of Kalkaska, State of Michigan.

2. Plaintiff Michael Cox resides in the Township of Oliver, County of Kalkaska, State of Michigan.

3. Defendant Kalkaska County is a general law county of the State of Michigan, governed by its Board of Commissioners, with its principal place of business located at 605 N. Birch Street in the Township of Kalkaska, County of Kalkaska, State of Michigan (hereinafter, the “County”).

4. Defendant Kalkaska Memorial Health Center is an Act 47 hospital, owned by Defendant Kalkaska County Hospital Authority, with their principal place of business located at 419 S. Coral Street in the Township of Kalkaska, County of Kalkaska, State of Michigan (hereinafter, the “Hospital”).

5. Defendant Kalkaska Memorial Health Center Board of Trustees (hereinafter, the “Board”), pursuant to Act 47, is the governing body, on behalf of the Kalkaska County Hospital Authority, of Kalkaska Memorial Health Center.

6. Defendant, Kevin Rogols, is the CEO of the Hospital and an individual residing in the Township of Milton, County of Antrim, State of Michigan (hereinafter, the “CEO”).

7. Defendant, Nelson Jerry Cannon, is a Trustee on the Board and an individual residing in the Township of Garfield, County of Kalkaska, State of Michigan.

8. Defendant, Bruce Zenner, is a Trustee on the Board and an individual residing in the Township of Excelsior, County of Kalkaska, State of Michigan.

9. Defendant, Tracy Nichol, is a Trustee on the Board and an individual residing in the Township of Blue Lake, County of Kalkaska, State of Michigan.

10. Defendant, Karl Klimek, is a Trustee on the Board, as well as the Chairman of the Board, and an individual residing in the Township of Excelsior, County of Kalkaska, State of Michigan.

11. Defendant, R. Troy Stobert, is a Trustee on the Board and an individual residing in the Township of Springfield, County of Kalkaska, State of Michigan.

12. Venue is proper, pursuant to 28 U.S.C. § 1391(b)(1) & (2), because this is the judicial district in which Defendants are deemed to reside; a substantial part of the events or omissions giving rise to the claim occurred; and where the County and Hospital are situated.

13. Jurisdiction in this Court is proper, pursuant to 28 U.S. Code § 1331 (federal question jurisdiction) & § 1343 (civil rights), because district courts have original jurisdiction of all civil actions arising under the laws of the United States, including the Constitution, 42 U.S. Code § 1983, and the Electronic Communications Privacy Act.

14. Jurisdiction over the pendant state law claims is proper pursuant to 28 U.S. Code § 1367 (supplemental jurisdiction).

GENERAL ALLEGATIONS

15. Plaintiffs reallege the above-enumerated paragraphs as if fully set forth herein.

16. In October 2023, Plaintiffs were Trustees on the Hospital's governing Board.

17. At the time, the Board was considering whether to discontinue its status as an Act 47 hospital by converting to a nonprofit organization.

18. The CEO presented each of the Trustees with an Act 47 Decision Matrix Survey to complete and submit before their October 17th Special Meeting.¹

¹ Exhibit 1 - Act 47 vs. Not-for-Profit Decision Matrix Survey

EAVESDROPPING UPON PRIVATE CONVERSATIONS

19. To discuss how to complete the Act 47 Decision Matrix Survey, Plaintiffs reserved the Commissioners' Chambers in the Kalkaska County Governmental Center and invited three other Trustees to attend the private gathering.

20. One of the Trustees who was invited did not attend.

21. On October 9th, Plaintiffs, along with two other Trustees, gathered privately in the Commissioners' Chambers and discussed the Survey (hereinafter, the "gathering").

22. These Trustees reserved the Commissioners' Chambers for their private gathering.

23. These Trustees locked the door before they began their substantive discussions.

24. There were no signs posted in or around the Commissioners' Chambers warning that the conference room was subject to audio and video recording of any conversations and activity occurring therein.

25. At the gathering, these Trustees had an expectation of privacy.

26. During their gathering, these Trustees had no idea that their conversations within the Commissioners' Chambers were being audio recorded.

27. For years prior to and including the gathering, the County allowed the computer audio and video surveillance equipment to continually record and save all conversations and activity occurring in the Commissioners' Chambers.

28. The County's policy is that recordings are kept for 30 days, election officials and department heads are granted access to view recordings as needed, and recorded video feed is available to any person through the Freedom of Information Act (hereinafter, the "FOIA") procedure unless exempt under a FOIA exception.²

² Exhibit 2 – Kalkaska County's Security Camera Policy effective February 17, 2021

29. Not a single party to the gathering consented to being audio recorded by the County.

30. These Trustees were not a duly formed committee or subcommittee.

31. None of these Trustees were on a committee together.

32. At the gathering, these Trustees did not constitute a quorum of the Board or any committee.

33. At the gathering, these Trustees did not have any decision-making authority on behalf of the Hospital or Board.

34. At the gathering, these Trustees did not make any decisions that deprived the Board of participating in the decision-making process.

35. These Trustees had no intent to circumvent the Open Meetings Act (hereinafter, the “OMA”).

36. The gathering of these Trustees did not violate the OMA.

“BOARD LEADERSHIP” VIOLATING THE OMA WHILE ACCUSING PLAINTIFFS OF VIOLATING THE OMA

37. Three days after the gathering, the invited Trustee who did not attend the gathering forwarded his email invitation to the CEO’s assistant, Chandra Whiting, who forwarded the email to the former Kalkaska County Sheriff, current Trustee, and Defendant Nelson Jerry Cannon.

38. A week later, the CEO emailed Trustees Zenner, Cannon, and Nichol with high priority and the subject of “Violation of the Michigan Open Meetings Act.”³

39. In that email, the CEO wrote “it is my opinion that Mr. Cox’s invitation and the resulting purposeful, ‘private’, and exclusionary meeting violates such Act.”⁴

40. Also in that email, the CEO wrote “I respectfully request that:” before enumerating a list of procedures to investigate and discipline Plaintiffs.

³ Exhibit 3 – Kevin Rogols’ email to Bruce Zenner, Jerry Cannon, and Tracy Nichol, October 19, 2023

⁴ Exhibit 3 – Kevin Rogols’ email to Bruce Zenner, Jerry Cannon, and Tracy Nichol, October 19, 2023

41. On or about October 30th, the CEO asked his assistant to schedule a meeting with “Board Leadership” this week, which request was met with an invitation to Trustees Zenner, Cannon, and Nichol to meet with the CEO on November 2nd at 3:00 pm.⁵

42. A week earlier, the Board amended their Bylaws to clarify that “a majority of all members then serving on the Board or the Board Committees shall constitute a quorum for their respective meetings.”⁶

43. The Bylaws also require that “[a]ll meetings of the Board of Trustees, its Executive Committee and all other committees shall be public meetings and shall generally follow the requirements of the Open Meetings Act.”⁷

44. On November 2nd, the CEO hosted a “Board Leadership” meeting with Trustees Zenner, Cannon, and Nichol.

45. At the time, Trustees Zenner, Cannon, and Nichol constituted 3/5 of the members of the Strategic Planning Committee.

46. At that meeting, Trustees Zenner, Cannon, and Nichol constituted a quorum of the Strategic Planning Committee.

47. At that meeting, the CEO and Trustees Zenner, Cannon, and Nichol deliberated on whether Plaintiffs’ gathering violated the OMA.

48. During that meeting, Trustees Zenner, Cannon, and Nichol made the decisions requested by the CEO in his October 19th email.

49. During that meeting, the CEO and Trustees Zenner, Cannon, and Nichol made the decision to investigate Plaintiffs’ October 9th gathering.

⁵ Exhibit 4 – Email Invitation: Meeting w/KMHC Board Leadership and Kevin on November 2, 2023

⁶ Exhibit 5 – Kalkaska County Hospital Authority Governing Board Bylaws, October 24, 2023, pg. 9, Section III- Quorum

⁷ Exhibit 5 – Kalkaska County Hospital Authority Governing Board Bylaws, October 24, 2023, pg. 10, Section VII

50. There was no notice published for this meeting, and no minutes were taken.

51. The decisions made by Trustees Zenner, Cannon, and Nichol during the November 2nd meeting deprived the entire Strategic Planning Committee of participating in those decisions.

52. The decisions made by Trustees Zenner, Cannon, and Nichol on November 2nd deprived the entire Strategic Planning Committee of participating in the decision of *whether* to investigate Plaintiffs' gathering.

53. The decisions made by Trustees Zenner, Cannon, and Nichol on November 2nd deprived the entire Strategic Planning Committee of participating in the decision of *how* to investigate Plaintiffs' gathering.

54. Although Trustees Zenner, Cannon, and Nichol did not constitute a quorum of the Board, their decisions on November 2nd deprived the entire Board of participating in the decision of *whether* to pursue an investigation of Plaintiffs' gathering.

55. The decisions made by Trustees Zenner, Cannon, and Nichol on November 2nd deprived the entire Board of participating in the decision of *how* to investigate Plaintiffs' gathering.

56. The meeting on November 2nd between the CEO and Trustees Zenner, Cannon, and Nichol violated the OMA.

57. Given that Trustees Zenner, Cannon, and Nichol constituted a quorum of the Strategic Planning Committee at the November 2nd meeting with the CEO and that these Trustees made decisions at that time, as was requested by the CEO, to investigate Plaintiffs' gathering, their meeting on November 2nd violated the OMA because it deprived the entire Strategic Planning Committee of participating in the decision of *whether* to and *how* to investigate Plaintiffs' gathering.

58. Although Trustees Zenner, Cannon, and Nichol did not constitute a quorum of the Board, this so-called “Board Leadership” made the decision at the November 2nd meeting, pursuant to the request of the CEO, to investigate Plaintiffs’ gathering, which violated the OMA because it deprived the entire Board of participating in the decision of whether to and how to investigate Plaintiffs’ gathering.

DISTRIBUTING EAVESDROPPED PRIVATE CONVERSATIONS

59. On November 14, 2023, Trustee Cannon, on behalf of the Hospital, submitted a FOIA request to the County seeking “voice/video of meeting held in the Commissioners meeting room starting on or about 3:45 pm + ending on or about 5:15 pm October 9th, 2023.”⁸

60. Trustee Cannon had no authority to submit a FOIA request on behalf of the Hospital.

61. None of the minutes of any of the Board’s public meetings document the existence of any such authority for Trustee Cannon to act on behalf of the Hospital to seek the County building surveillance footage of Plaintiffs’ gathering.

62. The FOIA does not authorize the County to publicly disclose any audio surveillance footage of private conversations occurring in the Commissioners’ Chambers.

63. The County has no authority to publicly disclose any audio surveillance footage of private conversations occurring in the Commissioners’ Chambers.

64. Responding to the FOIA request, the County Clerk, Deborah Hill (hereinafter, the “Clerk”), emailed Trustee Cannon and denied the existence of “any Board meetings held on that day in the Board room or at all.”⁹

⁸ Exhibit 6 – Jerry Cannon’s FOIA request November 14, 2023

⁹ Exhibit 7 – The Clerk’s email to Jerry Cannon, November 14, 2023, 6:58 pm

65. Trustee Cannon replied to the Clerk that “It was NOT a County Commissioner Meeting, but it WAS in the Commissioners Room. It was a small group from the Hospital Board. The only person that I am confident about being in attendance was Mike Cox.”¹⁰

66. The Clerk responded “I am not aware of a meeting on that date here.”¹¹

67. Just after midnight on November 17, 2023, former Sheriff / Trustee Cannon asked Sheriff Pat Whiteford (hereinafter, the “Sheriff”) to “point Deb in the right direction.”¹²

68. On November 20, 2023, the Sheriff emailed Trustee Cannon that “IT staff was able to pull this for you” and that the Clerk “should be reaching out with the video.”¹³

69. About an hour later, the Clerk emailed Trustee Cannon that “Pat searched the security cameras with IT, which I never gave a thought to regarding your request. I was thinking in terms of our posted meetings/recordings.....IT is making a copy of that recording if you would like to pick it up here” (hereinafter, the “audio recording”).¹⁴

70. By this time, Trustee Cannon was informed that the County was prohibited from publicly disclosing a copy of the audio recording of Plaintiffs’ gathering.

71. Trustee Cannon obtained the audio recording and video surveillance footage of Plaintiffs’ gathering.

72. The County had no authority to publicly disclose the audio recording.

73. Trustee Cannon had no legal right to receipt of the audio recording.

74. Prior to obtaining the audio recording, Trustee Cannon was informed that he would not be receiving the audio surveillance footage of Plaintiffs’ gathering.

¹⁰ Exhibit 7 – Jerry Cannon email to the Clerk, November 15, 2023, 7:01 am

¹¹ Exhibit 7 – The Clerk’s email to Jerry Cannon, November 15, 2023, 1:56 pm

¹² Exhibit 7 – Jerry Cannon’s email to the Sheriff, November 17, 2023, 12:21 am

¹³ Exhibit 7 – The Sheriff’s email to Jerry Cannon, November 20, 2023, 11:48 am

¹⁴ Exhibit 7 – The Clerk’s email to Jerry Cannon, November 20, 2023, 1:22 pm

75. About a half hour after wrongfully releasing the audio recording, the Clerk text messaged the Sheriff “Problem with us releasing the video with the audio! Jerry already has it.”¹⁵

76. Fifteen minutes later, the Sheriff responded that “Jerry will get it back to you.”

77. The Clerk responded “I’m not in the office... told the staff to let him know we will get it on a flash drive with video only.”

78. The next day, the Clerk texted the Sheriff “Can you let Jerry know the flash drive was a ready without sound,” to which the Sheriff responded “Yes.”¹⁶

79. When asked by the Sheriff whether he had made a copy of the audio recording, Trustee Cannon denied making a copy of the audio recording.

80. Contrary to his denial, Trustee Cannon had saved a copy of the audio recording for himself.

81. When asked by the Sheriff whether he had distributed a copy of the audio recording to any third-parties, Trustee Cannon denied distributing a copy of the audio recording.

82. Contrary to his denial, Trustee Cannon had distributed a copy of the audio recording to at least one other person.

83. Despite knowing that he was not supposed to be in possession of the audio recording, Trustee Cannon distributed a copy of the audio recording to at least one other person.

84. Trustee Cannon gave the CEO a copy of the audio recording.

VOTING AGAINST AUTHORIZING THE NPO DUE DILIGENCE PROCESS

85. On December 5, 2023, the Board held its final public meeting of the year whereat the minutes reflect that “As the matrix clearly reflects, the Leadership Team believes that KMHC

¹⁵ Exhibit 8 – The Clerk’s text message to the Sheriff, November 20, 2023, 1:56 pm

¹⁶ Exhibit 8 – The Clerk’s text message to the Sheriff, November 21, 2023, 2:37 pm

and the community is better served by the hospital becoming a not-for-profit entity rather than remaining an Act 47 entity.”¹⁷

86. Plaintiffs voiced concerns that the Hospital has assets worth over \$100 million, \$30 million in cash in the bank, and over \$100 million per year in revenue, which makes the Hospital worth hundreds of millions of dollars if sold, but that the twelve Townships and the Village of Kalkaska (hereinafter, the “Village”) are only going to collectively get \$7 million if they convert to an NPO.

87. Plaintiffs voiced concerns that Munson Medical Center (hereinafter, “Munson”), who currently operates the Hospital, is threatening to withdraw operations to pressure the Board into converting to an NPO.

88. Plaintiffs voiced concerns that Munson is not trying to buy the Hospital, but rather get it for free by taking over the Board through the NPO conversion process.

89. Currently, the Village and each of the twelve Townships appoint their own Trustee to the Board.

90. Plaintiffs voiced concern that conversion of the Bylaws from Act 47 to an NPO will deprive the Village and Townships of their appointing powers.

91. Plaintiffs voiced concerns that when the Village and Townships are no longer able to appoint their own Trustees, that the Trustees will instead become Munson insiders.

92. Plaintiffs voiced concerns that such Munson insiders might be persons such as the Board’s current attorney, who, despite his representation of the Board, is simultaneously a Trustee for Munson in Manistee.

¹⁷ Exhibit 9 – Meeting Minutes from the Board’s December 5, 2023 open meeting

93. Plaintiffs voiced concern that the CEO and the Board's attorney are retaliating against them for not simply following the herd by agreeing to convert the Hospital to an NPO (with a target vote date in May 2024).

94. Plaintiffs voiced concerns that when Munson insiders make up the majority of the Board, then the rural Hospital's services will be diminished to just an Emergency Room.

95. Plaintiffs voiced concerns that the CEO's position will be rendered redundant when Munson takes over the Board, and thus the CEO is advocating for a golden parachute.

96. During their December 5th meeting, the CEO recommended that the Board authorize the not-for-profit (hereinafter, "NPO") due diligence process, and after a motion to do so was made, the only Trustees who voted against doing so were those who attended Plaintiffs' gathering.¹⁸

"BOARD LEADERSHIP" RETALIATING AGAINST THE DISSENTERS

97. On December 14, 2023, the CEO hosted another meeting with purported Board Leadership: Trustees Bruce Zenner, Jerry Cannon, and Tracy Nichol.¹⁹

98. Behind closed doors, the CEO and his so-called "Board Leadership" deliberated public business.

99. The rest of the Board was unaware that the CEO was hosting these "Board Leadership" meetings.

100. At that meeting, Trustees Zenner, Cannon, and Nichol constituted 3/5 of the members of the Strategic Planning Committee.

101. At that meeting, Trustees Zenner, Cannon, and Nichol constituted a quorum of the Strategic Planning Committee.

¹⁸ Exhibit 9 – Meeting Minutes from the Board's December 5, 2023 open meeting

¹⁹ Exhibit 10 – Email Invitation: Meeting w/ Kevin and Board Leadership on December 14, 2023

102. At the December 14th meeting, the CEO and his so-called “Board Leadership” deliberated how to convince the rest of the Board to vote in favor of converting the Hospital to an NPO.

103. At that meeting, the CEO and Trustees Zenner, Cannon, and Nichol made the decision to retaliate against those Trustees who voted against authorizing the due diligence process of becoming an NPO.

104. To motivate retaliation, the CEO showed Trustees Zenner, Cannon, and Nichol the video and audio recording of Plaintiffs’ gathering.

105. At that meeting, the CEO and Trustees Zenner, Cannon, and Nichol made the decision to engage counsel to prepare a memorandum of law concluding that Plaintiffs violated the OMA.

106. None of the minutes of any of the Board’s public meetings document the existence of any Board or Committee decision to engage counsel to prepare a memorandum of law to discipline Plaintiffs for violating the OMA.

107. At the December 14th meeting, the CEO and Trustees Zenner, Cannon, and Nichol, made the decision to use the memorandum of law to ambush, during a closed session at the next Board meeting, those who attended Plaintiffs’ gathering with the wildly absurd accusation that the gathering violated the OMA.

108. The December 14th meeting violated the OMA.

109. For many of the same reasons that the November 2nd “Board Leadership” meeting violated the OMA, so did the December 14th “Board Leadership” meeting e.g. a quorum of a committee secretly deliberated Hospital business behind closed doors and decided on a course of action that prevented the entire committee from participating in those decisions.

110. Likewise, the decisions made at the December 14th “Board Leadership” meeting prevented the entire Board from deciding whether to engage counsel in an investigation of their fellow Trustees.

111. Behind closed doors, the CEO and his proclaimed “Board Leadership” violated the OMA while they were meeting to decide whether to accuse Plaintiffs of violating the OMA.

112. The CEO and his “Board Leadership” conspired against those Trustees who voted against authorizing the NPO due diligence process by accusing them of violating the OMA.

113. If the Hospital was an NPO instead of Act 47, then the OMA would not apply.

114. In the words of the Board’s attorney: if you were an NPO then you would not have to comply with that “pesky” OMA.

115. “Board Leadership” falsely accused Plaintiffs of violating the OMA to infringe on their free will to vote their conscience on whether to abandon the Hospital’s Act 47 status.

116. Due to the invasion of privacy and undue persecution by the CEO, “Board Leadership,” and their influence over the rest of the Trustees, Plaintiff Michael Cox resigned from the Board before the end of 2023.

THE BOARD KNEW THE AUDIO RECORDING IS EXEMPT FROM THE FOIA AS AN INVASION OF PRIVACY

117. On January 18, 2024, the CEO’s assistant submitted a FOIA request to the County for the audio and video recording of Plaintiffs’ gathering.²⁰

118. The Clerk responded: “please be advised that as there was no notice to the participants to the conversation that they would be audio recorded” thus “[a]ny such audio recording would be exempt from disclosure under FOIA as a clearly unwarranted invasion of an individual’s privacy. MCL 15.243(1)(a).”²¹

²⁰ Exhibit 11 – The Hospital’s FOIA request for the audio recording, January 18, 2024

²¹ Exhibit 11 – The Clerk’s email to the CEO’s assistant denying release of the audio recording, January 18, 2024

119. The Board's attorney responded to the Clerk: "we do not intend to pursue the request further."²²

120. The Board's attorney warned the Clerk to preserve "the original audio and video recordings of the October 2023 meeting in question" claiming that it was "potentially evidence in a criminal and/or civil proceeding."²³

121. The Clerk made a flash drive containing just the video as a partial response to the FOIA, but that flash drive was never picked up from the Clerk.

AMBUSHING DISSENTERS IN AN ILLEGAL CLOSED SESSION

122. On January 22, 2024, the Board's attorney and his associate hosted a meeting with the CEO and Trustees Zenner, Cannon, Nichol, and Klimek to review the updated memorandum of law in preparation for the next day's closed session.²⁴

123. This meeting involved a quorum of the Strategic Planning Commission whereat they deliberated public business behind closed doors, made decisions, failed to publish notice of the meeting, and recorded no minutes from the meeting.

124. At this meeting, "Board Leadership" gave its approval to the updated memorandum of law for its use at the next day's closed session.

125. At this meeting, "Board Leadership" made the decision to empower the Board's attorney to hire a stenographer to transcribe the eavesdropped private conversations from Plaintiffs' gathering for distribution to the entire Board.

126. This meeting, hosted by their attorneys, violated the OMA.

²² Exhibit 11 – The Hospital's attorney's response to the Clerk's refusal to release the audio recording, January 19, 2024

²³ Exhibit 11 – The Hospital's attorney's response to the Clerk's refusal to release the audio recording, January 19, 2024

²⁴ Exhibit 12 – Mika Meyers Invoice, February 23, 2024, re: Potential OMA Violation, billing entry for January 22, 2024

127. The Board's first meeting of 2024 included a Closed Session agenda that claimed a closed session was authorized by 15.268(h) – to consider material exempt from discussion or disclosure by state or federal statute.²⁵

128. At a minimum, an agenda justifying a closed session must contain a reference to what the exempt material is that justifies closed session e.g. “a legal memo.”

129. Since the agenda failed to identify the exempt material that justified the closed session, the Board violated the OMA by failing to provide adequate notice a closed session.

130. The material that the agenda referred to as exempt was the memorandum of law concluding that Plaintiffs violated the OMA and offering four options of punishment.

131. The closed session agenda also cited discussion with counsel regarding “potential” litigation as a basis to justify closed session.

132. Closed sessions are allowed for “pending” litigation, but only under two specific circumstances.

133. There was no litigation pending against the Board at the time.

134. The potential litigation to which the closed session agenda referred were “criminal and/or civil proceeding” options to be taken against Plaintiffs for their gathering.²⁶

135. The Board had no authority to go into closed session on January 23rd to discuss “potential” litigation.

136. While a legal memo is a legitimate basis for going into closed session, the discussion therein must be limited to strictly legal advice.

137. Public bodies may not deliberate in closed session without violating the OMA.

138. Public bodies may not make decisions in closed session without violating the OMA.

²⁵ Exhibit 13 – The Board's Agendas for open and closed sessions on January 23, 2024

²⁶ Exhibit 11 – The Hospital's attorney's response to the Clerk's refusal to release the audio recording, January 19, 2024

139. On January 23, 2024, the Board's closed session lasted for over an hour.

140. During the closed session, the Board deliberated over whether Plaintiffs' gathering violated the OMA.

141. Plaintiffs were never provided notice of the allegations that were asserted against them in closed session on January 23rd.

142. Due to their lack of evidence of an actual OMA violation, the CEO and "Board Leadership" shrouded their accusations in closed session rather than discussing them openly in front of the public during an open meeting as the OMA requires.

143. The Board's policy on closed sessions requires the disciplining of a public official, such as Plaintiffs, to occur in an open meeting unless the accused requests a closed session.²⁷

144. Trustee McKinnon never requested a closed session with respect to accusations against him.

145. Trustee McKinnon was unaware of the accusations against him until he was already in the closed session on January 23rd.

146. In closed session, the Trustees were provided a memorandum of law that offered four options of Board action to take in response to Plaintiffs' gathering.

147. Plaintiffs were never given an opportunity to be heard on the allegations that their gathering violated the OMA.

148. During the closed session, the Board concluded that the accused were guilty.

149. Plaintiffs were not given an opportunity to be heard before the Board concluded, during that closed session, that the accused were guilty of violating the OMA.

²⁷ Exhibit 14 – The Board's Policy on Closed Sessions

150. During the closed session, the Board deliberated about how to punish the attendees of Plaintiffs' gathering.

151. During that closed session, the Board accepted their attorney's recommendation that a punishment must be imposed.

152. During the closed session, the Board decided to adopt option #2 in the memorandum of law as they made the decision to engage counsel to prepare a resolution to publicly censure those who attended Plaintiffs' gathering.

153. When the Board came out of closed session, they simply tabled the closed session until their February meeting, and they took no further public action on the subject.

154. During the remainder of the open meeting, the Board never voted to authorize their attorney to prepare a resolution of public censure against those who attended Plaintiffs' gathering, even though their attorney told them during the closed session that their decision to engage him to prepare the resolution needed to occur after the closed session and during their open meeting.

155. Despite watching the Board fail to authorize him during the remainder of the open meeting to prepare the resolution, the Board's attorney nonetheless prepared the resolution that the Board had requested during their closed session.

156. After the chairman adjourned the Board's January 23rd public meeting, Trustee McKinnon exited the building.

POST-MEETING QUORUMS RECEIVING EAVESDROPPED PRIVATE CONVERSATIONS

157. After Trustee McKinnon's departure, the CEO announced to a quorum of the Board, who remained in the room after the public meeting, that he had dozens of flash drives containing the video and audio recording of Plaintiffs' gathering for each of the Trustees to take home with them.

158. A quorum of the Board, not to mention quorums of various committees, obtained flash drives from the CEO and watched as he pulled the video and audio recording up on the big screen.

159. During the CEO's post-meeting distribution of flash drives and viewing demonstration, a quorum of the Board and various committees saw and heard footage of Plaintiffs' gathering.

160. The flash drives containing Plaintiffs' gathering were not distributed to all Board members, but they were made available to all of them.

161. The quorums that remained after adjournment of the open meeting violated the OMA by displaying Plaintiffs' gathering up on the big screen and distributing the flash drives to those Trustees who stayed after adjournment.

162. The CEO's post-adjournment distribution of the video and audio recording of Plaintiffs' gathering deprived the entire Board from receiving materials relevant to public business that were being deliberated in closed sessions.

"BOARD LEADERSHIP" REJECTING BOARD REPRESENTATION AT TOWNSHIP MEETINGS

163. On February 8, 2024, the CEO received a request to attend the Oliver Township Trustee meeting on February 13th.

164. The CEO emailed the chairman, Trustee Klimek, to inform him of the invitation, and indicated that he would not attend.²⁸

165. The Chairman forwarded the CEO's email to Trustees Cannon, Nichol, and Stobert asking them to decide whether the Board should have a representative attend in place of the CEO.²⁹

²⁸ Exhibit 15 – The CEO's email to the Chairman, February 8, 2024, 3:26 pm

²⁹ Exhibit 15 – The Chairman's email to Trustees Jerry Cannon, Tracy Nichol, and Troy Stobert, February 8, 2024, 3:59 pm

166. Trustee Stobert's reply deliberated that "you would NOT want to respond to anything having to do with potential litigation items. Am I correct about that?"³⁰

167. The Chairman replied all that "we agreed that we will not have representation from either the KMHC administration or the Board of Trustees at this requested meeting."³¹

168. In response, the CEO replied to all that "the tape is being transcribed. FYI."³²

169. Nowhere in any of the Board's meeting minutes is there any authorization for the CEO to engage the Board's attorney to hire a stenographer to transcribe the audio recording of Plaintiffs' gathering.

170. On February 9th, without publishing notice of a meeting, without holding an open meeting, without recording any minutes of the meeting, Trustees Klimek, Cannon, Nichol, and Stobert deliberated over whether the Board would send a representative to the Oliver Township meeting, and made the decision, after consulting with counsel, that the Board would not send a representative to the Township meeting.

171. The decision made by Trustees Klimek, Cannon, Nichol, and Stobert excluded and deprived the entire Board from the decision-making process of whether the Board should send a representative to the Oliver Township meeting.

"BOARD LEADERSHIP" CRAFTED A RESOLUTION BEHIND CLOSED DOORS

172. The CEO hosted another "Board Leadership" meeting on February 14, 2024, which was attended by Trustees Cannon, Nichol, Klimek, and Stobert.³³

³⁰ Exhibit 15 – Troy Stobert's email reply to all, February 8, 2024, 8:04 pm

³¹ Exhibit 15 – The Chairman's email reply to all, February 9, 2024, 5:04 pm

³² Exhibit 15 – The CEO's reply to all, February 9, 2024, 5:12 pm

³³ Exhibit 16 – Email Invitation: Meeting w/ Board Leadership (Karl, Tracy, Jerry, Dr. Stobert) and Kevin, February 14, 2024

173. At this meeting, the attendees deliberated over a proposed resolution that had been prepared by the Board's attorney to discipline those who attended Plaintiffs' gathering by publicly censuring them.

174. Although the memorandum of law offered four options of how to discipline those who attended Plaintiffs' gathering, the prepared resolution had already concluded on option #2, public censure.

175. At the meeting on February 14th, the CEO and Trustees Cannon, Nichol, Klimek, and Stobert violated the OMA by making decisions outside of a public meeting that deprived the entire Board of deciding on which, if any, discipline would be in the resolution that was going to be introduced during the closed session only six days later.

176. Behind closed doors, "Board Leadership" approved of a resolution of public censure for introduction to the entire Board during their next closed session.

THE EAVESDROPPED CONVERSATIONS WERE TRANSCRIBED AT THE BEQUEST OF "BOARD LEADERSHIP"

177. On February 19th, the chairman emailed the entire Board a transcript of "the video shared with you at the full Board meeting last month."

178. There was no video shared with the Board during the January 23rd open meeting.

179. There was a video of Plaintiffs' gathering shared with a quorum of the Board and various committees that transpired after the Board's January 23rd open meeting was adjourned.

180. Trustee McKinnon replied to the chairman's email by asking who the Trustees were who requested transcription of Plaintiffs' gathering, to which the chairman responded that the Board's attorney had it transcribed "at the bequest of board members, including me."

181. No Board meeting minutes exist that document the Board having given authority to the Board's attorney to transcribe Plaintiffs' gathering.

182. No meeting minutes exist to document who the other “board members” were that the chairman referred to in his email as the requestors of the transcript.

183. The other “board members” to which the chairman referred to in his email were Trustees Cannon, Nichol, and Stobert.

ANOTHER ILLEGAL CLOSED SESSION

184. On February 20, 2024, the Board’s closed session agenda again contained a citation to permit closed session pursuant to MCL 15.268(h), and again failed to include a reference as to what the exempt material was.³⁴

185. The agenda justifying a closed session needs to contain a reference to what the exempt material is that justifies closed session e.g. “a legal memo.”

186. Since the agenda failed to identify the exempt material that justified the closed session, the Board violated the OMA by failing to provide adequate notice a closed session.

187. Like their prior closed session agenda, the February 20th closed session agenda again cited discussion with counsel regarding “potential” litigation as a basis to justify closed session.

188. There was no litigation against the Board pending at the time, and there is no exception in the OMA for going into closed session to discuss “potential” litigation.

189. On February 20, 2024, the Board held its second meeting of the year, which began with a consent agenda, followed by the closed session.

190. At the conclusion of the consent agenda, before the Board voted to go into closed session, Trustee McKinnon asked the chairman whether the transcript of Plaintiffs’ gathering was going to be discussed in the closed session.

³⁴ Exhibit 17 – The Board’s Agendas for open and closed sessions on February 20, 2024

191. The chairman refused Trustee McKinnon's request to discuss the transcript during the open meeting and instead responded that any of his questions could be asked and answered during the closed session.

192. Trustee McKinnon responded to the chairman that he would not be going into the closed session because he believed the Board was violating the OMA by deliberating public business behind closed doors without a proper exception authorizing a closed session.

193. The Board voted to go into closed session and all Trustees in attendance, except Trustee McKinnon, went into the closed session.³⁵

194. During the closed session, the Board made the decision to take the other options, #1, #3 & #4, off the table thus preventing the entire Board from deliberating those options during the open meeting.

195. When the resolution was adopted during the open meeting, the only blanks remaining in the prepared resolution were for who made the motion, who seconded it, who was being condemned, who voted in favor, who voted against, who abstained, signature and certification.³⁶

196. During the closed session, the Board approved the prepared resolution, concluded on publicly censuring all those who attended Plaintiffs' gathering, and agreed to take the resolution out into open session to adopt it.

197. When the Board came out of closed session, their attorney claimed that the Board requested, at the conclusion of the last Board meeting, that he prepare and present them with the resolution.

³⁵ Exhibit 18 – Meeting minutes from the Board's open meeting on February 20, 2024

³⁶ Exhibit 19 – The Board's Resolution Censuring Board Members, February 20, 2024

198. The Board never requested, during an open meeting, that the Board's attorney prepare a resolution to publicly censure Plaintiffs.

199. When the Board came out of closed session with a resolution of public censorship in hand, their deliberations before voting to adopt it were merely perfunctory and grandstanding.

200. During the open meeting, the Board never deliberated over whether those who attended Plaintiffs' gathering violated the OMA.

201. During the open meeting, the Board never deliberated over the memorandum of law's options #1, #3, or #4.

202. Before adopting the resolution, one Trustee commented upon how bare the public record was with regards to evidence supporting the resolution that was being adopted.

203. The Board's attorney chimed in to explain that there was enough documentation in the public records of other entities if any member of the public wanted to know what the evidentiary basis for the resolution was.

204. Except for the Trustees accused of wrongdoing and those Trustees who abstained, every other Trustee voted in favor of adopting the resolution of public censure.

PUBLICIZING FALSE ALLEGATIONS & EAVESDROPPED PRIVATE CONVERSATIONS

205. The CEO gave third-parties flash drives containing the video and audio recording of Plaintiffs' gathering.

206. During the February 20th Board meeting, a reporter from the Record Eagle asked for a copy of the flash drive.

207. The reporter later published that "on Tuesday the board went into a closed session that lasted nearly an hour, to discuss with attorney Wilson a mysterious videorecording of an unspecified October 9th meeting between unnamed board members that took place at the county

building...” “The video had been copied and save to several thumb drives which board Chair Klimek acknowledged were made available to some board members just after their January meeting...” “The Record-Eagle also filed a FOIA request for a transcript of what the thumb drive contained. Rogols instructed a staff member to fulfill the request the same day, and its contents will be covered in future reporting.”

208. Although the Board only authorized distribution of the resolution to those townships from whom the accused were appointed, on March 1, 2024, the Chairman mailed a copy of the resolution of public censure to every township in Kalkaska County.³⁷

209. Along with the resolution, the Chairman penned his own cover letter wherein he accused those who attended Plaintiffs’ gathering of “violating the Open Meetings Act and breaching their duties to the hospital and its board.”³⁸

“BOARD LEADERSHIP” VIOLATING THE OMA YET AGAIN

210. On March 15, 2024, the CEO hosted a “Board Leadership” meeting with Trustees Cannon, Nichol, Klimek, and Stobert.³⁹

211. At that meeting, Trustees Cannon, Nichol, Klimek, and Stobert constituted 4/7 of the Executive/Finance Committee.

212. At that meeting, Trustees Cannon, Nichol, Klimek, and Stobert constituted a quorum of the Executive/Finance Committee.

213. At that meeting, Trustees Cannon and Klimek constituted 2/2 of the members of the Joint Conference and Ethics Committee.

³⁷ Exhibit 20 – The Chairman’s cover letter to Oliver Township accompanying the resolution, March 1, 2024

³⁸ Exhibit 20 – The Chairman’s cover letter to Oliver Township accompanying the resolution, March 1, 2024

³⁹ Exhibit 21 – Email Invitation: Board Leadership Meeting w/ Kevin, March 15, 2024

214. At that meeting, Trustees Cannon and Klimek constituted a quorum of the members of the Joint Conference and Ethics Committee.

215. The March 15th meeting involved a quorum of the Executive/Finance Committee and the Joint Conference and Ethics Committee whereat Trustees Cannon, Nichol, Klimek, and Stobert deliberated public business, made decisions, published no notices of a meeting, and recorded no minutes from the meeting.

COUNT I – ELECTRONIC COMMUNICATIONS PRIVACY ACT

216. Plaintiffs reallege the above-enumerated paragraphs as if fully set forth herein.

217. On June 29, 2022, Michigan adopted an amendment to Act 47 to provide for the sale or transfer of a hospital owned by a hospital authority to a nonprofit corporation for no or nominal monetary consideration.⁴⁰

218. When this amendment was adopted in 2022, Kalkaska Memorial Health Center was, and still is, the only Act 47 hospital in the entire state of Michigan.

219. This amendment was adopted for the specific purpose of allowing the County to give the Hospital to Munson, through the NPO conversion process, in exchange for the Townships only receiving a total of \$7 million.

220. The Hospital's real property asset has no mortgage and is worth over \$100 million.

221. The Hospital has approximately \$30 million cash in the bank.

222. The Hospital has an annual revenue of over \$100 million.

223. Transfer of the Hospital's assets to an NPO for only \$7 million is nominal consideration.

⁴⁰ Exhibit 22 – Public Act 131 of 2022

224. Since the amendment was passed, Defendants have been pushing to get the Board prepared to vote to convert the Hospital to an NPO by May 2024.

225. In the fall of 2023, Plaintiffs voiced concerns about the legal advice the Board was receiving on the subject of abandoning the Hospital's Act 47 status.

226. Plaintiffs voiced concerns of a conflict of interest by their attorney who has been a Trustee on the Board for the Munson Healthcare Manistee Hospital Foundation since 2016, and a Member on the Health Care Council for Munson Healthcare Manistee Hospital Community since 2022.

227. Plaintiffs pushed for the creation of a committee to search for new legal counsel, but the Chairman appointed himself and Trustee Nichol to the committee to cause it to stalemate at 2-2; thus, killing the search for new counsel.

228. Plaintiffs voiced concerns that the CEO had a conflict of interest due to an expectation of a golden parachute retirement package when Munson takes over the NPO.

229. In short, Plaintiffs were asking the tougher questions about the conversion process.

230. The rest of the Board simply followed the CEO's and attorney's lead on the subject, which made the conversion to an NPO seem inevitable.

231. In October 2023, the CEO provided all Trustees with an Act 47 Decision Matrix Survey for them to complete and return to him before their next Board meeting.

232. Plaintiffs reserved the Commissioners' Chambers in the County Government Center where they gathered to discuss the Survey.

233. Plaintiffs locked the door and expected privacy during their gathering.

234. Plaintiffs believed they did have privacy during their gathering.

235. Plaintiffs conversed in a manner that demonstrated their belief in the privacy of their communications to each other, for example, by saying things they would not have said if they knew their words would be heard by someone who was not part of their gathering.

236. Unbeknownst to Plaintiffs, the County was audio recording their gathering.

237. At the time of their gathering, the County had been continuously audio recording the Commissioners' Chambers.

238. The County allowed the audio recording equipment to capture conversations in the Commissioners' Chambers for over 3 years straight.

239. When the former Sheriff, Trustee Cannon, learned that Plaintiffs gathered in the Commissioners' Chambers, he knew that the County had audio recorded the gathering.

240. Trustee Cannon submitted a FOIA request to the County seeking a copy of the audio recording of Plaintiffs' gathering.

241. The unusual request invoked a process through which the former Sheriff cajoled the current Sheriff into directing the County's IT department to produce and release a copy of the audio recording to the former Sheriff.

242. The County had no right to utilize their audio recording equipment to capture the discussions from Plaintiffs' gathering.

243. The County had no right to distribute the audio recording of Plaintiffs' gathering.

244. When the Clerk realized the flash drive that the County provided to Trustee Cannon in response to his FOIA contained the audio recording of Plaintiffs' gathering, the Clerk compelled the Sheriff to claw it back from Trustee Cannon.

245. Before returning the flash drive to the Sheriff, Trustee Cannon made a copy of the audio and video recording and provided it to the Hospital.

246. Defendants utilized the audio recording for their own purposes.

247. Defendants utilized the audio recording to vilify Plaintiffs.

248. Defendants utilized the audio recording to accuse Plaintiffs of violating the OMA.

249. Defendants utilized the audio recording to vilify the OMA.

250. Defendants utilized the audio recording to accuse Plaintiffs of violating the OMA to strong-arm Plaintiffs into despising the OMA so that they would vote to convert to an NPO.

251. Defendants utilized the audio recording of Plaintiffs speaking less-than-complimentary about their fellow Trustees to vilify Plaintiffs in the eyes of their fellow Trustees.

252. Defendants utilized the audio recording to make Plaintiffs, as objectors to converting to an NPO, the villains of the story so that the other Trustees would vote in favor of converting to an NPO.

253. By audio recording Plaintiffs' gathering, Defendants violated the Electronic Communications Privacy Act.

254. By distributing the audio recording of Plaintiffs' gathering, Defendants violated the Electronic Communications Privacy Act.

255. When the County learned that they had stored 3 years of audio recorded conversations on their surveillance system, the County deleted the stored recordings.

256. When the Clerk and the Sheriff became aware that Trustee Cannon had retained a copy of the audio recording, the County did nothing to rectify their error in distributing it.

257. When the Clerk and the Sheriff became aware that Trustee Cannon had provided a copy of the audio recording to the Hospital, the County did nothing to rectify their error in distributing it.

258. When the Clerk and the Sheriff became aware that the Hospital and CEO provided copies of the audio recording to third-parties, the County did nothing to rectify their error in distributing it.

259. As a direct and proximate result of Plaintiffs' gathering being audio recorded and then accessed and distributed by Defendants, Plaintiffs suffered unreasonable search and seizure, retaliation, accusations, defamation, hostility, ridicule, vilification, condemnation, humiliation, embarrassment, pain, mental anguish, emotional distress, anxiety, depression, suffering, sleeplessness, public censorship, damage to reputation, suppression of free speech, denial of due process, and deprivation of their civil rights.

COUNT II – INVASION OF PRIVACY / INTRUSION OF SECLUSION

260. Plaintiffs reallege the above-enumerated paragraphs as if fully set forth herein.

261. By obtaining an audio recording of Plaintiffs' gathering, Defendants intruded on Plaintiffs' seclusion and privacy.

262. The fact that the Commissioners' Chambers was being audio recorded was unknown to Plaintiffs, as it would have been to any reasonable person who occupied the premises which provided no such warning.

263. The County misrepresented the Commissioners' Chambers as capable of being reserved as a private space.

264. By allowing Plaintiffs to reserve the Commissioners' Chambers and lock out the public, Plaintiffs had a reasonable expectation of privacy.

265. By allowing Plaintiffs to reserve the Commissioners' Chambers and lock out the public, the County misrepresented the circumstances of the privacy occurring therein when they

allowed their audio recording equipment to secretly capture and store the conversations from Plaintiffs' gathering.

266. The County used special computer equipment to see and hear activity in the Commissioners' Chambers, even though the room was reserved for use as a private space.

267. An unaided person would not have been able to hear the discussion in Plaintiffs' gathering.

268. The County's audio recording of Plaintiffs' gathering exceeded the scope of Plaintiffs' consent.

269. Plaintiffs never consented to the County audio recording their gathering.

270. Defendants, without authorization, intentionally invaded Plaintiffs' private matters by obtaining the audio recording of Plaintiffs' gathering and distributing it for their own purposes.

271. The invasion of Plaintiffs' privacy and seclusion is offensive to a reasonable person, and it is offensive to Plaintiffs.

272. The matter that the Defendants intruded upon was a private matter.

273. As a direct and proximate result of Plaintiffs' gathering being audio recorded and then accessed and distributed by Defendants, Plaintiffs suffered unreasonable search and seizure, retaliation, accusations, defamation, hostility, ridicule, vilification, condemnation, humiliation, embarrassment, pain, mental anguish, emotional distress, anxiety, depression, suffering, sleeplessness, public censorship, damage to reputation, suppression of free speech, denial of due process, and deprivation of their civil rights.

COUNT III – INVASION OF PRIVACY / PUBLIC DISCLOSURE OF PRIVATE FACTS

274. Plaintiffs reallege the above-enumerated paragraphs as if fully set forth herein.

275. By obtaining an audio recording of Plaintiffs’ gathering and distributing it to the public, Defendants intruded on Plaintiffs privacy by publicly disclosing private facts.

276. For greater efficacy, Defendants transcribed Plaintiffs’ private conversations into a written document.

277. Plaintiffs’ gathering involved private conversations, for example, about their health and the health of their loved ones, which private facts were publicly disclosed by Defendants.

278. Defendants disclosed private facts from Plaintiffs’ gathering to retaliate against these public officials for questioning the propriety of converting to an NPO as recommended by “Board Leadership.”

279. As a direct and proximate result of Plaintiffs’ gathering being audio recorded and then accessed and distributed by Defendants, Plaintiffs suffered unreasonable search and seizure, retaliation, accusations, defamation, hostility, ridicule, vilification, condemnation, humiliation, embarrassment, pain, mental anguish, emotional distress, anxiety, depression, suffering, sleeplessness, public censorship, damage to reputation, suppression of free speech, denial of due process, and deprivation of their civil rights.

COUNT IV – INVASION OF PRIVACY / FALSE LIGHT

280. Plaintiffs reallege the above-enumerated paragraphs as if fully set forth herein.

281. Defendants intentionally or recklessly falsely accused Plaintiffs of violating the OMA.

282. Defendants publicly accused Plaintiffs of committing the crime of violating the OMA.

283. Plaintiffs' gathering did not violate the OMA as falsely alleged by Defendants.

284. Defendants publicly accused Plaintiffs of intentionally circumventing the OMA.

285. Plaintiffs did not intend to circumvent the OMA as falsely accused by Defendants.

286. Plaintiffs' gathering did not involve a quorum of any committee.

287. The attendees of Plaintiffs' gathering had no decision-making authority.

288. At Plaintiffs' gathering, no decisions were made on any public policy.

289. At Plaintiffs' gathering, no decisions were made that deprived the Board of participating in the decision-making process.

290. Defendants' accusation is outrageous as there is no valid basis upon which to conclude that Plaintiffs' gathering violated the OMA.

291. Accusing Plaintiffs, as public officials, of intentionally committing the crime of violating the OMA is a highly offensive statement.

292. Accusing Plaintiffs, as public officials, of intentionally committing the crime of violating the OMA is defamatory.

293. Defendants published their false accusations to every Township in the County.

294. As a direct and proximate result of Plaintiffs' gathering being audio recorded and then accessed and distributed by Defendants, Plaintiffs suffered unreasonable search and seizure, retaliation, accusations, defamation, hostility, ridicule, vilification, condemnation, humiliation, embarrassment, pain, mental anguish, emotional distress, anxiety, depression, suffering, sleeplessness, public censorship, damage to reputation, suppression of free speech, denial of due process, and deprivation of their civil rights.

COUNT V – INVASION OF PRIVACY / APPROPRIATION OF PLAINTIFFS’ LIKENESS

295. Plaintiffs reallege the above-enumerated paragraphs as if fully set forth herein.

296. Defendants used Plaintiffs’ name and likeness through distribution of the audio and video recording of Plaintiffs’ gathering.

297. Defendants accessed and distributed Plaintiffs likeness to quell their dissent on converting to an NPO.

298. Plaintiffs did not consent to Defendants use of Plaintiffs’ name and likeness.

299. Plaintiffs did not consent to Defendants accessing and distribution of the audio and video recording of Plaintiffs’ gathering.

300. Defendants used the audio and video recording containing Plaintiffs’ likeness to convince the public, and the other Trustees, that the public officials questioning “Board Leadership” about converting to an NPO were criminals.

301. Defendants used Plaintiffs likeness to gain the advantage of Plaintiffs losing credibility amongst their peers and fellow Trustees.

302. Defendants used Plaintiffs’ likeness to be the villain to gain the benefit of the other Trustees falling in line with “Board Leadership.”

303. Defendants tied Plaintiffs’ likeness to a subquorum OMA violation for the benefit of the Board seeing the OMA as “pesky” and thus a good reason to convert to an NPO to avoid it.

304. Defendants’ conduct was a substantial factor in causing Plaintiffs harm.

305. As a direct and proximate result of Defendants’ appropriation of Plaintiffs likeness, Plaintiffs suffered unreasonable search and seizure, retaliation, accusations, defamation, hostility, ridicule, vilification, condemnation, humiliation, embarrassment, pain, mental anguish, emotional

distress, anxiety, depression, suffering, sleeplessness, public censorship, damage to reputation, suppression of free speech, denial of due process, and deprivation of their civil rights.

COUNT VI – MCL § 750.539(a-h) – EAVESDROPPING UPON PRIVATE CONVERSATION

306. Plaintiffs reallege the above-enumerated paragraphs as if fully set forth herein.

307. When Plaintiffs reserved the Commissioners' Chambers and locked the door, the room became a private place that Plaintiffs reasonably expected to be safe from audio surveillance.

308. Defendants recorded and distributed the private discourse from Plaintiffs' gathering without the permission of any of the persons engaged in the discourse.

309. The County secretly audio recorded Plaintiffs' gathering.

310. Defendants obtained the computer stored audio recording of Plaintiffs' gathering for the purpose of spying on them.

311. Defendants distributed the audio recording of Plaintiffs' gathering for the purpose of invading their privacy.

312. Defendants willfully used an electronic device to eavesdrop upon the conversation in Plaintiffs' gathering.

313. None of the attendees of Plaintiffs' gathering consented to their conversation being audio recorded.

314. Defendants eavesdropped on Plaintiffs' gathering.

315. Defendants knowingly aided each other in procuring and distributing the eavesdropped audio recording of Plaintiffs' gathering.

316. Defendants knew, or should have known, that the audio recording was eavesdropped.

317. Defendants knew, or should have known, that the audio recording was not to be disclosed to third-parties.

318. Defendants knew, or should have known, that the audio recording was an invasion of Plaintiffs' privacy.

319. Defendants knew, or should have known, that disclosing or distributing the audio recording was an invasion of Plaintiffs' privacy.

320. Defendants used the audio recording, transcribed, duplicated, and divulged conversations therefrom that Defendants knew, or reasonably should have known, were obtained through eavesdropping upon Plaintiffs' gathering.

321. Defendants distributed and disseminated to public officials, Townships, the general public, and the media the eavesdropped audio recording of Plaintiffs' gathering.

322. As a direct and proximate result of Plaintiffs' gathering being audio recorded and then accessed and distributed by Defendants, Plaintiffs suffered unreasonable search and seizure, retaliation, accusations, defamation, hostility, ridicule, vilification, condemnation, humiliation, embarrassment, pain, mental anguish, emotional distress, anxiety, depression, suffering, sleeplessness, public censorship, damage to reputation, suppression of free speech, denial of due process, and deprivation of their civil rights.

COUNT VII – 42 U.S. CODE § 1983 / DUE PROCESS

323. Plaintiffs reallege the above-enumerated paragraphs as if fully set forth herein.

324. Defendants violated Plaintiffs due process rights by failing to provide them notice of the charges against them and an opportunity to be heard during an open meeting.

325. When Defendants accused Plaintiffs of intentionally violating the OMA, they never provided Plaintiffs with notice of the charges against them, or an opportunity for Plaintiffs to be heard before Defendants disciplined them by way of public censure.

326. Plaintiffs first learned of the accusations against them via a legal memo from the Board's attorney that was provided to the Trustees during their closed session on January 23, 2024.

327. After ambushing Plaintiffs during the January closed session, the Board's next closed session ended with the Trustees holding a resolution in their hand to adopt that would publicly censure Plaintiffs.

328. The Board did not provide Plaintiffs with an opportunity to respond to the allegations before the Board voted to publicly censure them.

329. Pursuant to the OMA as well as the Board's policy on when closed sessions are proper, the disciplining of a public official must occur during an open meeting unless the accused requests a closed session.⁴¹

330. Plaintiffs never requested a closed session for their disciplinary proceedings.

331. Plaintiffs were never told in advance that they were facing disciplinary proceedings.

332. The Board committed an OMA violation by conducting Plaintiffs' disciplinary proceedings in closed session.

333. Defendants violated Plaintiffs due process rights by conducting disciplinary proceedings against them without providing them with advance notice of the disciplinary proceedings and an opportunity to be heard during the public disciplinary proceedings.

334. As a direct and proximate result of Defendants' violation of Plaintiffs' due process rights, Plaintiffs suffered unreasonable search and seizure, retaliation, accusations, defamation,

⁴¹ Exhibit 14 – The Board's Policy on Closed Sessions

hostility, ridicule, vilification, condemnation, humiliation, embarrassment, pain, mental anguish, emotional distress, anxiety, depression, suffering, sleeplessness, public censorship, damage to reputation, suppression of free speech, denial of due process, and deprivation of their civil rights.

Count VIII – 42 U.S. CODE § 1983 / CONSPIRACY

335. Plaintiffs reallege the above-enumerated paragraphs as if fully set forth herein.

336. The audio recording of Plaintiffs' gathering is the result of the execution of an unlawful, illegal, and warrantless search.

337. Defendants were willful participants in obtaining and distributing the audio recording.

338. Defendants prepared and executed a plan to obtain and disclose the audio recording.

339. Defendants successfully executed their plan to obtain and disclose the audio recording.

340. The audio recording of Plaintiffs' gathering was obtained and disclosed in violation of the Fourth Amendment's protection against an unlawful search and seizure.

341. After disclosing the audio recording, Defendants knew that the audio recording was an invasion of Plaintiffs' privacy but they either continued to distribute it or they took no measures to prevent further distribution of it.

342. Defendants used the audio recording to push their agenda to convert the Act 47 Hospital to an NPO.

343. Defendants used the audio recording to suppress Plaintiffs' speech in opposition to converting to an NPO.

344. Defendants obtaining, distributing, and using the audio recording to accuse Plaintiffs of intentionally violating the OMA was undertaken recklessly and with complete

indifference and wanton disregard for the right of Plaintiffs to be free from violations of the Fourth Amendment.

345. Defendants obtaining, distributing, and using the audio recording to accuse Plaintiffs of intentionally violating the OMA was undertaken recklessly and with complete indifference and wanton disregard for Plaintiffs' First Amendment freedom of speech.

346. Defendants entered into, advanced, and executed their conspiracy to silence Trustee dissent to converting the Hospital to an NPO.

347. As a direct and proximate result of Plaintiffs' gathering being audio recorded and then accessed and distributed by Defendants, Plaintiffs suffered unreasonable search and seizure, retaliation, accusations, defamation, hostility, ridicule, vilification, condemnation, humiliation, embarrassment, pain, mental anguish, emotional distress, anxiety, depression, suffering, sleeplessness, public censorship, damage to reputation, suppression of free speech, denial of due process, and deprivation of their civil rights.

COUNT IX – TORTIOUS INTERFERENCE WITH A BUSINESS RELATIONSHIP

348. Plaintiffs reallege the above-enumerated paragraphs as if fully set forth herein.

349. Plaintiffs, as Trustees of the governing Board of the Act 47 Hospital, have a valid business relationship with the County, the Townships, the Board, their fellow Trustees, the Hospital, and the County residents, which relationships are not predicated upon a contract but rather a political appointment.

350. In that capacity, Plaintiffs owed fiduciary duties to the Hospital and its owner, to their appointing Townships, to the Board and its Trustees, and to the residents of the County.

351. At all relevant times, Defendants knew Plaintiffs were public officials and Trustees appointed to the Board by their respective Townships.

352. Defendants intentionally interfered with Plaintiffs' business relationship with the County, the Townships, the Board, their fellow Trustees, the Hospital, and the County residents when Defendants obtained and distributed the audio recording of Plaintiffs' gathering and falsely accused them of intentionally violating the OMA.

353. Defendants caused the Board to act unlawfully in violation of eavesdropping laws, the OMA, its own policy on disciplining its public officials, as well as Plaintiffs' constitutional rights to privacy, freedom of speech, freedom from unreasonable search and seizure, and due process.

354. Defendants' actions were unjustified in law and for the purpose of invading their privacy to maliciously malign Plaintiffs credibility.

355. Defendants' actions were not motivated by a legitimate business reason.

356. Defendants were retaliating against Plaintiffs for their free speech of questioning "Board Leadership's" justification for converting the last Act 47 Hospital in the state to an NPO.

357. Defendants had no legitimate business reason to obtain eavesdropped stored electronic communications from the County's surveillance system.

358. Defendants had no legitimate purpose for distributing the eavesdropped private conversations from Plaintiffs' gathering.

359. Defendants' tortious interference caused Plaintiff Cox to resign from the Board.

360. Defendants' tortious interference caused Plaintiff McKinnon to be treated as a persona non grata during his ongoing duties to the Board, Township, Hospital, County, and its residents.

361. As a direct and proximate result of Defendants' tortious interference with Plaintiffs' business relationship, Plaintiffs suffered unreasonable search and seizure, retaliation, accusations,

defamation, hostility, ridicule, vilification, condemnation, humiliation, embarrassment, pain, mental anguish, emotional distress, anxiety, depression, suffering, sleeplessness, public censorship, damage to reputation, suppression of free speech, denial of due process, and deprivation of their civil rights.

COUNT X – OPEN MEETINGS ACT

362. Plaintiffs reallege the above-enumerated paragraphs as if fully set forth herein.

363. All meetings of a public body must be open to the public and must be held in a place available to the general public.

364. “Public body” means any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function, as well as a lessee of such a body performing an essential public purpose and function pursuant to the lease agreement.

365. All decisions of a public body must be made at a meeting open to the public.

366. All deliberations of a public body constituting a quorum of its members must take place at a meeting open to the public.

367. A meeting of a public body shall not be held unless public notice is given by a person designated by the public body.

368. Each public body shall keep minutes of each meeting showing the date, time, place, members present, members absent, any decisions made at a meeting open to the public, and the purpose or purposes for which a closed session is held.

369. A public body may meet in a closed session to consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic

personnel evaluation of, a public officer, employee, staff member, or individual agent, if the named individual requests a closed hearing. An individual requesting a closed hearing may rescind the request at any time, in which case the matter at issue must be considered after the rescission only in open sessions.

370. A public body may meet in a closed session to consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, but only if an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body.

371. A public body may meet in a closed session to consider material exempt from discussion or disclosure by state or federal statute.

372. The CEO intended to repeatedly and deliberately circumvent the OMA by organizing and chairing so-called “Board Leadership” meetings behind closed doors, without notice to the public, without keeping minutes, and during which the Trustees made decisions he requested, which deprived the entire Board of participating in those decisions.

373. On November 2, 2023, the CEO and Trustees Zenner, Cannon and Nichol willfully violated the OMA by conducting a meeting with a quorum of the Board’s Strategic Planning Committee without proper notice, without taking minutes, without it being open to the public, and by making decisions that deprived the full committee, and Board, from participating in the decision-making process.

374. On December 14, 2023, the CEO and Trustees Zenner, Cannon and Nichol willfully violated the OMA by conducting a meeting with a quorum of the Board’s Strategic Planning Committee without proper notice, without taking minutes, without it being open to the public, and

by making decisions that deprived the full committee, and Board, from participating in the decision-making process.

375. On January 22, 2024, the CEO and Trustees Zenner, Cannon, Nichol, and Klimek willfully violated the OMA by conducting a meeting with a quorum of the Board's Strategic Planning Committee without proper notice, without taking minutes, without it being open to the public, and by making decisions that deprived the full committee, and Board, from participating in the decision-making process.

376. On January 23, 2024, the CEO and Board willfully violated the OMA by conducting a closed session without a proper basis to do so, deliberating far beyond the scope of strictly legal advice, and by making decisions behind closed doors.

377. On February 9, 2024, the CEO and Trustees Klimek, Cannon, Nichol, and Stobert willfully violated the OMA by deliberating over whether the Board would send a representative to the Oliver Township meeting, making the decision not to send a representative to the Township meeting, which deprived the entire Board of participating in that decision-making process.

378. On February 14, 2024, the CEO and Trustees Klimek, Cannon, Nichol, and Stobert willfully violated the OMA by conducting a meeting with a quorum of the Board's Strategic Planning Committee without proper notice, without taking minutes, without it being open to the public, and by making decisions that deprived the full committee, and Board, from participating in the decision-making process.

379. On February 20, 2024, the CEO and Board willfully violated the OMA by conducting a closed session without a proper basis to do so, deliberating far beyond the scope of strictly legal advice, and by making decisions behind closed doors.

380. Defendants violated the OMA by disciplining Plaintiffs during a closed session that Plaintiffs never requested.

381. On March 15, 2024, the CEO and Trustees Klimek, Cannon, Nichol, and Stobert willfully violated the OMA by conducting a meeting with a quorum of the Board's Executive/Finance Committee & Joint Conference & Ethics Committee without proper notice, without taking minutes, without it being open to the public, and by making decisions that deprived the full committee, and Board, from participating in the decision-making process.

382. Defendants repeated actions of willfully violating the OMA demonstrate a pattern of utter disregard for governmental transparency and accountability.

383. As a direct and proximate result of Defendants' violations of the OMA, Plaintiffs suffered unreasonable search and seizure, retaliation, accusations, defamation, hostility, ridicule, vilification, condemnation, humiliation, embarrassment, pain, mental anguish, emotional distress, anxiety, depression, suffering, sleeplessness, public censorship, damage to reputation, suppression of free speech, denial of due process, and deprivation of their civil rights.

COUNT XI – FREEDOM OF INFORMATION ACT

384. Plaintiffs reallege the above-enumerated paragraphs as if fully set forth herein.

385. On February 28, 2024, Plaintiff McKinnon submitted a FOIA request to the Board.⁴²

386. The FOIA requested that the written documentation be produced in its original digital file form, or pdf, by way of a flash drive that Plaintiff McKinnon would pick up upon notification that it was ready.

⁴² Exhibit 23 – Plaintiff McKinnon's FOIA request to the Board, February 28, 2024

387. On March 19, 2024, the Board's FOIA Coordinator, the CEO, provided Plaintiff McKinnon a written notice denying his requests for certain public records.⁴³

388. The FOIA response (1) denied that a public record exists under the name given or by another name reasonably known to the FOIA Coordinator, and (2) denied the requested record(s) as exempt from disclosure subject to the attorney-client privilege.

389. The Board has unjustly withheld an unknown number of public records, which were requested by Plaintiff McKinnon.

390. Numerous unlawful redactions blacked out many of the public records that were provided to Plaintiff McKinnon in response to his request.

391. The Board provided heavily redacted attorney invoices in response to Plaintiff McKinnon's FOIA request that sought all attorney invoices for legal services submitted to Kalkaska Memorial Health Center Board of Trustees, the Kalkaska Memorial Health Center's Senior Leadership Team and the Kalkaska Memorial Health Center in the years of 2020, 2021, 2022, 2023 and 2024.

392. The attorney-client privilege exemption does not extend to matters other than the provision of strictly legal advice.

393. The Board's heavily redacted attorney invoices excised much more information that would be deemed strictly legal advice.

394. The Board's written response contained several orange coversheets that indicate "Not Applicable" in response to Plaintiff McKinnon's FOIA requests numbered 3, 5, 9, 10, 25, 26, 27, 28 and 32.

⁴³ Exhibit 24 – The CEO's response to Plaintiff McKinnon's FOIA, March 19, 2024

395. “Not Applicable” is not, and has never been, a utilizable FOIA exemption, and it is not one of the FOIA exemptions enumerated within MCL 15.243.

396. If a public record contains material which is not exempt under section 13, as well as material which is exempt from disclosure under section 13, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying.

397. The Board’s written response failed to comply with the FOIA because it did not provide an adequate explanation of the basis for the determination that the public record, or portion of that public record, is exempt from disclosure.

398. The Board’s written response failed to comply with the FOIA because it did not provide any certificates indicating that the public records do not exist under the name given or by another name reasonably known to the Board.

399. The purpose of the FOIA’s certification requirement is to prevent a public body from using silence to effectively deny a FOIA request for records and obliging the requester to file a lawsuit to determine the existence of those records.

400. The Board’s written response failed to comply with the FOIA because it did not provide a description of all the withheld information that was separated or deleted under section 14 of the FOIA.

401. The obligations imposed by MCL 15.235(5) are ministerial in nature and Plaintiff McKinnon has a clear legal right to the benefits of MCL 15.235(5).

402. MCL 15.235(5)(c) imposes a legal duty upon the Board to provide a complete description of all public records or information on a public record that the Board separated or deleted under section 14 of the FOIA.

403. The Board's response violated the FOIA because it simply repeated statutory language instead of providing a complete particularized justification for entirely withholding or partially redacting numerous public records.

404. The Board unlawfully withheld public records and did not provide complete descriptions of all public records or information in the public records that was separated, deleted, and withheld.

405. The Board violated the FOIA by providing thousands of pages of public records in paper form as opposed to providing the public records in their original digital file form or pdf format as requested by Plaintiff McKinnon.

406. The Board does not lack the technological capability necessary to provide the public records to Plaintiff McKinnon in their original digital file form or pdf format.

407. Defendants intended to embarrass, harass, and retaliate against Plaintiff McKinnon by providing their response in large stacks of paper wheeled out on a cart and given to Plaintiff McKinnon during the Board's public meeting while complaining that the Board could not charge the \$4,000 it cost for them to provide their response because their website did not notify the public that they charge to respond to FOIA requests.

408. Defendants used the Board's obligation to comply with the FOIA to vilify Plaintiffs and Act 47 for the purpose of promoting their agenda of converting the Hospital to an NPO.

409. The Board's improper withholding of the requested public records was arbitrary and capricious.

410. The Board's improperly applied exemptions constitute a willful and intentional failure to comply.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request preliminary, equitable, injunctive, and declaratory relief, including to compel compliance, to enjoin further noncompliance, to void the decisions made during meetings and closed sessions that violated the OMA, publicly releasing minutes and recordings from the meetings and closed sessions that violated the OMA, releasing wrongfully withheld public records, requiring affidavits that describe with particularity each specific public record, or portion of a public record, that was withheld, separating the nonexempt material from the exempt material from the public records requested and releasing the nonexempt material, requiring the requested public records to be provided electronically in their original file format or pdfs; disgorgement of profits; compensatory, actual, statutory, exemplary, and punitive damages; costs, expenses, and attorney fees; and any such other and further relief as this Court deems just and proper.

VERIFICATION OF COMPLAINT

I declare under the penalties of perjury that this Complaint has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

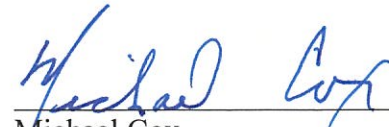
Dated: April 22, 2024

By:


Stuart McKinnon

Dated: April 22, 2024

By:


Michael Cox

JURY DEMAND

Plaintiffs respectfully demand a trial by jury on all counts.

CERTIFICATE OF SERVICE

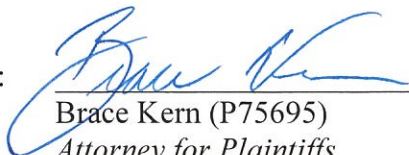
The undersigned hereby certifies that a true and correct copy of the above and foregoing was filed on this 22nd day of April 2024, with the Clerk of the Court via the Court's CM/ECF system for electronic service on all counsel of record.

Respectfully submitted,

BEK Law, PLC

Dated: April 22, 2024

By:



Brace Kern (P75695)

Attorney for Plaintiffs

3434 Veterans Drive

Traverse City, MI 49684

(231) 499-5380

Info@BraceKern.com

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

STUART MCKINNON & MICHAEL COX,

Plaintiffs,

File No. _____

Hon. _____

v

KALKASKA COUNTY BOARD OF COMMISSIONERS,
KALKASKA MEMORIAL HEALTH CENTER,
KALKASKA COUNTY HOSPITAL AUTHORITY,
KALKASKA MEMORIAL HEALTH CENTER
BOARD OF TRUSTEES, KEVIN ROGOLS,
NELSON JERRY CANNON, KARL KLIMEK,
TRACY NICHOL, BRUCE ZENNER, and
R. TROY STOBERT,

Defendants.

EXHIBIT 1
To The Complaint

CERTIFICATE OF SERVICE

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Respectfully submitted,

Dated: April 22, 2024

By: _____

BEK Law, PLC

Brace Kern (P75695)

Attorney for Plaintiffs

3434 Veterans Drive

Traverse City, MI 49684

(231) 499-5380

Info@BraceKern.com

Act 47 vs. Not-for-Profit Decision Matrix

Structure Alternatives

- A Remain an Act 47 Hospital Authority while maximizing vendor relationships if/when available.
- B Remain Act 47 Hospital Authority while minimizing vendor relationships by expanding internal operations.
- C Transition to a Not-for-profit (Tax Exempt 501c3)

Decision Criteria: Independence / Local Control									
Governance Function:									
<i>Governance remains the <u>exclusive</u> responsibility of the KMHC Board of Trustees.</i>	Structure A			Structure B			Structure C		
	Improves	Remains the same	Worsens	Improves	Remains the same	Worsens	Improves	Remains the same	Worsens
Governance Selection:									
<i>Act 47 - mixture of municipal appointments(13) plus at-large members (7). Not-for-profit - all at large members (7 to 9).</i>	Structure A			Structure B			Structure C		
	Improves	Remains the same	Worsens	Improves	Remains the same	Worsens	Improves	Remains the same	Worsens
Continuum of Service:									
<i>Decisions regarding community need, service determination and development remain the exclusive responsibility of the KMHC Board of Trustees.</i>	Structure A			Structure B			Structure C		
	Improves	Remains the same	Worsens	Improves	Remains the same	Worsens	Improves	Remains the same	Worsens
Decision Criteria: Operations									
Scope of potential partnerships:									
<i>The breadth and array of types of partnerships available to KMHC. (See "Continuum of Potential Healthcare Affiliations" 4-26-2023)</i>	Structure A			Structure B			Structure C		
	Improves	Remains the same	Worsens	Improves	Remains the same	Worsens	Improves	Remains the same	Worsens
Organizational Flexibility									
<i>The ability of the KMHC to react to changing circumstances, adapt to the environment and the array of adaptive options for consideration.</i>	Structure A			Structure B			Structure C		
	Improves	Remains the same	Worsens	Improves	Remains the same	Worsens	Improves	Remains the same	Worsens
Service Growth									
<i>The ability to expand services over time to best meet community need and demand.</i>	Structure A			Structure B			Structure C		
	Improves	Remains the same	Worsens	Improves	Remains the same	Worsens	Improves	Remains the same	Worsens
Cost Efficiency									
<i>The ability to provide a high quality service at a cost that is lower than that of competitors.</i>	Structure A			Structure B			Structure C		
	Improves	Remains the same	Worsens	Improves	Remains the same	Worsens	Improves	Remains the same	Worsens
Access to Capital									
<i>The ability to finance priority services and to replace ongoing facilities, equipment and furnishings.</i>	Structure A			Structure B			Structure C		
	Improves	Remains the same	Worsens	Improves	Remains the same	Worsens	Improves	Remains the same	Worsens
Quality and Safety Enhancement									
<i>The ability to continue to elevate the quality of services provided, in a way that is satisfying to those we serve, while providing patients, staff and visitors a safe environment.</i>	Structure A			Structure B			Structure C		
	Improves	Remains the same	Worsens	Improves	Remains the same	Worsens	Improves	Remains the same	Worsens

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

STUART MCKINNON & MICHAEL COX,

Plaintiffs,

File No. _____

Hon. _____

v

KALKASKA COUNTY BOARD OF COMMISSIONERS,
KALKASKA MEMORIAL HEALTH CENTER,
KALKASKA COUNTY HOSPITAL AUTHORITY,
KALKASKA MEMORIAL HEALTH CENTER
BOARD OF TRUSTEES, KEVIN ROGOLS,
NELSON JERRY CANNON, KARL KLIMEK,
TRACY NICHOL, BRUCE ZENNER, and
R. TROY STOBERT,

Defendants.

EXHIBIT 2
To The Complaint

CERTIFICATE OF SERVICE

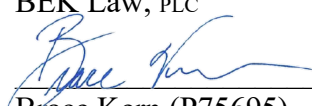
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Respectfully submitted,

BEK Law, PLC

Dated: April 22, 2024

By: _____


Brace Kern (P75695)
Attorney for Plaintiffs
3434 Veterans Drive
Traverse City, MI 49684
(231) 499-5380
Info@BraceKern.com

Kalkaska Board of Commissioners Policy Statement

Security Camera Policy		Policy #294
Date Approved 2-17-21	Effective 2-17-21	Replaces 4-15-20

Purpose: To establish procedures for use and access to live and recorded video feed from security camera(s).

Authority: BOC

Responsibility: Controller

Policy:

Recordings are kept for 30 days. Elected officials and department heads may view recordings as needed (see camera list and 'Granted Access'). Recorded video feed is available to any person through FOIA procedure unless exempt as allowed under the FOIA exception, 1976 PA 442, MCL 15.231 et seq.

Live video feed is available to Sheriff's Department and Dispatch at any time via internal network.

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

STUART MCKINNON & MICHAEL COX,

Plaintiffs,

File No. _____

Hon. _____

v

KALKASKA COUNTY BOARD OF COMMISSIONERS,
KALKASKA MEMORIAL HEALTH CENTER,
KALKASKA COUNTY HOSPITAL AUTHORITY,
KALKASKA MEMORIAL HEALTH CENTER
BOARD OF TRUSTEES, KEVIN ROGOLS,
NELSON JERRY CANNON, KARL KLIMEK,
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R. TROY STOBERT,

Defendants.

EXHIBIT 3
To The Complaint

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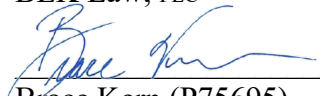
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Respectfully submitted,

BEK Law, PLC

Dated: April 22, 2024

By: _____


Brace Kern (P75695)
Attorney for Plaintiffs
3434 Veterans Drive
Traverse City, MI 49684
(231) 499-5380
Info@BraceKern.com

Rogols, Kevin

From: Rogols, Kevin
Sent: Thursday, October 19, 2023 1:40 PM
To: Bruce Zenner; Jerry Cannon; Tracy Nichol
Cc: rwilson@mikameyers.com; Coverdill, Jill
Subject: Violation of the Michigan Open Meetings Act

Importance: High

Bruce, Jerry, and Tracy:

With this e-mail, as an officer of Kalkaska Memorial Health Center, I am obligated to record a formal complaint against several members of the KMHC Board of Trustees. Specifically:

On October 9, 2023 member Bud Banker received an e-mail from member Mike Cox which reads as follows:

"Bud, A few of us hospital board members are going to meet privately to talk over where the hospital seems to be going. If you are interested we will be in the County Commissioners room at 4 today. Sorry for such short notice but I just was informed myself. We do not want just any member there so please do not pass along. Mike"

Bud appropriately reported the e-mail to Chandra Whiting who immediately reported the e-mail to me.

KMHC is obviously subject to the Michigan Open Meetings Act which, I believe, prohibits:

1. Private (non- public meeting) Board "Work Sessions".
2. A private (non-public meeting), informal meeting of board members to "discuss" issues.
3. Initiation of individual or small group private discussions among themselves to "pre-determine" or influence the outcome or a decision.

In addition to ethical implications, it is my opinion that **Mr. Cox's invitation and the resulting purposeful, "private", and exclusionary meeting violates such Act .**

Understanding that while KMHC is prohibited by Act 47 from removing an appointed board member, KMHC is not prohibited from disciplining said member. As such, with this communication, I respectfully request that:

1. The issue be investigated with oversight provided by Attorney Wilson and KMHC's Compliance Officer, Jill Coverdill.
2. The full Board of Trustees be immediately notified of the commencement of an investigation into a potential violation of the OMA by certain members of the Board.
3. That anything directly or indirectly influenced from the "private meeting" (*such as creation of a Board sub-committee specifically populated, in part, by those attending the "private meeting"*) be immediately halted, and brought back to the Board for further discussion, with declaration of conflict of interest and subsequent recusal of those attending the "private meeting."
4. If violation of law is validated, that the KMHC Joint Conference / Ethics Committee draft a recommendation of discipline and provide that recommendation to the full Board for action.
5. Discipline (all of which is NOT prohibited by Act 47) could include, but is not necessarily limited to:
 - a. Formal, recorded sanction.
 - b. That, if those participating are "appointed" members of the Board, that their respective Township be notified of the violation and resulting disciplinary action.

- c. If determined egregious, that the Board of Trustees request that the township replace the violating member knowing that the Townships cannot be compelled to replace.
- d. That the offending member be immediately recused from the decision process associated with the purpose of the "private meeting."

I am so sorry for placing this burden on you as officers of the Board of Trustees. Please understand that as CEO my duty of care, obedience and loyalty is ONLY to KMHC.

Also please be advised that I respectfully believe that if the violation is validated, the Board of Trustees MUST take action, otherwise it becomes complicit. I have a professional license/certification to protect and will not be complicit as well.

Kevin Rogols
Chief Executive Officer

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

STUART MCKINNON & MICHAEL COX,

Plaintiffs,

File No. _____

Hon. _____

v

KALKASKA COUNTY BOARD OF COMMISSIONERS,
KALKASKA MEMORIAL HEALTH CENTER,
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KALKASKA MEMORIAL HEALTH CENTER
BOARD OF TRUSTEES, KEVIN ROGOLS,
NELSON JERRY CANNON, KARL KLIMEK,
TRACY NICHOL, BRUCE ZENNER, and
R. TROY STOBERT,

Defendants.

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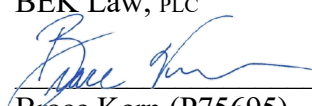
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Respectfully submitted,

BEK Law, PLC

By: _____


Brace Kern (P75695)
Attorney for Plaintiffs
3434 Veterans Drive
Traverse City, MI 49684
(231) 499-5380
Info@BraceKern.com

Dated: April 22, 2024

Whiting, Chandra

Subject: Meeting w/KMHC Board Leadership and Kevin
Location: Classrooms A & B

Start: Thu 11/2/2023 3:00 PM
End: Thu 11/2/2023 4:00 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Whiting, Chandra
Required Attendees: Bruce Zenner; Jerry Cannon; Tracy Nichol

Whiting, Chandra

From: Whiting, Chandra
Sent: Tuesday, October 31, 2023 1:10 PM
To: Tracy Nichol; Jerry Cannon (kalkaskaso@yahoo.com); Bruce Zenner (bazenner@gmail.com)
Subject: RE: [EXTERNAL] Re: Meeting with Kevin at KMHC
Importance: High

Good afternoon,

Thank you all for the responses.

We will schedule the meeting for **Thursday, November 02 at 3:00 PM in Classrooms A & B.**

Thank you,

Chandra Whiting

Chandra S. Whiting
Executive Assistant

Kalkaska Memorial Health Center
419 S Coral Street
Kalkaska MI 49646
231-258-7502 (phone)
231-258-7527 (fax)
cwhiting3@mhc.net

From: Tracy Nichol <nicholtracy1@hotmail.com>
Sent: Tuesday, October 31, 2023 12:44 PM
To: Whiting, Chandra <cwhiting3@mhc.net>; Jerry Cannon (kalkaskaso@yahoo.com) <kalkaskaso@yahoo.com>
Subject: Re: [EXTERNAL] Re: Meeting with Kevin at KMHC

All,
I can make Thursday or Friday
Tracy

From: Whiting, Chandra <cwhiting3@mhc.net>
Sent: Tuesday, October 31, 2023 8:29 AM
To: Jerry Cannon (kalkaskaso@yahoo.com) <kalkaskaso@yahoo.com>; Tracy Nichol (nicholtracy1@hotmail.com) <nicholtracy1@hotmail.com>
Subject: RE: [EXTERNAL] Re: Meeting with Kevin at KMHC

Good morning,

Touching base on this email to see if we can get this meeting scheduled with the Board Leadership this week with Kevin. Please see the times below that are available and let me know what might work in your schedule. Thanks!!

Thank you,

Chandra Whiting

Chandra S. Whiting

Executive Assistant

Kalkaska Memorial Health Center

419 S Coral Street

Kalkaska MI 49646

231-258-7502 (phone)

231-258-7527 (fax)

cwhiting3@mhc.net

From: Whiting, Chandra

Sent: Monday, October 30, 2023 3:11 PM

To: Bruce Zenner <bazenner@gmail.com>

Cc: Jerry Cannon (<kalkaskaso@yahoo.com> <kalkaskaso@yahoo.com>); Tracy Nichol (<nicholtracy1@hotmail.com> <nicholtracy1@hotmail.com>)

Subject: RE: [EXTERNAL] Re: Meeting with Kevin at KMHC

Thank you for the response...waiting to hear from the other two and I will get a meeting scheduled.

Thank you,

Chandra Whiting

Chandra S. Whiting

Executive Assistant

Kalkaska Memorial Health Center

419 S Coral Street

Kalkaska MI 49646

231-258-7502 (phone)

231-258-7527 (fax)

cwhiting3@mhc.net

From: Bruce Zenner <bazenner@gmail.com>

Sent: Monday, October 30, 2023 3:09 PM

To: Whiting, Chandra <cwhiting3@mhc.net>

Cc: Jerry Cannon (kalkaskaso@yahoo.com) <kalkaskaso@yahoo.com>; Tracy Nichol (nicholtracy1@hotmail.com) <nicholtracy1@hotmail.com>

Subject: [EXTERNAL] Re: Meeting with Kevin at KMHC

I can make any of those dates work.

On Mon, Oct 30, 2023 at 12:19 PM Whiting, Chandra <cwhiting3@mhc.net> wrote:

Good afternoon,

Kevin has asked that I set up a meeting with the three of you, the Board Leadership, in the next few days if possible. The following dates and times are available in Kevin's schedule to meet here at KMHC:

Tuesday, October 31, 1:00 PM

Wednesday, November 01, 11:30 AM

Thursday, November 02, 3:00 PM

Friday, November 03, 10:00 AM

Please respond back to which, if any of these dates/times, may work in your schedule for a meeting this week.

Thank you,

Chandra Whiting

Chandra S. Whiting

Executive Assistant

Kalkaska Memorial Health Center

419 S Coral Street

Kalkaska MI 49646

231-258-7502 (phone)

231-258-7527 (fax)

cwhiting3@mhc.net

Whiting, Chandra

From: Whiting, Chandra
Sent: Monday, October 30, 2023 12:19 PM
To: Bruce Zenner (bazenner@gmail.com); Jerry Cannon (kalkaskaso@yahoo.com); Tracy Nichol (nicholtracy1@hotmail.com)
Subject: Meeting with Kevin at KMHC
Importance: High

Good afternoon,

Kevin has asked that I set up a meeting with the three of you, the Board Leadership, in the next few days if possible. The following dates and times are available in Kevin's schedule to meet here at KMHC:

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Wednesday, November 01, 11:30 AM
Thursday, November 02, 3:00 PM
Friday, November 03, 10:00 AM

Please respond back to which, if any of these dates/times, may work in your schedule for a meeting this week.

Thank you,

Chandra Whiting

Chandra S. Whiting
Executive Assistant

Kalkaska Memorial Health Center
419 S Coral Street
Kalkaska MI 49646
231-258-7502 (phone)
231-258-7527 (fax)
cwhiting3@mhc.net

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

STUART MCKINNON & MICHAEL COX,

Plaintiffs,

File No. _____

Hon. _____

v

KALKASKA COUNTY BOARD OF COMMISSIONERS,
KALKASKA MEMORIAL HEALTH CENTER,
KALKASKA COUNTY HOSPITAL AUTHORITY,
KALKASKA MEMORIAL HEALTH CENTER
BOARD OF TRUSTEES, KEVIN ROGOLS,
NELSON JERRY CANNON, KARL KLIMEK,
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R. TROY STOBERT,

Defendants.

EXHIBIT 5
To The Complaint

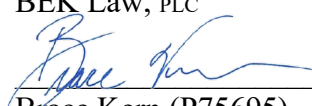
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Respectfully submitted,

BEK Law, PLC

By: _____


Brace Kern (P75695)
Attorney for Plaintiffs
3434 Veterans Drive
Traverse City, MI 49684
(231) 499-5380
Info@BraceKern.com

Dated: April 22, 2024

Suggested meeting frequency: Monthly during periodic strategic planning cycles and quarterly for monitoring/reporting progress

Suggested Membership:

- Five members of the KMHC Board of Trustees as volunteered and approved by the KMHC Board of Trustees
- Primary administrative support will be provided by the Chief Executive Officer.

Section VIII—Committee Appointments.

Committees of the Board of Trustees and their members shall be appointed at the Annual Meeting by the Chairperson of the Board of Trustees, and subsequently ratified by the Board of Trustees. Such appointments shall include the selection of each respective committee chair.

Section IX—Ad Hoc Committees.

The Chairperson of the Board may appoint ad hoc committees to investigate and make recommendations on specified topics or areas of concern at any time, and may appoint the chair of the ad hoc committees, subject to approval by the Board.

Section X—Role of Committees.

In accordance with Act 47, committees shall not exercise governing powers of the KMHC Board but shall make reports and recommendations to the Board as the Board directs.

**ARTICLE VII
Meetings**

Section I - Regular Meetings

The Board of Trustees shall hold regular meetings as follows: The Board of Trustees shall determine its schedule of regular meetings for the ensuing year at each Annual Meeting of the Board and post the same in accordance with the Open Meetings Act.

Section II - Special Meetings

The Chair may call special meetings by giving three days' notice of the time, place, and purpose to each member of the Board, as well as posting a notice of special meeting in accordance with the Open Meetings Act. The Chair shall call a special meeting upon the written request of three members of the Board specifying the purpose of the requested meeting. Only business stated in the notice may be considered at a special meeting unless all members of the Board are present.

Section III - Quorum

A majority of all members then serving on the Board or the Board Committees shall constitute a quorum for their respective meetings. For purposes of clarity, vacant seats are not included in quorum determinations.

Section IV - Meeting Reporting Requirements

Appointed Trustees should report to their respective member jurisdiction at least two times each year. Reports should include financial statements and other significant issues.

Section V - Notice of Meetings.

For regular meetings of the Board of Trustees, each member of the Board shall receive notice and an agenda at least three days in advance of the meeting. A notice of the meeting shall also be posted in accordance with the Michigan Open Meetings Act.

Section VI

Persons shall be permitted to address the Board at all open meetings under the agenda item entitled "Questions from Members and Guests".

Section VII

All meetings of the Board of Trustees, its Executive Committee and all other committees shall be public meetings and shall generally follow the requirements of the Open Meetings Act being Public Act No. 267, of the Michigan Public Acts of 1976.]

ARTICLE VIII CEO - Chief Executive Officer

Section I

The Hospital Board shall employ a Chief Executive Officer (CEO) to hold office at the pleasure of the Board. The CEO shall have general charge of the operation and management of the Hospital, its facilities, staff, employees and contractors, subject to these Bylaws and such policies, rules and regulations as may be enacted by the Board. The CEO shall be responsible to and report to the Board of Trustees.

Section II

The CEO shall act as the duly authorized representative of the Board of Trustees in all matters in which the Board has not formally designated some other person to so act. In the absence of applicable rules or policies, the CEO shall have the authority to make and enforce all necessary rules and regulations for proper conduct of all aspects of the Hospital's operations. When the CEO is absent from the Hospital, he shall have the authority to appoint a temporary acting CEO during his absence. It shall be the duty of the CEO to enforce all rules and regulations for the proper conduct of the Hospital, made by or under the authority of the Board of Trustees.

Section III

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

STUART MCKINNON & MICHAEL COX,

Plaintiffs,

File No. _____

Hon. _____

v

KALKASKA COUNTY BOARD OF COMMISSIONERS,
KALKASKA MEMORIAL HEALTH CENTER,
KALKASKA COUNTY HOSPITAL AUTHORITY,
KALKASKA MEMORIAL HEALTH CENTER
BOARD OF TRUSTEES, KEVIN ROGOLS,
NELSON JERRY CANNON, KARL KLIMEK,
TRACY NICHOL, BRUCE ZENNER, and
R. TROY STOBERT,

Defendants.

EXHIBIT 6
To The Complaint

CERTIFICATE OF SERVICE

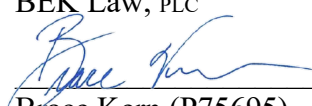
The undersigned hereby certifies that a true and correct copy of the above and foregoing was filed on this 22nd day of April 2024, with the Clerk of the Court via the Court's CM/ECF system for electronic service on all counsel of record.

Respectfully submitted,

BEK Law, PLC

Dated: April 22, 2024

By: _____


Brace Kern (P75695)
Attorney for Plaintiffs
3434 Veterans Drive
Traverse City, MI 49684
(231) 499-5380
Info@BraceKern.com

County: Keep original and provide copy of both sides, along with Public Summary, to Requestor at no charge.



Kalkaska County

605 N. Birch Street, Kalkaska, Michigan 49646
Phone: (231) 258-3300

Request Form

Note: Requestors are not required to use this form. The County may complete one for recordkeeping if not used.

FOIA Request for Public Records

Michigan Freedom of Information Act, Public Act 442 of 1976, MCL 15.231, et seq.

Request No.: _____ Date Received: _____ Check if received via: ☐ Email ☐ Fax ☐ Other Electronic Method
Date delivered to junk/spam folder: _____

Name	<u>JERRY CANNON</u>	Phone	<u>(231) 369-3333</u>
Firm/Organization	<u>KALKASKA MEMORIAL HEALTH CTR</u>	Fax	
Street	<u>419 COAL STREET</u>	Email	<u>KALKASKA50@YAHOO.COM</u>
City	<u>KALKASKA, MI 49633</u>	State	Zip

(Please Print or Type)

Date discovered in junk/spam folder: _____

Request for: ☒ Copy ☐ Certified copy ☐ Record inspection ☐ Subscription to record issued on regular basis

Delivery Method: ☒ Will pick up ☐ Will make own copies onsite ☐ Mail to address above ☐ Email to address above
☒ Deliver on digital media provided by the County: _____

Note: The County is not required to provide records in a digital format or on digital media if the County does not already have the technological capability to do so.

Describe the public record(s) as specifically as possible. You may use this form or attach additional sheets:

REQUEST COPY OF VOICE/VIDEO OF MEETING HELD IN THE
COMMISSIONERS MEETING ROOM STARTING ON OR ABOUT 3:45 PM
& ENDING ON OR ABOUT 5:15 PM OCTOBER 9TH, 2023

Consent to Non-Statutory Extension of County's Response Time

I have requested a copy of records or a subscription to records or the opportunity to inspect records, pursuant to the Michigan Freedom of Information Act, Public Act 442 of 1976, MCL 15.231, et seq. I understand that the County must respond to this request within five (5) business days after receiving it, and that response may include taking a 10-business day extension. However, I hereby agree and stipulate to extend the County's response time for this request until: _____ (month, day, year).

Requestor's Signature

[Signature]

Date

11/1/23

(Complete both sides)

Records Located on Website

If the County directly or indirectly administers or maintains an official internet presence, any public records available to the general public on that internet site at the time the request is made are exempt from any labor charges to redact (*separate exempt information from non-exempt information*).

If the FOIA coordinator knows or has reason to know that all or a portion of the requested information is available on its website, the County must notify the Requestor in its written response that all or a portion of the requested information is available on its website. The written response, to the degree practicable in the specific instance, must include a specific webpage address where the requested information is available. On the detailed cost itemization form, the County must separate the requested public records that are available on its website from those that are not available on the website and must inform the requestor of the additional charge to receive copies of the public records that are available on its website.

If the County has included the website address for a record in its written response to the Requestor and the Requestor thereafter stipulates that the public record be provided to him or her in a paper format or other form, including digital media, the County must provide the public records in the specified format (if the County has the technological capability) but may use a fringe benefit multiplier greater than the 50%, not to exceed the actual costs of providing the information in the specified format.

Request for Copies/Duplication of Records on County Website

I hereby stipulate that, even if some or all of the records are located on the County website, I am requesting that the County make copies of those records on the website and deliver them to me in the format I have requested above. I understand that some FOIA fees may apply.

Requestor's Signature

Date

Overtime Labor Costs

Overtime wages shall not be included in the calculation of labor costs unless overtime is specifically stipulated by the requestor and clearly noted on the detailed cost itemization form.

Consent to Overtime Labor Costs

I hereby agree and stipulate to the County using overtime wages in calculating the following labor costs as itemized in the following categories:

1. ☐ Labor to copy/duplicate 2. ☐ Labor to locate 3a. ☐ Labor to redact 3b. ☐ Contract labor to redact
6b. ☐ Labor to copy/duplicate records already on County's website

Requestor's Signature

Date

Request for Discount: Indigence

A public record search **must** be made and a copy of a public record **must** be furnished **without charge for the first \$20.00 of the fee** for each request by an individual who is entitled to information under this act and who:

- 1) Submits an affidavit stating that the individual is indigent and receiving specific public assistance, **OR**
2) If not receiving public assistance, stating facts showing inability to pay the cost because of indigence.

If a Requestor is ineligible for the discount, the public body shall inform the requestor specifically of the reason for ineligibility in the public body's written response. An individual is ineligible for this fee reduction if **ANY** of the following apply:

- (i) The individual has previously received discounted copies of public records from the same public body twice during that calendar year,
(ii) The individual requests the information in conjunction with outside parties who are offering or providing payment or other remuneration to the individual to make the request. A public body may require a statement by the requestor in the affidavit that the request is not being made in conjunction with outside parties in exchange for payment or other remuneration.

Office Use: ☐ Affidavit Received ☐ Eligible for Discount ☐ Ineligible for Discount

I am submitting an affidavit and requesting that I receive the discount for indigence for this FOIA request:

Date:

Requestor's Signature:

Request for Discount: Nonprofit Organization

A public record search **must** be made and a copy of a public record **must** be furnished **without charge for the first \$20.00 of the fee** for each request by a nonprofit organization formally designated by the state to carry out activities under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 and the Protection and Advocacy for Individuals with Mental Illness Act, if the request meets **ALL** of the following requirements:

- (i) Is made directly on behalf of the organization or its clients.
(ii) Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the Mental Health Code, 1974 PA 258, MCL 330.1931.
(iii) Is accompanied by documentation of its designation by the state, if requested by the County.

Office Use: ☐ Documentation of State Designation Received ☐ Eligible for Discount ☐ Ineligible for Discount

I stipulate that I am a designated agent for the nonprofit organization making this FOIA request and that this request is made directly on behalf of the organization or its clients and is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the Mental Health Code, 1974 PA 258, MCL 330.1931:

Date:

4/14/23

Requestor's Signature:

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

STUART MCKINNON & MICHAEL COX,

Plaintiffs,

File No. _____

Hon. _____

v

KALKASKA COUNTY BOARD OF COMMISSIONERS,
KALKASKA MEMORIAL HEALTH CENTER,
KALKASKA COUNTY HOSPITAL AUTHORITY,
KALKASKA MEMORIAL HEALTH CENTER
BOARD OF TRUSTEES, KEVIN ROGOLS,
NELSON JERRY CANNON, KARL KLIMEK,
TRACY NICHOL, BRUCE ZENNER, and
R. TROY STOBERT,

Defendants.

EXHIBIT 7
To The Complaint

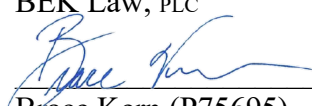
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing was filed on this 22nd day of April 2024, with the Clerk of the Court via the Court's CM/ECF system for electronic service on all counsel of record.

Respectfully submitted,

BEK Law, PLC

By: _____


Brace Kern (P75695)
Attorney for Plaintiffs
3434 Veterans Drive
Traverse City, MI 49684
(231) 499-5380
Info@BraceKern.com

Dated: April 22, 2024

Deborah Hill

From: Deborah Hill
Sent: Tuesday, November 14, 2023 6:57 PM
To: 'kalkaskaso@yahoo.com'
Subject: FOIA request

Hi Jerry:

I cannot find where there were any Board meetings held on that day in the Board room or at all.
I looked for posting and minutes but I don't show any.

Deb

Deborah Hill
Kalkaska County Clerk
605 N Birch Street
Kalkaska, MI 49646

231-258-3349

dhill@kalkascourt.org

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Deborah Hill

From: kalkaskaso@yahoo.com
Sent: Wednesday, November 15, 2023 7:01 AM
To: Deborah Hill
Subject: Re: FOIA request

Deb-

Apologize for the confusion. It was NOT a County Commissioner Meeting, but it WAS in the Commissioners Room. It was a small group from the Hospital Board. The only person that I am confident about being in attendance was Mike Cox. It was probably a short meeting that was to begin at 4PM; because of this uncertainty I requested the longer time-frame. Only need the period they were in the room.

Thanks

Jerry

On Nov 14, 2023 18:58, Deborah Hill <dhill@kalkaskacourt.org> wrote:

Hi Jerry:

I cannot find where there were any Board meetings held on that day in the Board room or at all.

I looked for posting and minutes but I don't show any.

Deb

Deborah Hill

Kalkaska County Clerk

605 N Birch Street

Kalkaska, MI 49646

231-258-3349

dhill@kalkaskacourt.org

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Sheriff Pat Whiteford

From: kalkaskaso@yahoo.com
Sent: Friday, November 17, 2023 12:21 AM
To: Sheriff Pat Whiteford
Subject: Fwd: RE: FOIA request

Pat-
Can you point Deb in the right direction?
Jerry

----- Forwarded message -----

From: Deborah Hill <dhill@kalkaskacourt.org>
Date: Nov 15, 2023 13:55
Subject: RE: FOIA request
To: kalkaskaso@yahoo.com
Cc:

Hi Jerry:

I am not aware of a meeting on that date here...????...even an outside party....hummm.....

Unless I was taking minutes for some reason I would have no recordings.

Was it a meeting with the Hospital board and others...???

Trying to remember if anyone may have asked to use that room....I just don't recall anything at the moment.

Deb

Deborah Hill

Kalkaska County Clerk

605 N Birch Street

Kalkaska, MI 49646

231-258-3349

dhill@kalkaskacourt.org

Sheriff Pat Whiteford

From: Sheriff Pat Whiteford
Sent: Monday, November 20, 2023 11:48 AM
To: 'kalkaskaso@yahoo.com'
Subject: RE: RE: FOIA request

She should be reaching out with the video, our IT staff was able to pull this for you.

Pat

From: kalkaskaso@yahoo.com <kalkaskaso@yahoo.com>
Sent: Friday, November 17, 2023 12:21 AM
To: Sheriff Pat Whiteford <pwhiteford@kalso.org>
Subject: Fwd: RE: FOIA request

Pat-
Can you point Deb in the right direction?
Jerry

----- Forwarded message -----

From: Deborah Hill <dhill@kalkaskacourt.org>
Date: Nov 15, 2023 13:55
Subject: RE: FOIA request
To: kalkaskaso@yahoo.com
Cc:

Hi Jerry:

I am not aware of a meeting on that date here...????...even an outside party....hummm.....

Unless I was taking minutes for some reason I would have no recordings.

Was it a meeting with the Hospital board and others...???

Trying to remember if anyone may have asked to use that room....I just don't recall anything at the moment.

Deb

Deborah Hill

Kalkaska County Clerk

605 N Birch Street

Deborah Hill

From: Deborah Hill
Sent: Monday, November 20, 2023 1:22 PM
To: 'kalkaskaso@yahoo.com'
Subject: RE: FOIA request

Jerry:

Pat searched the security cameras with IT, which I never gave a thought to regarding your request.
I was thinking in terms of our posted meetings/recordings.....
There was some time involved for IT to locate the incident but no idea how to calculate that expense...
With that said, IT is making a copy of that recording if you would like to pick it up here.
The charge is \$10.00 for the flash drive.

Deb

Deborah Hill
Kalkaska County Clerk
605 N Birch Street
Kalkaska, MI 49646

231-258-3349
dhill@kalkaskacourt.org

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From: Deborah Hill
Sent: Wednesday, November 15, 2023 1:56 PM
To: 'kalkaskaso@yahoo.com' <kalkaskaso@yahoo.com>
Subject: RE: FOIA request

Hi Jerry:

I am not aware of a meeting on that date here...????...even an outside party....hummm.....
Unless I was taking minutes for some reason I would have no recordings.
Was it a meeting with the Hospital board and others...???
Trying to remember if anyone may have asked to use that room....I just don't recall anything at the moment.

Deb

Deborah Hill
Kalkaska County Clerk
605 N Birch Street
Kalkaska, MI 49646

231-258-3349

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

STUART MCKINNON & MICHAEL COX,

Plaintiffs,

File No. _____

Hon. _____

v

KALKASKA COUNTY BOARD OF COMMISSIONERS,
KALKASKA MEMORIAL HEALTH CENTER,
KALKASKA COUNTY HOSPITAL AUTHORITY,
KALKASKA MEMORIAL HEALTH CENTER
BOARD OF TRUSTEES, KEVIN ROGOLS,
NELSON JERRY CANNON, KARL KLIMEK,
TRACY NICHOL, BRUCE ZENNER, and
R. TROY STOBERT,

Defendants.

EXHIBIT 8
To The Complaint

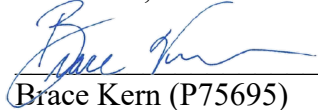
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Respectfully submitted,

BEK Law, PLC

By:



Brace Kern (P75695)

Attorney for Plaintiffs

3434 Veterans Drive

Traverse City, MI 49684

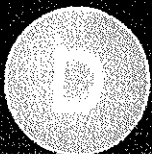
(231) 499-5380

Info@BraceKern.com

Dated: April 22, 2024

09:23 @ X M GE

87%

<  Deb Hill ▾

⋮

Problem with us releasing the video
with the audio! Jerry already has it

13:56

14:11

Jerry will get it back to you

I'm not in the office... told the staff
to let him know we will get it on a
flash drive with video only

15:06

Tuesday, November 21, 2023

Can u let Jerry know the flash drive
was a ready without sound

14:37

14:38

Yes

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

STUART MCKINNON & MICHAEL COX,

Plaintiffs,

File No. _____

Hon. _____

v

KALKASKA COUNTY BOARD OF COMMISSIONERS,
KALKASKA MEMORIAL HEALTH CENTER,
KALKASKA COUNTY HOSPITAL AUTHORITY,
KALKASKA MEMORIAL HEALTH CENTER
BOARD OF TRUSTEES, KEVIN ROGOLS,
NELSON JERRY CANNON, KARL KLIMEK,
TRACY NICHOL, BRUCE ZENNER, and
R. TROY STOBERT,

Defendants.

EXHIBIT 9
To The Complaint

CERTIFICATE OF SERVICE

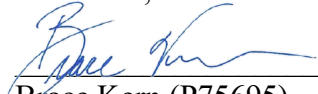
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BEK Law, PLC

Dated: April 22, 2024

By:



Brace Kern (P75695)

Attorney for Plaintiffs

3434 Veterans Drive

Traverse City, MI 49684

(231) 499-5380

Info@BraceKern.com

Kalkaska Memorial Health Center Full Authority Board of Trustees Meeting.....December 05, 2023

Township Representatives:

☒	George "Bud" Banker, Bear Lake	☐	OPEN, Oliver	☒	Eric Hendricks, Orange	☒	Diana Needham, Kalkaska Village
☒	Gregory Bradley, Clearwater	☒	Paul Erickson, Boardman	☐	Ray Hoffman, Coldsprings	☒	Tracy Nichol, Blue Lake
☒	Nelson "Jerry" Cannon, Garfield	☒	Dr. R. Troy Stobert, Springfield	☒	Karl Klimek, Excelsior	☒	Stuart McKinnon, Rapid River
☒	Dale De Korne, Kalkaska Township						

Members At Large Members:

☒	Robert "Bob" Barr	☒	Kim Stephens	☐		☐	
☒	Melanie Pauch	☒	Bruce Zenner	☐			

Staff:

☒	Jeremy Cannon	☒	Sandy Dilley	☒	Andrew Raymond	☒	Chandra Whiting
☒	Daniel Conklin	☐	Jeremy Holmes, DO (via TEAMS)	☒	Kevin Rogols	☒	Laura Zingg
☐		☐		☐		☐	

Community:

☐		☐		☐		☐	
--------------------------	--	--------------------------	--	--------------------------	--	--------------------------	--

TOPIC	SUMMARY	ACTION ASSIGNMENT
Call to Order	Mr. Bruce Zenner called the meeting to order at 6:00 PM in the Dr. William W. Kitti Education Center.	
Pledge of Allegiance	The Pledge of Allegiance was recited.	
Conflict of Interest Roll Call	A roll call for Conflict of Interest was taken as follows: George "Bud" Banker, no; Nelson "Jerry" Cannon, no; Dale De Korne, no; Gregory Bradley, no; Paul Erickson, no; Eric Hendricks, no; Dr. R. Troy Stobert, no; Karl Klimek, no; Tracy Nichol, no; Stuart McKinnon, no; Diana Needham, no; Melanie Pauch, no; Robert "Bob" Barr; Kim Stephens, no; Bruce Zenner, no.	

Kalkaska Memorial Health Center Full Authority Board of Trustees Meeting.....December 05, 2023

Consent Agenda	Mr. Zenner thanked everyone for their attendance of the KMHC December Board Meeting. The Consent Agenda was reviewed. <u>Motion was made and duly supported to approve the Consent Agenda as presented. All "AYE." Motion carried.</u>	
Public Comment Regarding Agenda Topics	No public comment was made at this time.	
Moments of Excellence Grand Opening of New Acute Care Pavilion	Mr. Rogols welcomed the Board Members and thanked the guests from the community for attending the December KMHC Board Meeting. The Flour Pot Bakery was also recognizing for the preparation of the bags of cookies that were received by each of the Board Members at the Meeting. Mr. Rogols then shared two Moments of Excellence with the Board Members. The first was the open house event for the new Acute Care Pavilion at KMHC that was held on Sunday, November 12, 2023. The open house was a tremendous success with tours being provided to 700-900 people from the community. The overall feedback received was very positive regarding the new space. The event was also attended by 10 of the KMHC Board of Trustee Members. Mr. Rogols also shared a recent personal experience regarding a family member that was overwhelmed by the amazing care they received when they were being treated in the new Emergency Department. The second moment of Excellence that was shared with the Board Members was regarding Ms. Zingg, who is the chair of an opioid consortium. Last week Ms. Zingg gave a podcast regarding the topic and has now been invited to travel to Washington D.C. to represent Northern Michigan and share what is being done locally regarding the opioid crisis.	
Board Education Topic: Northern Michigan Substance Abuse Coalition	Ms. Zingg presented an overview of the Northern Michigan Substance Abuse Coalition: its mission, background, membership, efforts and successes. Ms. Zingg then answered questions for the Board Members regarding the topic.	

Kalkaska Memorial Health Center Full Authority Board of Trustees Meeting.....December 05, 2023

Medical Staff Report Change to Medical Staff By-Laws	Mr. Rogols referenced the document that was included in the Board packet pertaining to a change to medical staff by-laws regarding the medical staff application. The Board is required to approve any change to the medical staff by-laws and medical staff application. The requested change is to remove the verbiage pertaining to "mental condition" from the medical staff application and replace with verbiage to identify any and all impairment. It was noted that this change is being made to the medical staff application across the Munson Healthcare system. The medical staff at KMHC has already approved this change to the medical staff application. <u>Motion was made and duly supported to approve the change to the medical staff by-laws pertaining the medical staff application as presented. A roll call vote was taken as follows: George "Bud" Banker, yes; Nelson "Jerry" Cannon, yes; Dale De Korne, yes; Gregory Bradley, yes; Paul Erickson, yes; Eric Hendricks, yes; Dr. R. Troy Stobert, yes; Karl Klimek, yes; Tracy Nichol, yes; Stuart McKinnon, yes; Diana Needham, yes; Melanie Pauch, yes; Robert "Bob" Barr, yes; Kim Stephens, yes; Bruce Zenner, yes. 15 "AYES." 0 NAYS. Motion carried.</u>	
Medical Staff Update	Dr. Holmes reported on the following: • There will be a self-referral mammogram process that will be starting soon.	
Committee Reports • Strategic Planning Committee Meeting 11-06-23 • Executive/Finance Committee Meeting 11-08-23	Mr. Zenner informed the Board that the Committee Reports would be covered under the Board Chair Reports and the CEO Reports.	
Board Chair Report Munson Healthcare Update	Mr. Zenner informed the Board that he would be attending a Munson Healthcare Board Meeting the following day, December 06, 2023, and would provide a Munson Healthcare update at the January Board Meeting.	

Kalkaska Memorial Health Center Full Authority Board of Trustees Meeting.....December 05, 2023

Calendar Year 2024 Board Committee Interest & Assignments	Mr. Zenner thanked the Board Members for submitting their interest regarding their participation on the Board Committees for the 2024 calendar year. Mr. Zenner then provided the Board Members with a list of proposed Board Committee assignments for the 2024 calendar year. These assignments will be voted on by the Full KMHC Board of Trustees at the January 23, 2024, Board Meeting. The Board Members were asked to direct any questions or comments regarding the proposed assignments to Mr. Zenner prior to the January Board of Trustees Meeting.	
CEO Compensation	Mr. Zenner updated the Board on the Executive/Finance Committee's discussion regarding CEO compensation (base salary plus estimated annual incentive) on November 08, 2023. It was noted that in 2021, the decision was made to keep the CEO at the 50th percentile for such compensation. Based on 2023 survey data, the Executive/Finance Committee recommends an increase to the CEO's compensation (base salary and estimated annual incentive) to the 50th percentile: \$396,650. The board was informed that, as in the past, the CEO compensation study was based on comparative FTE's and annual net revenue for hospitals across the mid-west. Discussion ensued regarding the recommendation from the committee. <u>Motion was made and duly supported to increase the CEO's compensation (base salary plus estimated annual incentive) to \$400,000.</u> Discussion ensued regarding the proposed motion. <u>A roll call vote was taken as follows: George "Bud" Banker, yes; Nelson "Jerry" Cannon, yes; Dale De Korne, yes; Gregory Bradley, yes; Paul Erickson, no; Eric Hendricks, no; Dr. R. Troy Stobert, yes; Karl Klimek, yes; Tracy Nichol, yes; Stuart McKinnon, no; Diana Needham, yes; Melanie Pauch, yes; Robert "Bob" Barr, yes; Kim Stephens, yes; Bruce Zenner, yes. 12 "AYES." 3 "NAYS". Motion carried.</u>	

Kalkaska Memorial Health Center Full Authority Board of Trustees Meeting.....December 05, 2023

CEO Report KMHC Org Chart	Mr. Rogols reference the updated organizational chart that was included in the Board Packet for Board Members. It was noted that there had been only one change to the chart, Ms. Babcock retired in September, and Ms. Dilley has joined KMHC as the Vice President of Human Resources. The Board Members also received a copy of the organizational chart at this meeting to update their Board of Trustees manual.	
Not-for-Profit Decision Process Not-for-Profit Decision Process Flowchart	Mr. Rogols began the evening's discussion of the topic of Act 47 versus not-for-profit by reminding the Board Members of the timeframe that had been identified by the Board to educate themselves on the advantages and disadvantages of each structure and what the future would look like if KMHC remained an Act 47 entity or if KMHC became a not-for-profit entity. Mr. Rogols then clarified the decision before the Board of Trustees today. Specifically, the Board's decision at this meeting is to decide whether becoming a not for profit demonstrates enough benefit for leadership to complete, by the May 2024 meeting of the Board of Trustees, due diligence including: • Drafting membership model not-for-profit articles and bylaws. • Negotiation of potential "pay-backs" with each individual township/village. • Drafting ballot language, and • Negotiating an additional one-year extension with MHC. Questions were addressed for Board Members and discussion ensued regarding the proposed flowchart. It was concluded through discussion, that a board sub-committee would not be needed for the due diligence process, as was reflected in the flowchart. If the Board chooses to move forward with due diligence, the Strategic Planning and Executive/Finance Committees could provide monthly updates to the Full Board of Trustees. There was no dissention to this conclusion. All Board Members were reminded that they are able to attend any of the committee meetings as they are open to the public.	

Kalkaska Memorial Health Center Full Authority Board of Trustees Meeting.....December 05, 2023

Act 47 Versus Not-for-Profit Act 47 Decision Matrix	Mr. Rogols then referenced the Act 47 Decision Matrix included in the Board packet and reviewed the results for each category of governance, operations, prior success, resulting in an overall grand total for the Leadership Team. As the matrix clearly reflects, the Leadership Team believes that KMHC and the community is better served by the hospital becoming a not-for-profit entity rather than remaining an Act 47 entity. Additionally, the team believes that a "membership" not-for-profit model demonstrates potential for continued community involvement, oversight and control. Members of the KMHC Senior Leadership Team then shared what they believe are the most significant findings reflected in the decision matrix as follows: Mr. Raymond: • Mr. Raymond has been in healthcare for 16 years. • The business of healthcare is hard and dramatically changing; it is very different than it was in 1945, when Act 47 was enacted. • Being an independent facility is also very difficult, especially as an Act 47 entity which is prohibited from engaging in equity partnerships. • There would be no change to reimbursement for KMHC as a not-for-profit. KMHC would remain a critical access hospital. • KMHC becoming a not-for-profit would impact tax collection; the hospital would have to negotiate with the townships and the village regarding the past five years of levied taxes as well as it would impact the ability to levy future taxes. • As a not-for-profit, KMHC would have the ability to participate in equity joint ventures, philanthropy, and building campaigns. • Becoming a not-for-profit would require refinancing the portion of KMHC's debt that is specifically collateralized by the capital levy. KMHC's remaining revenue bonds may or may not require refinancing depending upon, among other things, how the not-for-profit is structured. • Such debt would be refinanced. Sources of refinancing would look very favorably on KMHC strong balance sheet and cash position. Mr. Conklin: • Mr. Conklin has been in healthcare for almost 20 years. • Mr. Conklin stated that if KMHC is going to become more independent, KMHC will need to provide value as defined as the ability to provide a high quality of service at a cost that is lower than that of competitors.	The due diligence process will begin led by Mr. Rogols and the Senior Leadership Team. The Board Chair will reach out to other hospitals that had transitioned from Act 47 to not-for-profit to get commentary on the pros as well as the cons of the transition and what factors drove their decision.
--	--	---

Kalkaska Memorial Health Center Full Authority Board of Trustees Meeting.....December 05, 2023

- KMHC will also need to continue to expand and improve the services we provide to the community.
- To accomplish this will need to make sure that partners align with goals and objectives.
- As a not-for-profit, KMHC can engage quality partners to expand services, enhance quality/service, and to drive down costs.

Mr. Cannon:

- Mr. Cannon has been in healthcare for 15 years.
- The opportunity for KMHC as a not-for-profit is the ability for the expansion of services, providing access to additional services in a rural area.
- Mr. Cannon described numerous examples of services that could be expanded through partnerships including anesthesiology, gastroenterology, orthopedics, general surgery (robotics), outpatient cardiac catheterization services, and care for higher acuity inpatients (ICU).
- For expanded access to care in the future, joint ventures are going to be necessary.

Ms. Dilley:

- Ms. Dilley has been in healthcare for 21 years in rural communities.
- KMHC has been very thoughtful about the culture within the facility which is a big difference compared to other facilities.
- On the most recent Great Place to Work survey, KMHC had a score of 92%, which is a great score.
- However, KMHC is limited on growth opportunities for employees due to the limited services and new areas to experience.
- The ability to participate in joint ventures would allow KMHC to offer more services and in turn more opportunities for employees and providers to grow in their roles. Growth and opportunities for KMHC staff will increase retention.
- Providers have shared that they are big supporters of the ability for KMHC to do joint ventures.
- Joint ventures also allow KMHC to choose who to partner with, to ensure the partner aligns with the KMHC culture.

Ms. Zingg:

- Ms. Zingg has been in healthcare for 16 years.
- Ms. Zingg believes there is concern that if KMHC were to become a not-for-profit, it would change KMHC's ongoing focus on responding to the needs of the communities we serve. This is not the case; KMHC is

very different than other health care organizations and planning is driven by culture and Leadership. KMHC will not stop listening to the community.

- Ms. Zingg noted that as a not-for-profit, KMHC would be required by the IRS to periodically complete a community health needs assessment. It would be more in-depth than that of an Act 47 (which does not have the requirement). It would also publicly elevate community benefit information focusing specifically on KMHC's service area.
- While not-for-profits are not subject to the open meetings act, not-for-profits are required to file a form 990 as a public document. Among other things, form 990's record financial condition, highest wages, directorships, and contractors of those working in and with the not-for-profit.
- Ms. Zingg concluded that as a not-for-profit, KMHC would have enhanced information to drive the decision making for better partnerships and joint ventures.

Mr. Rogols then recommended that the Board take the next step and authorize KMHC Leadership to start the not-for-profit due diligence process. Board Members were again reminded that information would be brought back to the Board monthly regarding the progress of the due diligence with the outcome of the due diligence process presented to the Full Board in May of 2024. At that time, the Board can make an informed decision regarding remaining an Act 47 entity or transitioning to a not-for-profit entity.

Motion was made and duly supported to move to acknowledge the potential benefits of becoming a not-for-profit and authorizing the leadership to commence in-depth due diligence.

Discussion ensued regarding the proposed motion including:

The Board chairman made a recommendation as part of due diligence to reach out to other hospitals that had transitioned from Act 47 to not-for-profit to get commentary on the pros as well as the cons of the transition and what factors drove their decision. The Board chairman volunteered to complete this part of due diligence.

Extensive discussion ensued among the members regarding the role of the previously created Ad-Hoc committee and the desire by a few members, to obtain an additional legal opinion from a municipal attorney. No conclusion was reached.

Kalkaska Memorial Health Center Full Authority Board of Trustees Meeting.....December 05, 2023

	<u>Motion was made and duly supported to move to acknowledge the potential benefits of becoming a not-for-profit and authorizing the leadership to commence in-depth due diligence. A roll call vote was taken as follows: George "Bud" Banker, yes; Nelson "Jerry" Cannon, yes; Dale De Korne, yes; Gregory Bradley, yes; Paul Erickson, no; Eric Hendricks, no; Dr. R. Troy Stobert, yes; Karl Klimek, yes; Tracy Nichol, yes; Stuart McKinnon, no; Diana Needham, yes; Melanie Pauch, yes; Robert "Bob" Barr, yes; Kim Stephens, yes; Bruce Zenner, yes. 12 "AYES." 3 "NAYS". Motion carried.</u>	
Membership Not-for-Profit versus Directorship Not-for-Profit	This topic was not discussed.	
Recommendations from the Strategic Planning Committee and the Executive/Finance Committee	This topic was not discussed.	
LTC Facility Plan Update	*Deferred to January 2024 Board Agenda.	Ms. Whiting will move this topic to the January 2024 Board Meeting agenda per the request of the Board Chair, Mr. Zenner.
Go Into Closed Session	*No closed session discussion.	
Come Out of Closed Session	*No closed session discussion.	
Credentialing Discussion	*Deferred to January 2024 Board Agenda.	Ms. Whiting will move this topic to the January 2024 Board Meeting agenda per the request of the Board Chair, Mr. Zenner.
Open Dialogue from Members	A Board member requested that the approved motion regarding acknowledging the potential benefits of becoming a not-for-profit and authorizing the leadership to commence in-depth due diligence be sent out to the Board.	Ms. Whiting will send out the verbiage of the approved motion regarding the Act 47 due diligence to all Board Members.
Public Comment	Community Member inquired about the discussion from the October meeting pertaining to the Act 47 versus Not-for-Profit Ad-Hoc Committee. An update	

Kalkaska Memorial Health Center Full Authority Board of Trustees Meeting.....December 05, 2023

	was provided by committee members from the Act 47 versus Not-for-Profit Ad-Hoc Committee. A Board Member requested that notifications be provided to the Board when a new Board Member joins or when a member has stepped down from the Board. Mr. Zenner reported to the Board that the Board Member representing Oliver Township has stepped down and there is now an opening for that township. Mr. Zenner also reported that there are currently three at-large vacancies on the KMHC Board. The KMHC Nominating Committee will be meeting in the near future to work on addressing the at-large vacancies.	
Upcoming Events/Conferences	Next Full Authority Board of Trustees Meeting on January 23, 2024.	
Adjournment	Upon proper motion the meeting was adjourned at 8:23 PM.	

Respectfully submitted,



Chandra S. Whiting
Board Recording Secretary

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

STUART MCKINNON & MICHAEL COX,

Plaintiffs,

File No. _____

Hon. _____

v

KALKASKA COUNTY BOARD OF COMMISSIONERS,
KALKASKA MEMORIAL HEALTH CENTER,
KALKASKA COUNTY HOSPITAL AUTHORITY,
KALKASKA MEMORIAL HEALTH CENTER
BOARD OF TRUSTEES, KEVIN ROGOLS,
NELSON JERRY CANNON, KARL KLIMEK,
TRACY NICHOL, BRUCE ZENNER, and
R. TROY STOBERT,

Defendants.

EXHIBIT 10

To The Complaint

CERTIFICATE OF SERVICE

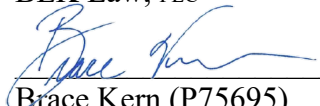
The undersigned hereby certifies that a true and correct copy of the above and foregoing was filed on this 22nd day of April 2024, with the Clerk of the Court via the Court's CM/ECF system for electronic service on all counsel of record.

Respectfully submitted,

BEK Law, PLC

Dated: April 22, 2024

By: _____


Brace Kern (P75695)

Attorney for Plaintiffs

3434 Veterans Drive

Traverse City, MI 49684

(231) 499-5380

Info@BraceKern.com

Whiting, Chandra

Subject: Meeting w/Kevin and Board Leadership
Location: Classroom A

Start: Thu 12/14/2023 11:00 AM
End: Thu 12/14/2023 12:00 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Whiting, Chandra
Required Attendees: Rogols, Kevin; Bruce Zenner; Jerry Cannon; Tracy Nichol

Whiting, Chandra

From: Whiting, Chandra
Sent: Monday, December 11, 2023 8:18 AM
To: kalkaskaso@yahoo.com
Subject: RE: [EXTERNAL] Re: Meeting with Kevin Rogols at KMHC

Importance: High

Good morning Jerry,

This is the meeting that I sent a text about, Bruce and Tracy could not make it on Monday (today). It is scheduled for this Thursday the 14th at 11am in Classroom A. I sent an email and calendar invite on Friday morning for this one.

Please let me know if you have any questions. Thanks!!

Thank you,

Chandra Whiting

Chandra S. Whiting
Executive Assistant

Kalkaska Memorial Health Center
419 S Coral Street
Kalkaska MI 49646
231-258-7502 (phone)
231-258-7527 (fax)
cwhiting3@mhc.net

From: kalkaskaso@yahoo.com <kalkaskaso@yahoo.com>
Sent: Friday, December 8, 2023 3:08 PM
To: Whiting, Chandra <cwhiting3@mhc.net>
Subject: [EXTERNAL] Re: Meeting with Kevin Rogols at KMHC

Monday works for me.

On Dec 6, 2023 15:35, "Whiting, Chandra" <cwhiting3@mhc.net> wrote:

Good afternoon,

Kevin has asked to set up a meeting next week, if possible, with the KMHC Board Leadership. The following dates/times are available to meet:

Monday December 11th 11:00 AM

3:00 PM

Wednesday December 13th 10:00 AM

2:00 PM

Thursday December 14th 11:00 AM

Please let me know if any of these times/dates will work in your schedule to meet or if we need to look for alternative times.

Thank you,

Chandra Whiting

Chandra S. Whiting

Executive Assistant

Kalkaska Memorial Health Center

419 S Coral Street

Kalkaska MI 49646

231-258-7502 (phone)

231-258-7527 (fax)

cwhiting3@mhc.net

Whiting, Chandra

From: Whiting, Chandra
Sent: Friday, December 8, 2023 10:32 AM
To: Bruce Zenner (bazenner@gmail.com); Jerry Cannon (kalkaskaso@yahoo.com); Tracy Nichol (nicholtracy1@hotmail.com)
Subject: RE: Meeting with Kevin Rogols at KMHC
Importance: High

Good morning,

Thank you all for the responses.

We have scheduled the meeting for Board Leadership to meet with Kevin on **Thursday, December 14th at 11:00 AM in Classroom A.**

I have sent everyone a calendar invite also.

Have a great weekend!!

Thank you,

Chandra Whiting

Chandra S. Whiting
Executive Assistant

Kalkaska Memorial Health Center
419 S Coral Street
Kalkaska MI 49646
231-258-7502 (phone)
231-258-7527 (fax)
cwhiting3@mhc.net

From: Whiting, Chandra
Sent: Thursday, December 7, 2023 1:44 PM
To: Bruce Zenner (bazenner@gmail.com) <bazenner@gmail.com>; Jerry Cannon (kalkaskaso@yahoo.com) <kalkaskaso@yahoo.com>; Tracy Nichol (nicholtracy1@hotmail.com) <nicholtracy1@hotmail.com>
Subject: RE: Meeting with Kevin Rogols at KMHC
Importance: High

Good afternoon,

Touching base regarding my email from yesterday. Hoping to set up the meeting for next week with Board Leadership and Kevin.

The following dates/times are still available:

Monday December 11th 11:00 AM
3:00 PM

Wednesday December 13th 10:00 AM
2:00 PM

Thursday December 14th 11:00 AM

Please let me know which of these times may work in your schedules for the meeting here at KMHC.

Thank you,

Chandra Whiting

Chandra S. Whiting
Executive Assistant

Kalkaska Memorial Health Center
419 S Coral Street
Kalkaska MI 49646
231-258-7502 (phone)
231-258-7527 (fax)
cwhiting3@mhc.net

From: Whiting, Chandra
Sent: Wednesday, December 6, 2023 3:35 PM
To: Bruce Zenner (bazenner@gmail.com) <bazenner@gmail.com>; Jerry Cannon (kalkaskaso@yahoo.com) <kalkaskaso@yahoo.com>; Tracy Nichol (nicholtracy1@hotmail.com) <nicholtracy1@hotmail.com>
Subject: Meeting with Kevin Rogols at KMHC
Importance: High

Good afternoon,

Kevin has asked to set up a meeting next week, if possible, with the KMHC Board Leadership. The following dates/times are available to meet:

Monday December 11th 11:00 AM
3:00 PM

Wednesday December 13th 10:00 AM
2:00 PM

Thursday December 14th 11:00 AM

Please let me know if any of these times/dates will work in your schedule to meet or if we need to look for alternative times.

Thank you,

Chandra Whiting

Chandra S. Whiting
Executive Assistant

Kalkaska Memorial Health Center
419 S Coral Street
Kalkaska MI 49646
231-258-7502 (phone)
231-258-7527 (fax)
cwhiting3@mhc.net

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

STUART MCKINNON & MICHAEL COX,

Plaintiffs,

File No. _____

Hon. _____

v

KALKASKA COUNTY BOARD OF COMMISSIONERS,
KALKASKA MEMORIAL HEALTH CENTER,
KALKASKA COUNTY HOSPITAL AUTHORITY,
KALKASKA MEMORIAL HEALTH CENTER
BOARD OF TRUSTEES, KEVIN ROGOLS,
NELSON JERRY CANNON, KARL KLIMEK,
TRACY NICHOL, BRUCE ZENNER, and
R. TROY STOBERT,

Defendants.

EXHIBIT 11

To The Complaint

CERTIFICATE OF SERVICE

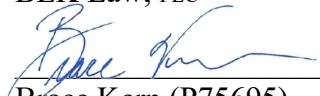
The undersigned hereby certifies that a true and correct copy of the above and foregoing was filed on this 22nd day of April 2024, with the Clerk of the Court via the Court's CM/ECF system for electronic service on all counsel of record.

Respectfully submitted,

BEK Law, PLC

Dated: April 22, 2024

By: _____


Brace Kern (P75695)

Attorney for Plaintiffs

3434 Veterans Drive

Traverse City, MI 49684

(231) 499-5380

Info@BraceKern.com



KALKASKA MEMORIAL HEALTH CENTER

Partnering with MUNSON HEALTHCARE

Kalkaska Memorial Health Center
419 S. Coral Street
Kalkaska, MI 49646

January 18, 2024

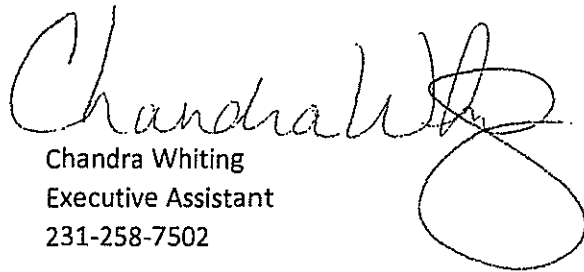
Kalkaska County
Deborah Hill
605 N Birch St
Kalkaska, MI 49646

Re: Freedom of Information Act Request,

Per the Freedom of Information Act, I am requesting the video and audio of the meeting that took place on October 09, 2023, at approximately 4:00 PM at the County Commissioners Room that included Michael Cox, Stuart McKinnon, Paul Erickson, and Eric Hendricks. I do know that there are both video and audio recordings of this meeting as this was previously requested and obtained by Mr. Jerry Cannon.

Thank you for your assistance with this Freedom of Information Act Request.

Sincerely,


Chandra Whiting
Executive Assistant
231-258-7502

FILED
KALKASKA COUNTY CLERK

JAN 18 2024

Deborah Hill

From: Deborah Hill
Sent: Thursday, January 18, 2024 4:05 PM
To: 'cwhiting3@mhc.net'
Cc: Sherri Sanders
Subject: FOIA Request dated 1-18-2024

Good afternoon Chandra:

Regarding your FOIA request dated 1-18-2024, for the audio and video recording on a meeting that occurred in the Board of Commissioner Chambers on 10-9-2023, please be advised that as there was no notice to the participants to the conversation that they would be audio recorded. Any such audio recording would be exempt from disclosure under FOIA as a clearly unwarranted invasion of an individual's privacy. MCL 15.243(1)(a).

With that said, I can request IT to make a copy of the video as a partial response to your FOIA.
I myself do not have access to the security cameras.

There is a \$10.00 charge for the data on a flash drive, I do not believe there would be any additional labor charges from the IT Company for the service.

This will also be a duplicate of what Jerry Canon was provided.

Please confirm that you still request the USB with the video only.

Thank you,

Deb Hill

Deborah Hill
Kalkaska County Clerk
605 N Birch Street
Kalkaska, MI 49646

231-258-3349
dhill@kalkaskacourt.org

Please note that this email message and any attachments may contain privileged or confidential information that is protected against use or disclosure under federal and state law. Any transmission to persons other than the intended recipient shall not constitute a waiver of any applicable privileges. Any unauthorized use, disclosure, copying or dissemination is strictly prohibited. If you have received this in error, please advise by immediate reply.

Deborah Hill

From: Richard M. Wilson <RWilson@mikameyers.com>
Sent: Friday, January 19, 2024 1:10 PM
To: Deborah Hill
Cc: Dominic T. Clolinger; Rogols, Kevin (krogols@mhc.net); Chandra S. Whiting (cwhiting3@mhc.net)
Subject: Kalkaska Memorial Health Center FOIA request

Good afternoon Ms. Hill,

We represent the Kalkaska Memorial Health Center and are in receipt of a copy of your email yesterday to Chandra Whiting denying KMHC's FOIA request for a copy of an audio recording of a meeting held by four KMHC Board members that occurred at the County building in October of 2023. While we do not agree at all that this recording is exempt from disclosure under FOIA under the exception you cited in your email, or any other exception, we do not intend to pursue the request further at this time but reserve the right to renew the request at a later date.

However, please be advised that the original audio and video recordings of the October 2023 meeting in question are potentially evidence in a criminal and/or civil proceeding and therefore we request that you do not destroy this evidence or tamper with it any way. Thank you.

Richard

Richard M. Wilson, Jr.
Member

Mika  Meyers

Mika Meyers PLC
414 Water Street
PO Box 537
Manistee, MI 49660
Tel: 231-723-8333
Fax: 231-723-3888
mikameyers.com

E-mail: rwilson@mikameyers.com

This message is for the addressee only. It may be confidential, and may include communications protected by the attorney-client privilege, attorney work product protected from discovery in litigation, and/or insider information regarding business transactions. Unauthorized use, disclosure or copying is prohibited, and may be unlawful. If you have received this message in error, please call the sender at (231) 723-8333 and delete the message from your system.

Deborah Hill

From: Deborah Hill
Sent: Monday, January 22, 2024 11:01 AM
To: 'cwhiting3@mhc.net'
Cc: Sherri Sanders
Subject: RE: FOIA Request dated 1-18-2024

Importance: High

Hi Chandra:

Please be advised that I do have the flash drive with the Video that you have requested for the above FOIA. The \$10.00 is the only charge given that the IT employee is not aware of any additional fees at this time.

We are open from 8 AM to 5 PM each day, Monday thru Friday.

Thank you,

Deb Hill

Deborah Hill
Kalkaska County Clerk
605 N Birch Street
Kalkaska, MI 49646

231-258-3349
dhill@kalkaskacourt.org

Please note that this email message and any attachments may contain privileged or confidential information that is protected against use or disclosure under federal and state law. Any transmission to persons other than the intended recipient shall not constitute a waiver of any applicable privileges. Any unauthorized use, disclosure, copying or dissemination is strictly prohibited. If you have received this in error, please advise by immediate reply.

From: Deborah Hill
Sent: Thursday, January 18, 2024 4:05 PM
To: 'cwhiting3@mhc.net' <cwhiting3@mhc.net>
Cc: Sherri Sanders <ssanders@kalkaskacounty.org>
Subject: FOIA Request dated 1-18-2024

Good afternoon Chandra:

Regarding your FOIA request dated 1-18-2024, for the audio and video recording on a meeting that occurred in the Board of Commissioner Chambers on 10-9-2023, please be advised that as there was no notice to the participants to the conversation that they would be audio recorded. Any such audio recording would be exempt from disclosure under FOIA as a clearly unwarranted invasion of an individual's privacy. MCL 15.243(1)(a).

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Thank you,

Deb Hill

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Kalkaska, MI 49646

231-258-3349

dhill@kalkaskacourt.org

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

STUART MCKINNON & MICHAEL COX,

Plaintiffs,

File No. _____

Hon. _____

v

KALKASKA COUNTY BOARD OF COMMISSIONERS,
KALKASKA MEMORIAL HEALTH CENTER,
KALKASKA COUNTY HOSPITAL AUTHORITY,
KALKASKA MEMORIAL HEALTH CENTER
BOARD OF TRUSTEES, KEVIN ROGOLS,
NELSON JERRY CANNON, KARL KLIMEK,
TRACY NICHOL, BRUCE ZENNER, and
R. TROY STOBERT,

Defendants.

EXHIBIT 12

To The Complaint

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing was filed on this 22nd day of April 2024, with the Clerk of the Court via the Court's CM/ECF system for electronic service on all counsel of record.

Respectfully submitted,

BEK Law, PLC

By: _____

Brace Kern (P75695)

Attorney for Plaintiffs

3434 Veterans Drive

Traverse City, MI 49684

(231) 499-5380

Info@BraceKern.com

Dated: April 22, 2024

MIKA MEYERS PLC

Kalkaska Memorial Health Center
Client No. 45430-64885

February 23, 2024

Invoice No. 699056

Re: Potential OMA Violation

Professional Fees

Date	Description
1/17/24	Call K. Rogols; [REDACTED]
1/17/24	Telephone conference with D. Clolinger; review and revise [REDACTED] [REDACTED]
1/18/24	Continue researching Open Meetings Act issues [REDACTED] [REDACTED]
1/18/24	Telephone conference with K. Rogols and D. Clolinger; telephone conference with D. Clolinger
1/18/24	Emails with D. Clolinger [REDACTED] [REDACTED]
1/19/24	Review surveillance footage; attend meeting with K. Rogols; [REDACTED] begin revising memorandum
1/19/24	Review and respond to emails from K. Rogols [REDACTED]
1/19/24	Prepare draft email to D. Hill; email with K. Rogols; email to D. Hill
1/19/24	TEAMS call with K. Klimek, K. Rogols, C. Whiting, and D. Clolinger; begin review of audio/video of October 2023 meeting; email to K. Rogols
1/22/24	Review materials and draft memorandum [REDACTED]
1/22/24	Continued review of video of meeting; telephone conference with D. Clolinger; email to K. Rogols; review email from K. Klimick [REDACTED]
1/22/24	Review updated memo [REDACTED] TEAMS call with K. Klimik, B. Zenner, K. Rogols, J. Cannon, T. Nichols, D. Clolinger, and C. Whiting
1/23/24	Attend Board meeting to present issue to Board in closed session
1/23/24	Prepare for Board meeting; review Bylaws; email to K. Klimik; attend Board meeting via Zoom; post- mortem with D. Clolinger
1/24/24	Review and respond to email from K. Klimik

Total Professional Fees

\$ 9,540.00

Total Current Invoice

\$ 9,540.00

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

STUART MCKINNON & MICHAEL COX,

Plaintiffs,

File No. _____

Hon. _____

v

KALKASKA COUNTY BOARD OF COMMISSIONERS,
KALKASKA MEMORIAL HEALTH CENTER,
KALKASKA COUNTY HOSPITAL AUTHORITY,
KALKASKA MEMORIAL HEALTH CENTER
BOARD OF TRUSTEES, KEVIN ROGOLS,
NELSON JERRY CANNON, KARL KLIMEK,
TRACY NICHOL, BRUCE ZENNER, and
R. TROY STOBERT,

Defendants.

EXHIBIT 13

To The Complaint

CERTIFICATE OF SERVICE

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Respectfully submitted,

BEK Law, PLC

By: _____

Brace Kern (P75695)

Attorney for Plaintiffs

3434 Veterans Drive

Traverse City, MI 49684

(231) 499-5380

Info@BraceKern.com

Dated: April 22, 2024



KALKASKA MEMORIAL HEALTH CENTER

Partnering with MUNSON HEALTHCARE

Kalkaska Memorial Health Center Board of Trustees Meeting **NEW Acute Care Pavilion Education Rooms 1 & 2** **(2nd Floor of Acute Care Pavilion-Enter at the Green Canopy Entrance)**

Tuesday, 1/23/2024
6:00 - 8:00 PM ET

- 1. CALL TO ORDER** Presented By: Mr. Zenner **(6:00 PM)**
- 2. PLEDGE OF ALLEGIANCE** Presented By: Mr. Zenner **(6:01 PM)** **Action Item**
- 3. CONFLICT OF INTEREST ROLL CALL** Presented By: Mr. Zenner **(6:02 PM)** **Action Item**
- 4. CONSENT AGENDA** Presented By: Mr. Zenner **(6:05 PM)** **Action Item**
 - a. BOARD MEETING MINUTES - December 05, 2023
Board Meeting Minutes 12 05 23 - v2 - Page 5
 - b. ACT 47 VERSUS NOT-FOR-PROFIT AD-HOC COMMITTEE MEETING MINUTES
11 01 23 - Approved Act 47 Not for Profit ad-Hoc Committee Mtg Minutes - Page 15
 - c. STRATEGIC PLANNING COMMITTEE MEETING MINUTES
11 06 23 - Approved Strategic Planning Committee Mtg Minutes - Page 18
 - d. FINANCIAL STATEMENTS & GRAPHS (November and December)
KHC_FS 1123 - Page 22
Financial Statement Graphs - November 2023 - Page 29
KHC_FS 1223 - Page 32
Copy of Financial Statement Graphs - December 2023 - Page 39
 - e. PERFORMANCE SCORECARD (November and December)
2024-5 Scorecard - Page 42
2024-6 Scorecard - Page 45
 - f. KMHC EMPLOYEE NEWS
KMHC Employee Newsletter 12.1.23 - Page 48
KMHC Employee Newsletter 12.15.23 - Page 52
KMHC Employee Newsletter 12.29.23 - Page 55
KMHC Employee Newsletter 1.12.24 - Page 58
- 5. PUBLIC COMMENT REGARDING AGENDA TOPICS (3 minutes each)** **(6:07 PM)**
- 6. MOMENTS OF EXCELLENCE** **(6:12 PM)**
 - a. "WALK IN THEIR SHOES" VIDEO Presented By: Mr. Rogols **Informational**
- 7. GO INTO CLOSED SESSION TO CONSULT WITH LEGAL COUNSEL REGARDING POTENTIAL LITIGATION** Presented By: Mr. Zenner **(6:20)** **Action Item**
Michigan Open Meetings Act - Act 267 of 1976 - 15.268(h). To consider material exempt from discussion or disclosure by state or federal statute.
- 8. COME OUT OF CLOSED SESSION** Presented By: Mr. Zenner **(6:40 PM)** **Action Item**



Partnering with MUNSON HEALTHCARE

Kalkaska Memorial Health Center Board of Trustees Meeting-Closed Session

Acute Care Pavilion Education Rooms 1 & 2

Tuesday, 1/23/2024

6:20 - 6:40 PM ET

- 1. CALL TO ORDER** Presented By: Mr. Zenner (6:20 PM) Action Item
Going into "Closed Session" related to the following:

Michigan Open Meetings Act - Act 267 of 1976 - 15.268 (h). To consider material exempt from discussion or disclosure by state or federal statute.

- 2. DISCUSSION WITH COUNSEL REGARDING POTENTIAL LITIGATION** Presented By: Mr. Zenner/Mr. Clolinger/Mr. Wilson (6:22 PM) Discuss
- 3. LEAVE CLOSED SESSION** Presented By: Mr. Zenner (6:40 PM) Action Item

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

STUART MCKINNON & MICHAEL COX,

Plaintiffs,

File No. _____

Hon. _____

v

KALKASKA COUNTY BOARD OF COMMISSIONERS,
KALKASKA MEMORIAL HEALTH CENTER,
KALKASKA COUNTY HOSPITAL AUTHORITY,
KALKASKA MEMORIAL HEALTH CENTER
BOARD OF TRUSTEES, KEVIN ROGOLS,
NELSON JERRY CANNON, KARL KLIMEK,
TRACY NICHOL, BRUCE ZENNER, and
R. TROY STOBERT,

Defendants.

EXHIBIT 14

To The Complaint

CERTIFICATE OF SERVICE

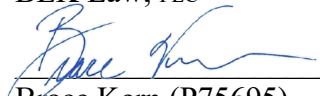
The undersigned hereby certifies that a true and correct copy of the above and foregoing was filed on this 22nd day of April 2024, with the Clerk of the Court via the Court's CM/ECF system for electronic service on all counsel of record.

Respectfully submitted,

BEK Law, PLC

Dated: April 22, 2024

By: _____


Brace Kern (P75695)

Attorney for Plaintiffs

3434 Veterans Drive

Traverse City, MI 49684

(231) 499-5380

Info@BraceKern.com

8. CEO Report

- a. Any action requested by the CEO that impacts KMHC to a magnitude greater than \$100,000 annually will be made through a roll call vote.
- b. Any action requested by the CEO that impacts KMHC to a magnitude less than \$100,000 annually will be made through a group vote.

9. Medical Staff Report

- a. The KMHC Chief of Staff will provide the Board with an overview of medical staff and Chief Medical Officer activities over the past month.
- b. Any action requested by the Chief of Staff that impacts KMHC to a magnitude greater than \$100,000 annually will be made through a roll call vote.
- c. Any action requested by the Chief of Staff that impacts KMHC to a magnitude less than \$100,000 annually will be made through a group vote.

10. Closed Session

- a. The Open Meetings Act requires a roll call vote to go into Closed Session. The following categories requires 2/3 approval of the entire Board to go into Closed Session:
 - i. Considering the purchase or lease of real property.
 - 1. *"To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained."*
 - ii. Consulting with the public body's attorney
 - 1. *"To consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, but only if an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body."*
 - 2. *"To consider material exempt from discussion or disclosure by state or federal statute. [note, this exception permits a board to go into closed session to discuss a written legal opinion from their attorney, but not if the opinion is verbal/not written.]"*
 - iii. Considering an employment application
 - 1. *"To review and consider the contents of an application for employment or appointment to a public office if the candidate requests that the application remain confidential. However, except as otherwise provided in this subdivision, all interviews by a public body for employment or appointment to a public office shall be held in an open meeting pursuant to this act. This subdivision does not apply to a public office described in subdivision (j)."*
 - iv. Considering material exempt from disclosure under state or federal statute.
- b. Going into closed session for other purposes requires a roll call vote that passes by simple majority; such as for:
 - i. Considering personnel evaluation information
 - 1. *"To consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, if the named person requests a closed hearing. A person requesting a closed hearing may rescind the*

request at any time, in which case the matter at issue shall be considered after the rescission only in open sessions."

- ii. For collective Bargaining
 - 1. *"For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement if either negotiating party requests a closed hearing."*
- c. Closed Session Minutes
 - i. A separate set of minutes will be taken for closed sessions. While closed session minutes must be approved in an open meeting (with contents of the minutes kept confidential), the board may meet in closed session to consider approving the minutes.
 - ii. Closed session minutes shall only be disclosed if required by a civil action filed under the Open Meetings Act. While the board secretary may furnish the minutes of a closed session to a board member, KMHC will make closed session minutes available for review by a Board member in the KMHC administrative offices. Such a practice assures that closed session minutes are not accidentally reviewed by non-board members, which would thus make closed session minutes discoverable.
 - iii. Closed session minutes may be destroyed one year and one day after approval of the minutes of the regular meeting at which the closed session occurred.
- d. Credentialing/privileging materials are privileged and exempt from disclosure under the State Peer Review Statute, and the Peer Review Statute cannot be waived by the Hospital. The only way to comply with the state Peer Review Statute is to consider credentialing/privileging materials in closed session. As such, the Board will always go into closed session to review and take action on any Medical Staff Credentialing activity unless an applicant specifically requests open session review. The individuals being credentialed do not have to request closed session.
 - i. Pertaining to credentialing, the agenda and minutes will cite: *"To consider credentialing and peer review information exempt from discussion or disclosure as reflected in the Michigan Health Code, Act 368 of 1978, Section 333.21515: Confidentiality of records, data and knowledge."*
 - ii. In the rare event that an individual requests their credentials be reviewed/discussed in open session, KMHC will:
 - 1. Inform the individual that his/her request will result in the waiver of statutory protection from discovery.
 - 2. KMHC will then comply with the request.
- e. For all other circumstances requiring closed session, the agenda and minutes will cite one or more of the permissible purposes listed above. An example of a motion to go into closed session is:
 - i. "I move that the Board meet in closed session under section 8(e) of the Open Meetings Act to consult with our attorney regarding trial or settlement strategy in connection with [the name of the specific lawsuit]."

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

STUART MCKINNON & MICHAEL COX,

Plaintiffs,

File No. _____

Hon. _____

v

KALKASKA COUNTY BOARD OF COMMISSIONERS,
KALKASKA MEMORIAL HEALTH CENTER,
KALKASKA COUNTY HOSPITAL AUTHORITY,
KALKASKA MEMORIAL HEALTH CENTER
BOARD OF TRUSTEES, KEVIN ROGOLS,
NELSON JERRY CANNON, KARL KLIMEK,
TRACY NICHOL, BRUCE ZENNER, and
R. TROY STOBERT,

Defendants.

EXHIBIT 15

To The Complaint

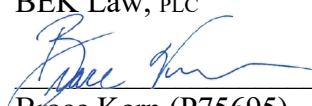
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing was filed on this 22nd day of April 2024, with the Clerk of the Court via the Court's CM/ECF system for electronic service on all counsel of record.

Respectfully submitted,

BEK Law, PLC

By: _____


Brace Kern (P75695)
Attorney for Plaintiffs
3434 Veterans Drive
Traverse City, MI 49684
(231) 499-5380
Info@BraceKern.com

Dated: April 22, 2024

Rogols, Kevin

From: Rogols, Kevin
Sent: Friday, February 9, 2024 5:12 PM
To: Karl Klimek; R. Troy Stobert; Tracy Nichol; Jerry Cannon
Cc: Richard Wilson
Subject: Re: [EXTERNAL] Re: Oliver Township

Hi everyone, the tape is being transcribed. FYI

K

Get [Outlook for iOS](#)

From: Karl Klimek <karlklimek@mac.com>
Sent: Friday, February 9, 2024 5:04:08 PM
To: R. Troy Stobert <troy.stobert@gmail.com>; Tracy Nichol <nicholtracy1@hotmail.com>; Jerry Cannon <kalkaskaso@yahoo.com>
Cc: Rogols, Kevin <krogols@mhc.net>; Richard Wilson <rwilson@mikameyers.com>
Subject: [EXTERNAL] Re: Oliver Township

All...A Friday evening wrap-up!

Please know that after extensive discussion with Kevin and our attorneys, we agreed that we will not have representation from either the KMHC administration or the Board of Trustees at this requested meeting.

Thanks for giving this your attention. Enjoy your weekend.

Karl

On Feb 8, 2024, at 8:04 PM, R. Troy Stobert <troy.stobert@gmail.com> wrote:

While I think it is important to be transparent and openly communicate with the townships, I would need to know more about this meeting prior to making any recommendation for attendance. This sounds quite threatening. Did they give any indication as to what they would like to discuss? Is civil discussion an option? Have representatives from Oliver Township attended one of the town hall meetings at the hospital?

Karl, I think in the final sentence of your first paragraph you would NOT want to respond to anything having to do with potential litigation items. Am I correct about that?

I have very little experience interacting with local government entities. I hope this is not the "norm".

R. Troy

On 2/8/2024 3:59 PM, Karl Klimek wrote:

Kevin,

Thank you for the information and heads-up. It is unfortunate that the escalation in Oliver Twp. has risen in this manner. Certainly, we will need the opinion of Mr. Wilson, and perhaps a strategy discussion on what, if anything the Board officers could do. For instance, if there would be any value in me being present, I would consider that. I would be less of an igniter than you, given your role and the much longer history you have with Mike Cox. And obviously, would respond to anything having to do with the potential litigation items.

So the main question is, should we have someone there, or leave it alone? IF we opt to have a presence, I'm sure we could get support from the Sheriff...which I would request.

Jerry, Tracy and Troy...Please weigh-in if you wish.

Still thinking.....

Karl

On Feb 8, 2024, at 3:26 PM, Rogols, Kevin <krogols@mhc.net> wrote:

Karl,

Please be advised that I have received a request (via e-mail) to attend the next Oliver Township Trustee meeting on February 13, 2024. Oliver Township's hospital board appointee was Mike Cox and is now his wife Janet Cox.

The e-mail also strongly recommends that I bring a law officer with me for "tensions are high and the hospital is a hot topic."

I obviously will not attend.

K

Karl

Karl Klimek
231.590.8855
Board Authority Trustee
Kalkaska Memorial Health Center

Karl

Karl Klimek
231.590.8855

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

STUART MCKINNON & MICHAEL COX,

Plaintiffs,

File No. _____

Hon. _____

v

KALKASKA COUNTY BOARD OF COMMISSIONERS,
KALKASKA MEMORIAL HEALTH CENTER,
KALKASKA COUNTY HOSPITAL AUTHORITY,
KALKASKA MEMORIAL HEALTH CENTER
BOARD OF TRUSTEES, KEVIN ROGOLS,
NELSON JERRY CANNON, KARL KLIMEK,
TRACY NICHOL, BRUCE ZENNER, and
R. TROY STOBERT,

Defendants.

EXHIBIT 16

To The Complaint

CERTIFICATE OF SERVICE

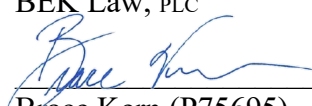
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Respectfully submitted,

BEK Law, PLC

Dated: April 22, 2024

By: _____


Brace Kern (P75695)

Attorney for Plaintiffs

3434 Veterans Drive

Traverse City, MI 49684

(231) 499-5380

Info@BraceKern.com

Whiting, Chandra

Subject: Meeting w/Board Leadership (Karl, Tracy, Jerry, Dr. Stobert) and Kevin
Location: Kevin's Office - Administration

Start: Wed 2/14/2024 12:00 PM
End: Wed 2/14/2024 1:00 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Whiting, Chandra
Required Attendees: Rogols, Kevin; Karl Klimek; Jerry Cannon; Troy Stobert; Tracy Nichol

Whiting, Chandra

From: Whiting, Chandra
Sent: Friday, February 9, 2024 5:07 PM
To: Karl Klimek (karlklimek@mac.com); Jerry Cannon (kalkaskaso@yahoo.com); Tracy Nichol (nicholtracy1@hotmail.com); troy.stobert@gmail.com
Subject: RE: Meeting w/Kevin (KMHC)
Importance: High

Good afternoon,

Thank you all for your **amazing flexibility** and responses over the last few days to get this meeting set up before the next Board Meeting !! It is greatly appreciated!!

The KMHC Board Leadership will be meeting with Kevin on **Wednesday, February 14, 2024, at 12:00 PM in Kevin's Office in Administration.**

His office is located just past Classrooms A & B at the end of the hall, please ring the doorbell.

Have a great weekend!!

Thank you,

Chandra Whiting

Chandra S. Whiting
Executive Assistant

Kalkaska Memorial Health Center
419 S Coral Street
Kalkaska MI 49646
231-258-7502 (phone)
231-258-7527 (fax)
cwhiting3@mhc.net

From: Whiting, Chandra
Sent: Thursday, February 8, 2024 11:20 AM
To: Karl Klimek (karlklimek@mac.com) <karlklimek@mac.com>; Jerry Cannon (kalkaskaso@yahoo.com) <kalkaskaso@yahoo.com>; Tracy Nichol (nicholtracy1@hotmail.com) <nicholtracy1@hotmail.com>; troy.stobert@gmail.com
Subject: Meeting w/Kevin (KMHC)
Importance: High

Good morning,

Kevin would like to set up a meeting with the Board Leadership toward the end of next week. There is availability on the following dates/times:

Wednesday February 14th 10:00 AM

Thursday February 15th 3:00 PM

Friday February 16th 1:00 PM
2:00 PM

Please let me know which of these dates/times may work in your schedule to meet next week or if we need to look at alternatives.

Thank you,

Chandra Whiting

Chandra S. Whiting
Executive Assistant

Kalkaska Memorial Health Center
419 S Coral Street
Kalkaska MI 49646
231-258-7502 (phone)
231-258-7527 (fax)
cwhiting3@mhc.net

Whiting, Chandra

From: Whiting, Chandra
Sent: Thursday, February 8, 2024 6:04 PM
To: Tracy Nichol; Karl Klimek
Cc: Jerry Cannon (kalkaskaso@yahoo.com); troy.stobert@gmail.com
Subject: RE: Meeting w/Kevin (KMHC)

Thank you for the responses. I am just waiting to hear from one more person.

Thank you,

Chandra Whiting

Chandra S. Whiting
Executive Assistant

Kalkaska Memorial Health Center
419 S Coral Street
Kalkaska MI 49646
231-258-7502 (phone)
231-258-7527 (fax)
cwhiting3@mhc.net

From: Tracy Nichol <nicholtracy1@hotmail.com>
Sent: Thursday, February 8, 2024 4:55 PM
To: Karl Klimek <karlklimek@mac.com>; Whiting, Chandra <cwhiting3@mhc.net>
Cc: Jerry Cannon (kalkaskaso@yahoo.com) <kalkaskaso@yahoo.com>; troy.stobert@gmail.com
Subject: [EXTERNAL] Re: Meeting w/Kevin (KMHC)

Hi,
The 14th or 16th works for me, I am out of town on the 15th after 12:30 pm, but could be there in the morning.

Tracy

From: Karl Klimek <karlklimek@mac.com>
Sent: Thursday, February 8, 2024 12:02 PM
To: Whiting, Chandra <cwhiting3@mhc.net>
Cc: Jerry Cannon (kalkaskaso@yahoo.com) <kalkaskaso@yahoo.com>; Tracy Nichol (nicholtracy1@hotmail.com) <nicholtracy1@hotmail.com>; troy.stobert@gmail.com <troy.stobert@gmail.com>
Subject: Re: Meeting w/Kevin (KMHC)

14th or 16th is best for me. 15th already has a few KMHC meetings for me. 🤖

Karl

Karl Klimek
231-590-8855

On Feb 8, 2024, at 11:20 AM, Whiting, Chandra <cwhiting3@mhc.net> wrote:

Good morning,

Kevin would like to set up a meeting with the Board Leadership toward the end of next week. There is availability on the following dates/times:

Wednesday February 14th 10:00 AM

Thursday February 15th 3:00 PM

Friday February 16th 1:00 PM

2:00 PM

Please let me know which of these dates/times may work in your schedule to meet next week or if we need to look at alternatives.

Thank you,

Chandra Whiting

Chandra S. Whiting

Executive Assistant

Kalkaska Memorial Health Center

419 S Coral Street

Kalkaska MI 49646

231-258-7502 (phone)

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

STUART MCKINNON & MICHAEL COX,

Plaintiffs,

File No. _____

Hon. _____

v

KALKASKA COUNTY BOARD OF COMMISSIONERS,
KALKASKA MEMORIAL HEALTH CENTER,
KALKASKA COUNTY HOSPITAL AUTHORITY,
KALKASKA MEMORIAL HEALTH CENTER
BOARD OF TRUSTEES, KEVIN ROGOLS,
NELSON JERRY CANNON, KARL KLIMEK,
TRACY NICHOL, BRUCE ZENNER, and
R. TROY STOBERT,

Defendants.

EXHIBIT 17

To The Complaint

CERTIFICATE OF SERVICE

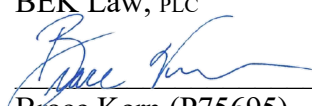
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Respectfully submitted,

BEK Law, PLC

Dated: April 22, 2024

By: _____


Brace Kern (P75695)

Attorney for Plaintiffs

3434 Veterans Drive

Traverse City, MI 49684

(231) 499-5380

Info@BraceKern.com



Partnering with MUNSON HEALTHCARE

Kalkaska Memorial Health Center Board of Trustees Meeting
Acute Care Pavilion Education Rooms 1 & 2
(2nd Floor of Acute Care Pavilion-Use GREEN Canopy Entrance)
Tuesday, 2/20/2024
6:00 - 9:00 PM ET

1. CALL TO ORDER Presented By: Mr. Klimek **(6:00 PM)**

2. PLEDGE OF ALLEGIANCE Presented By: Mr. Klimek **(6:01 PM)** **Action Item**

3. CONFLICT OF INTEREST ROLL CALL Presented By: Mr. Klimek **(6:02 PM)** **Action Item**

4. CONSENT AGENDA Presented By: Mr. Klimek **(6:05 PM)** **Action Item**

a. BOARD MEETING MINUTES - January 23, 2024

Board Meeting Minutes 01 23 24 - v2 - Page 5

b. NOMINATING COMMITTEE MEETING MINUTES

Final Signed - Nominating Comm Min - 03 12 20 - Page 16

c. FINANCIAL STATEMENTS & GRAPHS (January)

KHC_FS 0124 - Page 17

Copy of Financial Statement Graphs - January 2024 - Page 24

d. PERFORMANCE SCORECARD (January)

2024-7 Scorecard - Page 27

e. KMHC EMPLOYEE NEWS

KMHC Employee Newsletter 1.26.24 - Page 30

KMHC Employee Newsletter 2.9.24 - Page 31

5. PUBLIC COMMENT REGARDING AGENDA TOPICS (3 minutes each) (6:07 PM)

6. MOMENTS OF EXCELLENCE (6:13 PM)

a. RECOGNITION Presented By: Mr. Klimek **Informational**

b. CORNEA TRANSPLANT Presented By: Mr. Cannon **Informational**

7. GO INTO CLOSED SESSION TO CONSULT WITH LEGAL COUNSEL REGARDING POTENTIAL LITIGATION Presented By: Mr. Klimek **(6:25 PM)** **Action Item**

Michigan Open Meetings Act - Act 267 of 1976 - 15.268(h). To consider material exempt from discussion or disclosure by state or federal statute.

8. COME OUT OF CLOSED SESSION Presented By: Mr. Klimek **(7:00 PM)** **Action Item**

9. COMMITTEE APPOINTMENTS - DISCUSSION AND APPOINTMENT BY BOARD CHAIR Presented By: Mr. Klimek **(7:05 PM)**

*Motion was made at the January Annual Meeting to defer this topic until the February meeting due to the election of the new Board Chair.

2024 Committee Recommendations - Karl Klimek 02 16 24 - Page 36

a. Executive/Finance Committee **Action Item**



Kalkaska Memorial Health Center Board of Trustees Meeting-Closed Session

Acute Care Pavilion Education Rooms 1 & 2

Tuesday, 2/20/2024

6:25 - 7:00 PM ET

- 1. CALL TO ORDER** Presented By: Mr. Klimek (6:25 PM) Action Item
Going into "Closed Session" related to the following:

Michigan Open Meetings Act - Act 267 of 1976 - 15.268 (h). To consider material exempt from discussion or disclosure by state or federal statute.

- 2. CLOSED SESSION MEETING MINUTES - January 23, 2024** Action Item

- 3. DISCUSSION WITH COUNSEL REGARDING POTENTIAL LITIGATION** Presented By: Mr. Klimek/Mr. Clolinger/Mr. Wilson (6:27 PM) Discuss

- 4. LEAVE CLOSED SESSION** Presented By: Mr. Klimek (6:50 PM) Action Item

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

STUART MCKINNON & MICHAEL COX,

Plaintiffs,

File No. _____

Hon. _____

v

KALKASKA COUNTY BOARD OF COMMISSIONERS,
KALKASKA MEMORIAL HEALTH CENTER,
KALKASKA COUNTY HOSPITAL AUTHORITY,
KALKASKA MEMORIAL HEALTH CENTER
BOARD OF TRUSTEES, KEVIN ROGOLS,
NELSON JERRY CANNON, KARL KLIMEK,
TRACY NICHOL, BRUCE ZENNER, and
R. TROY STOBERT,

Defendants.

EXHIBIT 18

To The Complaint

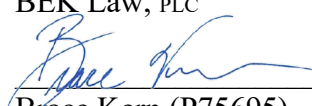
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Respectfully submitted,

BEK Law, PLC

By: _____


Brace Kern (P75695)

Attorney for Plaintiffs

3434 Veterans Drive

Traverse City, MI 49684

(231) 499-5380

Info@BraceKern.com

Dated: April 22, 2024

Kalkaska Memorial Health Center Full Authority Board of Trustees Meeting.....February 20, 2024

Township Representatives:

☒	George "Bud" Banker, Bear Lake	☒	Janet Cox, Oliver	☒	Eric Hendricks, Orange	☒	Diana Needham, Kalkaska Village
☐	Gregory Bradley, Clearwater	☒	Paul Erickson, Boardman	☒	Gayenell Gentelia, Coldsprings	☒	Tracy Nichol, Blue Lake
☒	Nelson "Jerry" Cannon, Garfield	☒	Dr. R. Troy Stobert, Springfield	☒	Karl Klimek, Excelsior	☒	Stuart McKinnon, Rapid River
☒	Dale De Korne, Kalkaska Township						

Members At Large Members:

☒	Robert "Bob" Barr	☒	Kim Stephens	☐	Noreen Broering	☐	
☒	Melanie Pauch	☒	Bruce Zenner	☐			

Staff:

☒	Jeremy Cannon	☒	Sandy Dilley	☒	Andrew Raymond	☒	Chandra Whiting
☒	Daniel Conklin	☐	Jeremy Holmes, DO	☒	Kevin Rogols	☐	Laura Zingg
☒	Doreen Birgy	☒	Dr. Nathan Sailor	☐		☐	

Community:

☒	Richard Wilson, Mika Meyers (Via Teams) – left at 7:47 PM	☒	Dominic Clolinger, Mika Meyers (Via Teams) – left at 7:47 PM	☒	Barb Klimek	☒	Ed Fisher
☒	Ruthann Willison	☒	Jessy Zenner	☒	Valerie Hansen	☒	Annie Wallace
☒	Kathleen Cascaddan	☒	Peggy Young	☒	Angelo Poli	☒	Melissa Poli
☒	Lynnette Cervone	☒	Darel Willison	☒	Mardi Link	☐	

TOPIC	SUMMARY	ACTION ASSIGNMENT
Call to Order	Mr. Karl Klimek called the meeting to order at 6:00 PM in Education Rooms 1 & 2 of the Acute Care Pavilion at Kalkaska Memorial Health Center.	
Pledge of Allegiance	The Pledge of Allegiance was recited.	

Kalkaska Memorial Health Center Full Authority Board of Trustees Meeting.....February 20, 2024

Conflict of Interest Roll Call	A roll call for Conflict of Interest was taken as follows: George "Bud" Banker, no; Nelson "Jerry" Cannon, no; Dale De Korne, no; Janet Cox, no; Paul Erickson, no; Eric Hendricks, no; Gayenell Gentelia, no; Dr. R. Troy Stobert, no; Karl Klimek, no; Tracy Nichol, no; Stuart McKinnon, no; Diana Needham, no; Melanie Pauch, no; Robert "Bob" Barr; Kim Stephens, no; Bruce Zenner, no.	
Consent Agenda	Mr. Klimek welcomed two new KMHC Board of Trustee Members to the Board; Janet Cox, Oliver Township Representative and Gayenell Gentelia, Coldsprings Township Representative. The Consent Agenda was reviewed. A Board Member requested clarification on At-Large Member, Noreen Broering, being added back to the January 23, 2024, Meeting Minutes as her name had not appeared on the minutes for the previous four months. This was explained that the Ms. Broering had not resigned from her At-Large position on the Board of Trustees. She had only taken a temporary leave of absence. Discussion ensued regarding topics of recent emails the Board Members had received from the Board Chair, Mr. Klimek. This discussion was tabled at this time as these topics were to be addressed later in the meeting and did not pertain to the Consent Agenda. <u>Motion was made and duly supported to approve the Consent Agenda as presented. All "AYE." Motion carried.</u>	
Public Comment Regarding Agenda Topics	A member of the community requested a brief history and better understanding of the topic of Act 47 from the Board. In response: Act 47 is a public act from 1945 that allows municipalities to form hospitals. It allowed the 12 townships and the Village to form a hospital that is governed by the townships and the Village and to operate as a not-for-profit. KMHC is the last Act 47 entity in the State of Michigan. KMHC will be holding public forums in the near future to help provide a better understanding and additional information. A member of the community asked for clarification if KMHC were to become a not-for-profit, if it would mean Munson Healthcare would take over ownership of the hospital. In response: KMHC is an affiliate of Munson Healthcare and will be addressed later in the meeting.	

Kalkaska Memorial Health Center Full Authority Board of Trustees Meeting.....February 20, 2024

	A member of the community inquired as to who the two attorneys were that were attending the meeting remotely via Teams. Response: Attorneys are from the Mika Meyers law firm, representing Kalkaska Memorial Health Center. A community member inquired if KMHC is looking into putting up railings in the Grand Hallway to assist individuals with access. There was also a comment if Administration is looking into concerns with access to Physical Therapy. Response: Both concerns are being looked into. Ms. Link, Traverse City Record Eagle, made a formal request for a copy of the thumb drive that was discussed. A community member inquired who authorizes the payments to the attorneys from Mika Meyers that represent KMHC. This was addressed that the attorneys are general counsel for KMHC, and the payments are approved by CEO. It was also clarified that the KMHC Board of Trustees is a governing Board and not a managing Board.	
Moments of Excellence Recognition	Mr. Zenner joined Mr. Rogols at the front of the Boardroom. Mr. Rogols shared with the Board that he is celebrating his 10th year with KMHC and has had the honor of working with Mr. Zenner as the Board Chair for the last 6 years. During this time, Mr. Zenner has been instrumental in sharing the feedback of the community with KMHC, as well as bringing a tremendous amount of experience, knowledge, and tenure to the KMHC Board of Trustees. While Mr. Zenner has served as the Chair of the Board of Trustees, KMHC added the new medical pavilion, doubled the size of the medical staff, and built a new emergency department and inpatient unit. Mr. Klimek added that healthcare is a very hard business. He thanked Mr. Zenner for his work as the KMHC Board Chair partnering with the Administration and medical staff during a period of significant growth. Mr. Zenner was presented with a plaque to thank him for his time as the Chair of the KMHC Board of Trustees from 2018-2023. A photo was taken with Mr. Zenner and the Board of Trustees officers (Mr. Klimek - Chair, Mr. Cannon - Vice-Chair, Ms. Nichol - Secretary, Dr. Stobert - Treasurer).	
Cornea Transplant		

Kalkaska Memorial Health Center Full Authority Board of Trustees Meeting.....February 20, 2024

	Mr. Jeremy Cannon shared with the Board a recent patient success story involving an individual receiving a cornea transplant. The procedure being done at KMHC was possible because of the excellence relationship between KMHC and the team at Traverse City Eye.	
Go Into Closed Session to Consult with Legal Counsel Regarding Potential Litigation	<u>Motion was made and duly supported to go into Closed Session at 6:32 PM for the following reason(s): To consider materials exempt from disclosure by state or federal law, pursuant to Section 8(h) of the OMA. It was requested to dismiss all administrative staff including Ms. Whiting. The Board of Trustees Secretary, Ms. Nichol, will take the meeting minutes for the closed session.</u> Discussion ensued regarding the proposed motion to go into closed session including the reason for going into closed session and an explanation of section 8(h) of the OMA (Open Meetings Act). <u>A roll call vote was taken as follows: George "Bud" Banker, yes; Nelson "Jerry" Cannon, yes; Dale De Korne, yes; Janet Cox, no; Paul Erickson, abstain; Eric Hendricks, no; Gayenell Gentelia, yes; Dr. R. Troy Stobert, yes; Tracy Nichol, yes; Stuart McKinnon, no; Diana Needham, yes; Melanie Pauch, yes; Robert "Bob" Barr, yes; Kim Stephens, yes; Bruce Zenner, yes; Karl Klimek, yes. 12 "AYES." 1 "Abstain" 3 "NAYS". Motion Carried.</u>	
Come out of Closed Session	The Board Recording Secretary does not have the information for coming out of closed session due to not being in attendance at the closed session. Mr. Klimek reconvened in Open Session at 7:29 PM. <u>Motion was made and duly supported to approve the consent agenda from the closed session. All "AYE". Motion carried.</u> Mr. Klimek distributed a draft <u>Resolution of Censure</u> document to the Board Members that had been prepared by Legal Counsel. The Board had requested at the last meeting for Legal Counsel to prepare a resolution. Board members reviewed the resolution document presented. <u>Motion was made and duly supported to adopt the resolution (attached to the original minutes) as presented.</u>	

Kalkaska Memorial Health Center Full Authority Board of Trustees Meeting.....February 20, 2024

	Discussion ensued with several members expressing their disappointment in the actions and behavior of certain members of the board as outlined in the Resolution of Censure. Mr. Wilson, Legal Counsel, verified with the Board the names of the townships whose current appointees being condemned including Orange Township, Rapid River Township, and Boardman Township that will be included on the resolution. The date of February 20, 2024, would also be filled in on the resolution for the date of adoption as well as the number 001 for resolution number 2024-001. Discussion ensued regarding the details of the proposed resolution. <u>Motion was made and duly supported to adopt the resolution (attached to the original minutes) as presented. A roll call vote was taken as follows: George "Bud" Banker, yes; Nelson "Jerry" Cannon, yes; Dale De Korne, yes; Janet Cox, Abstain; Paul Erickson, Abstain; Eric Hendricks, no; Gayenell Gentelia, yes; Dr. R. Troy Stobert, yes; Tracy Nichol, yes; Stuart McKinnon, no; Diana Needham, yes; Melanie Pauch, yes; Robert "Bob" Barr, yes; Kim Stephens, yes; Bruce Zenner, yes; Karl Klimek, yes. 12 "AYES." 2 "Abstain" 2 "NAYS". Motion Carried.</u> Mr. Wilson reminded the Board that an agenda topic later in the meeting would be covering the question of putting the hospital up for sale. He wanted to ensure the Board had an understanding that this topic was different than the topic of the possibility of KMHC converting to a not-for-profit.	
Committee Appointments – Discussion and Appointment by Board Chair • Executive/Finance Committee • Audit and Compliance Committee • Joint Conference and Ethics Committee • Nominating Committee • Board Quality, Safety and Patient Experience Committee • Strategic Planning Committee • Building Ad-Hoc Committee • Governance Committee (In Development)	Mr. Klimek thanked the Board members for their interest and providing input in Board Committee Appointments for the 2024 calendar year. The following recommendations were made by the Board Chair, Mr. Klimek, for committee appointments: Executive/Finance Committee will consist of the following members: • Dr. Troy Stobert (Chair) • Mr. Karl Klimek • Mr. George "Bud" Banker • Ms. Tracy Nichol • Mr. Nelson "Jerry" Cannon • Mr. Eric Hendricks • Ms. Diana Needham	

Audit and Compliance Committee will consist of the following members:

- Dr. Troy Stobert (Chair)
- Mr. Dale De Korne
- Ms. Janet Cox
- Mr. Eric Hendricks
- Mr. Bruce Zenner
- Mr. Karl Klimek

Joint Conference and Ethics Committee will consist of the following members:

- Mr. Karl Klimek
- Mr. Nelson "Jerry" Cannon

Nominating Committee will consist of the following members:

- Ms. Kim Stephens (Chair)
- Mr. George "Bud" Banker
- Ms. Gayenell Gentelia
- Mr. Karl Klimek
- Mr. Nelson "Jerry" Cannon
- Ms. Diana Needham
- Bruce Zenner

Board Quality, Safety, and Patient Experience Committee will consist of the following members:

- Ms. Melanie Pauch (Chair)
- Ms. Janet Cox
- Mr. Gregory Bradley
- Mr. Paul Erickson
- Ms. Noreen Broering
- Mr. Karl Klimek

Strategic Planning Committee will consist of the following members:

- Mr. Nelson "Jerry" Cannon (Chair)
- Mr. Karl Klimek
- Mr. George "Bud" Banker
- Ms. Tracy Nichol
- Ms. Kim Stephens
- Mr. Robert "Bob" Barr
- Dr. Holmes
- Dr. Sailor

	Building Ad-Hoc Committee will consist of the following members: • Mr. Gregory Bradley (Chair) • Ms. Gayenell Gentelia • Mr. Paul Erickson • Mr. Dale De Korne • Mr. Karl Klimek Mr. Klimek noted that the recommendations included in the Board meeting packet for a proposed Governance Committee would be discussed as a later agenda topic in the meeting. Due to the Governance Committee being in a development stage only at this time, these recommendations would not be included in the approval of appointments at this time. <u>Motion was made and duly supported to approve the committee appointments as recommended, excluding the presented Governance Committee recommendations. A roll call vote was taken as follows: George "Bud" Banker, yes; Nelson "Jerry" Cannon, yes; Dale De Korne, yes; Janet Cox, yes; Paul Erickson, yes; Eric Hendricks, yes; Gayenell Gentelia, yes; Dr. R. Troy Stobert, yes; Tracy Nichol, yes; Stuart McKinnon, yes; Diana Needham, yes; Melanie Pauch, yes; Robert "Bob" Barr, yes; Kim Stephens, yes; Bruce Zenner, yes; Karl Klimek, yes. 16 "AYES." 0 "NAYS". Motion Carried.</u>	
Committee Reports Act 47 Versus Not-For-Profit Ad-Hoc Committee Meeting 12-19-23 Open Discussion Regarding Role of Ad-Hoc Committee • Motion Made by Act 47/Not-for-Profit Ad-Hoc Committee • Committee Members Unanimously Concurred for the Recommendation to the Strategic Planning Committee for the Dissolution for the Act 47/Not-for-Profit Ad-Hoc Committee	Mr. Zenner reported the following from the meeting of the Act 47 versus Not-for-Profit Ad-Hoc Committee Meeting on 12-19-23: • A motion was made and unanimously supported for the Strategic Planning Committee to become the recipient of questions from the Board of Trustees relevant to the potential shift to a not-for-profit. • Committee members unanimously concurred for the recommendation to the Strategic Planning Committee for the Dissolution of the Act 47/ Not-for-Profit Ad-Hoc Committee.	

Kalkaska Memorial Health Center Full Authority Board of Trustees Meeting.....February 20, 2024

Strategic Planning Committee Meeting 01-15-24 Report from Act 47/Not-for-Profit Ad-Hoc Committee Meeting - Strategic Planning Committee RECEIVED Both Actions from the Act 47/Not-for-Profit Ad-Hoc Committee December 19, 2023 Meeting - Motion Made by the Strategic Planning Committee	Mr. Jerry Cannon reported that the Strategic Planning Committee met on January 15, 2024, and received both actions from the Act 47/Not-for-Profit Ad-Hoc Committee. As a result of the recommendations from the Act 47/Not-for-Profit Ad-Hoc Committee, the Strategic Planning Committee unanimously approved the following motion: Motion was made and duly supported to support the recommendations by the Act 47/Not-for-Profit Ad-Hoc Committee made on December 19, 2023, to recommend to the Full Board that the Strategic Planning Committee become the recipient of questions from the Board of Trustees relevant to the potential shift to a not-for-profit and to utilize legal counsel for written opinions in, as timely manner as possible. To recommend that counsel's responses, as well as Strategic Planning Committee's recommendations, be included in the monthly Board Packet. Also, for the Dissolution of the Act 47/Not-For-Profit Ad-Hoc Committee. After the Committee report was given, the following motion was by the Board: <u>Motion was made and duly supported to approve the recommendations from the Act 47/Not-for-Profit Ad-Hoc Committee that the Strategic Planning Committee become the recipient of questions from the Board of Trustees relevant to the potential shift to a not-for-profit. Also, for the Dissolution of the Act 47/Not-For-Profit Ad-Hoc Committee. A roll call vote was taken as follows: George "Bud" Banker, yes; Nelson "Jerry" Cannon, yes; Dale De Korne, yes; Janet Cox, yes; Paul Erickson, yes; Eric Hendricks, yes; Gayenell Gentelia, yes; Dr. R. Troy Stobert, yes; Tracy Nichol, yes; Stuart McKinnon, yes; Diana Needham, yes; Melanie Pauch, yes; Robert "Bob" Barr, yes; Kim Stephens, yes; Bruce Zenner, yes; Karl Klimek, yes. 16 "AYES." 0 "NAYS". Motion Carried.</u>	
Act 47 Versus Not-for-Profit - Q & A Document - Interest in Selling KMHC	Mr. Cannon referenced a Q & A document that was provided to the Board Members in the Board Packet. One of the questions in the Q & A document pertained to the possibility of interest in selling KMHC. This is a question that has been discussed by the Board in the past and the consensus has been that the Board has had no desire to pursue a possible sale of KMHC.	

Kalkaska Memorial Health Center Full Authority Board of Trustees Meeting.....February 20, 2024

	Mr. Cannon stated that the Strategic Planning Committee recognizes the desire of our communities for Kalkaska Memorial Health Center to remain a thriving, independent, self-governing organization. Furthermore, the full KMHC Board of Trustees recognizes the potential benefits of investigating becoming a hospital organized as an independent not-for-profit, and voted 12-3 at the December 5, 2023, Board of Trustees' meeting to continue that due diligence process. Throughout the history of the investigation to transition from a hospital organized under Act 47 to a not-for-profit hospital, the KMHC Board of Trustees, and administration, have been adamant that the hospital is not for sale. Following the December 5, 2023, Board of Trustees' meeting, trustee McKinnon posed several questions to KMHC Board Chair Zenner. One of those questions was, "Could we presently sell the hospital at fair market value?" Legal counsel provided correspondence dated January 4, 2024, that a sale of the hospital at fair market value could be allowed under Section 9 of Act 47. The Strategic Planning Committee re-affirms its recommendation to the full Board of Trustees that although allowed, there is no current need to investigate a sale, as a sale would almost certainly lead to the loss of self-determination of KMHC's future." After receiving the Strategic Planning Committee's recommendation, the following motion was made by the Board of Trustees: <u>Motion was made and duly supported to reiterate that KMHC is NOT for sale. A roll call vote was taken as follows: George "Bud" Banker, yes; Nelson "Jerry" Cannon, yes; Dale De Korne, yes; Janet Cox, yes; Paul Erickson, yes; Eric Hendricks, yes; Gayenell Gentelia, yes; Dr. R. Troy Stobert, yes; Tracy Nichol, yes; Stuart McKinnon, yes; Diana Needham, yes; Melanie Pauch, yes; Robert "Bob" Barr, yes; Kim Stephens, yes; Bruce Zenner, yes; Karl Klimek, yes. 16 "AYES." 0 "NAYS". Motion Carried.</u>	
Handouts for Government Unit Open Forums	Mr. Rogols provided the following update to the Board Members regarding the recent Township/Village Open Forums: There were upwards of 50 Township and Village Board Members that attended the four sessions that were offered.	

Kalkaska Memorial Health Center Full Authority Board of Trustees Meeting.....February 20, 2024

	• The discussions during the sessions were both positive and very in-depth. • Every attendee received a packet containing the PowerPoint presentation as well as the background information that has been provided to the Board Members over the last several months pertaining to the Act 47 versus Not-for-Profit discussion. • There will be additional Open Forums scheduled for the Townships and Village as well as the Community in the near future.	
Governance Committee of the Board of Trustees	Mr. Klimek commented that today was a tough day for the KMHC Board of Trustees and that there are times that a Board has a need for a Governance Committee. Mr. Klimek then informed the Board Members of his plan to put together a group to discuss ideas of what a Governance Committee could look like and what value it could possibly add to the KMHC Board of Trustees. He reminded the Board that this potentially new Committee is only at an idea gathering stage at this time.	
Board Compensation	Mr. Rogols introduced the topic of Board Member compensation by informing the Board Members that he had <u>not</u> received a request for compensation from any Board Member. Mr. Rogols then educated the Board on the fact that the Township appointed Board Members are compensated by their respective Townships and the At-Large Members receive no compensation. There was a survey completed by KMHC in 2019 to obtain the range of compensation for the appointed Township Board Members and a proposal brought to the Board at that time for compensation for all Board Members. Mr. Rogols explained to the Board Members that it is not uncommon for Board Members to receive compensation as there are expectations that are required of Board Members, and he provided examples of those expectations. Mr. Rogols plans to work with the Governance Committee, if formed, on a proposal for a Board Member compensation plan.	

Kalkaska Memorial Health Center Full Authority Board of Trustees Meeting.....February 20, 2024

Nominating Committee Meeting 02-15-24 Member at Large Application Review	Mr. Klimek introduced Ms. Stephens to provide the report for the recent meeting of the Nominating Committee. Ms. Stephens referenced the three applications included in the Board packet for the two open member At-Large vacancies. Ms. Stephens provided the Nominating Committee's recommendation to the Board for the At-Large vacancies of: • Lynnette Cervone • Charlie Stiehl Discussion ensued regarding the third applicant being held for future openings. <u>Motion was made by Mr. Cannon and duly supported by Ms. Gentelia to appoint Ms. Lynnette Cervone and Mr. Charlie Stiehl to fill the two vacant At-Large Member positions on the Board.</u> Discussion ensued about the terms for the potential new At-Large Members. <u>After Amendment, motion was made by Mr. Cannon and duly supported by Ms. Gentelia to appoint Ms. Lynnette Cervone to a Member At-Large term ending in 2026 and Mr. Charlie Stiehl to a Member At-Large term ending in 2027. A roll call vote was taken as follows: George "Bud" Banker, yes; Nelson "Jerry" Cannon, yes; Dale De Korne, yes; Janet Cox, yes; Paul Erickson, yes; Eric Hendricks, yes; Gayenell Gentelia, yes; Dr. R. Troy Stobert, yes; Tracy Nichol, yes; Stuart McKinnon, yes; Diana Needham, yes; Karl Klimek, yes. 12 "AYES." 0 "NAYS". Motion Carried.</u>	Ms. Whiting will retain the application for the third applicant for possible future vacancies of At-Large Members.
Board Quality, Safety, and Patient Experience Community Member Application Review	Ms. Stephens referenced the two applications included in the Board packet for potential Board Quality, Safety, and Patient experience Community Members. The recent change to the Board of Trustee By-Laws would allow the Board to chose up to three individuals to fill this role. <u>Motion was made by Mr. Zenner and duly supported by Ms. Nichol to appoint Ms. Anderson and Ms. Knight to the role of Board Quality, Safety, and Patient Experience Community Member for a two-year term. A roll call vote was taken as follows: George "Bud" Banker, yes; Nelson "Jerry" Cannon, yes; Dale De Korne, yes; Janet Cox, yes;</u>	

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	<u>Paul Erickson, yes; Eric Hendricks, yes; Gayenell Gentelia, yes; Dr. R. Troy Stobert, yes; Tracy Nichol, yes; Stuart McKinnon, yes; Diana Needham, yes; Melanie Pauch, yes; Robert "Bob" Barr, yes; Kim Stephens, yes; Bruce Zenner, yes; Karl Klimek, yes. 16 "AYES." 0 "NAYS". Motion Carried.</u>	
Audit and Compliance Committee Meeting 02-20-24 Professional Services Agreement Compensation Review • Dr. JP Milliken • Dr. Kayleigh White • Dr. Eden Elfrink	Mr. Rogols informed the Board that when hospitals participate in Medicare and Medicaid, they are required to ensure that compensation is within fair market value. KMHC uses benchmark data to ensure that the compensation provided is within the fair market value. Mr. Rogols provided an overview of the three physician employment agreements that were discussed in the Audit and Compliance Committee meeting: • Dr. JP Milliken • Dr. Kayleigh White • Dr. Eden Elfrink The compensation plans were determined as being within fair market value.	
Board Chair Report Munson Healthcare Update	Mr. Klimek informed the Board that KMHC has a seat on the Munson Healthcare Board of Directors. This seat has been occupied by the past Board Chair, Mr. Zenner, and will be transitioned to the new Board Chair, Mr. Klimek. Mr. Zenner informed the Board he will be attending a meeting of the Munson Healthcare Governance Board on February 21, 2024. He did not have an update to report at this time for Munson Healthcare. Mr. Zenner announced his resignation from the Munson Healthcare Board. Mr. Zenner recommended Mr. Klimek to be appointed to the Munson Healthcare Board of Directors and it was supported by Mr. Banker. <u>Motion was made and duly supported to recommend Mr. Klimek to be appointed to the Munson Healthcare Board of Directors. All "AYE". Motion carried.</u> Mr. Klimek updated the Board on a recent introductory visit with Mr. Ed Ness and Ms. Rachel Roe at Munson Healthcare.	

Kalkaska Memorial Health Center Full Authority Board of Trustees Meeting.....February 20, 2024

Recommendation for Update to Board of Trustees Job Description Document	Mr. Klimek referenced the recommended update to the current Board Member Job Description Form included in the Board Member's packet. The change to the document is being requested to match the verbiage of the recent Board of Trustees By-Law change pertaining to the Board Quality, Safety, and Patient Experience Committee.	Ms. Whiting will add this item back to the March Board Agenda for the Board to approve the update.
CEO Report Intensive Outpatient Geri-psych Program	Mr. Raymond educated the Board about an intensive outpatient geriatric psychiatry program that will be coming to KMHC. The program will offer group therapy sessions. Some of the target patients will be recent widow/widowers, recent long-term care, and assisted living residents. KMHC plans to renovate the old emergency department space to be able to offer this new service with a target start date of mid-summer 2024.	
LTC Facility Plan Update	Mr. Rogols provided an update to the Board regarding the progress of the promises made to the community for the 2017 levy, thus far KMHC has implemented the a new Medical Pavilion, expanded the number of physicians, added Chemotherapy, as well as built a new Emergency Department and In-patient unit. The last step in KMHC's fulfillment of the promises to the community regarding the 2017 levy involves the Long-Term Care (LTC) facility plan. KMHC plans to be well on the way to completing this project by 2026. Mr. Cannon and Mr. Raymond then shared with the Board a presentation for an infrastructure refresh project for LTC as a beginning step in the LTC facility update. The LTC refresh project would have an overall estimated cost for renovation of \$1,009,299.00. Discussion ensued and Mr. Cannon and Mr. Raymond answered questions regarding the proposed refresh project and future facility plans.	

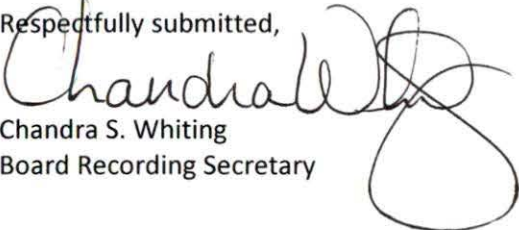
Kalkaska Memorial Health Center Full Authority Board of Trustees Meeting.....February 20, 2024

	<u>Motion was made and duly supported to approve the Long-Term Care refresh project as presented. A roll call vote was taken as follows: George "Bud" Banker, yes; Nelson "Jerry" Cannon, yes; Dale De Korne, yes; Janet Cox, yes; Paul Erickson, yes; Eric Hendricks, yes; Gayenell Gentelia, yes; Dr. R. Troy Stobert, yes; Tracy Nichol, yes; Stuart McKinnon, yes; Diana Needham, yes; Melanie Pauch, yes; Robert "Bob" Barr, yes; Kim Stephens, yes; Bruce Zenner, yes; Karl Klimek, yes. 16"AYES." 0 "NAYS". Motion Carried.</u> A board member asked how the cost of the LTC refresh project would be covered. This was addressed that the project would be paid for with cash from operations.	
Open Dialogue from Members	There was no additional comment from Board Members at this time.	
Public Comment	A member of the community commented that they understand that the hospital is not for sale. They questioned if KMHC were to change to a not-for-profit, how would the Board Members be selected by the Townships. This was addressed that the Board is currently doing due diligence and looking into article of incorporation and by-laws, that would as closely as possible, mirror the structure that KMHC has today. A community member questioned what would happen with the five-year individual tax "credit" that KMHC currently offers taxpayers if KMHC changed to a not-for-profit. Response: It would be the intention of KMHC to apply the prior five years as it is done today. There would not be any additional future credit without a future tax levy. Ms. Cervone thanked the KMHC Board of Trustees and is honored to have been selected to serve on the Board as an At-Large Member.	
Future Topics for Discussion 2023 KMHC Board Self Evaluation Survey Results	Mr. Klimek informed the Board Members of a newly added section to the Board Meeting Agenda titled Future Topics for Discussion. Mr. Klimek then invited Board Members to get topics to him that they would like to see added to the agendas for future discussion. An example was provided for a future topic of discussion that will be added; the Board will revisit the 2023 KMHC Board Self Evaluation Survey results.	
Upcoming Events/Conferences		

Kalkaska Memorial Health Center Full Authority Board of Trustees Meeting.....February 20, 2024

	Next Full Authority Board of Trustees Meeting on March 19, 2024.	
Adjournment	Upon proper motion the meeting was adjourned at 9:12 PM.	

Respectfully submitted,



Chandra S. Whiting
Board Recording Secretary

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

STUART MCKINNON & MICHAEL COX,

Plaintiffs,

File No. _____

Hon. _____

v

KALKASKA COUNTY BOARD OF COMMISSIONERS,
KALKASKA MEMORIAL HEALTH CENTER,
KALKASKA COUNTY HOSPITAL AUTHORITY,
KALKASKA MEMORIAL HEALTH CENTER
BOARD OF TRUSTEES, KEVIN ROGOLS,
NELSON JERRY CANNON, KARL KLIMEK,
TRACY NICHOL, BRUCE ZENNER, and
R. TROY STOBERT,

Defendants.

EXHIBIT 19

To The Complaint

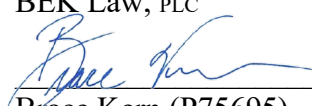
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing was filed on this 22nd day of April 2024, with the Clerk of the Court via the Court's CM/ECF system for electronic service on all counsel of record.

Respectfully submitted,

BEK Law, PLC

By: _____


Brace Kern (P75695)

Attorney for Plaintiffs

3434 Veterans Drive

Traverse City, MI 49684

(231) 499-5380

Info@BraceKern.com

Dated: April 22, 2024

RESOLUTION 2024-001

KALKASKA MEMORIAL HEALTH CENTER
BOARD OF TRUSTEES

RESOLUTION CENSURING BOARD MEMBERS ERIC HENDRICKS, STUART
MCKINNON, AND PAUL ERICKSON FOR BREACH OF DUTY AND WILLFUL
VIOLATION OF THE OPEN MEETINGS ACT

WHEREAS, Kalkaska Memorial Health Center ("KMHC") is a governmental hospital authority created pursuant to Public Act 47 of 1945 ("Act 47");

WHEREAS, as an Act 47 hospital, KMHC is directed and governed by a hospital Board of Trustees (the "Board") and is subject to the Open Meetings Act, Public Act 267 of 1976, MCL 15.261 to 15.275 (the "OMA");

WHEREAS, KMHC Board members have a duty to not violate the OMA and have duties of loyalty and good faith to the hospital and the Board;

WHEREAS, Michigan courts have held that subquorum groups may violate the OMA when they meet to deliberate on public policy with the intention of circumventing the OMA;

WHEREAS, on or around October 9, 2023, Board member Michael Cox published an email to a fellow Board member inviting him to meet with a select group of Board members in the Kalkaska County Commissioners room for a secret meeting to deliberate upon policy issues currently in front of the Board;

WHEREAS, the email instructed that not all members of the Board were welcome and, by implication, the public, were not welcome to attend to partake in the deliberations;

WHEREAS, on or around October 9, 2023, Board members Eric Hendricks, Stuart McKinnon, Paul Erickson and Michael Cox privately met in the Kalkaska County Commissioners room to deliberate on public policy issues before the hospital in an effort to circumvent the OMA, including the preparation of motions to bring before the Board to further their views on the future direction of the hospital;

WHEREAS, Michael Cox is no longer a member of the Board, but the Board nevertheless condemns his actions, described above;

WHEREAS, the members who attended the meeting on October 9, 2023, were not a duly formed committee or subcommittee of the Board;

WHEREAS, this meeting was not preceded by notice as required by the OMA, and no minutes were kept;

WHEREAS, this meeting was in direct circumvention of the OMA's objective of promoting openness and accountability in government;

WHEREAS, the meeting deprived other members of the Board of participation in the discussions and decisions made in that meeting;

NOW THEREFORE on the motion of Bob Barr, supported by Bud Banker,

IT IS HEREBY RESOLVED, that the Board of Trustees of Kalkaska Memorial Health Center condemns the conduct of Eric Hendricks, Stuart McKinnon, and Paul Erickson described above, and publicly censures them for the willful violation of the duties owed to KMHC and the Board by members of its Board and for the willful violation of the duties owed to the public under the OMA.

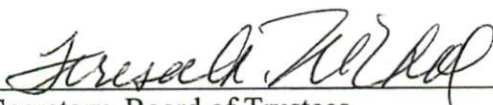
BE IT FURTHER RESOLVED, that a copy of this Resolution be sent to the Township Boards of Orange, Rapid River and Boardman Townships, and strongly urge them to remove the named individuals as Board members of Kalkaska Memorial Health Center and replace them with appointees who will abide by their legal duties as Board members.

THOSE VOTING IN FAVOR: George "Bud" Banker, Nelson "Jerry" Cannon, Dale De Korne, Gayenell Gentelia, Dr. R. Troy Stobert, Karl Klimek, Tracy Nichol, Diana Needham, Melanie Pauch, Robert "Bob" Barr, Kim Stephens, Bruce Zenner

THOSE VOTING AGAINST: Eric Hendricks, Stuart McKinnon

THOSE ABSENT OR ABSTAINING: Noreen Broering (Absent), Gregory Bradley (Absent), Janet Cox (Abstain), Paul Erickson (Abstain)

RESOLUTION DECLARED PASSED


Secretary, Board of Trustees,
Kalkaska Memorial Health Center

CERTIFICATION

The undersigned Secretary of the Board of Trustees of Kalkaska Memorial Health Center hereby certifies that the foregoing is a true and correct copy of Resolution 2024-001 duly adopted by the Board of Trustees at a regular meeting thereof, held on the 20th day of February, 2024, at which a quorum was present and which was held in accordance with Act 267 of the Public Acts of 1976, as amended.


Secretary, Board of Trustees,
Kalkaska Memorial Health Center

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

STUART MCKINNON & MICHAEL COX,

Plaintiffs,

File No. _____

Hon. _____

v

KALKASKA COUNTY BOARD OF COMMISSIONERS,
KALKASKA MEMORIAL HEALTH CENTER,
KALKASKA COUNTY HOSPITAL AUTHORITY,
KALKASKA MEMORIAL HEALTH CENTER
BOARD OF TRUSTEES, KEVIN ROGOLS,
NELSON JERRY CANNON, KARL KLIMEK,
TRACY NICHOL, BRUCE ZENNER, and
R. TROY STOBERT,

Defendants.

EXHIBIT 20

To The Complaint

CERTIFICATE OF SERVICE

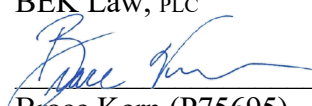
The undersigned hereby certifies that a true and correct copy of the above and foregoing was filed on this 22nd day of April 2024, with the Clerk of the Court via the Court's CM/ECF system for electronic service on all counsel of record.

Respectfully submitted,

BEK Law, PLC

Dated: April 22, 2024

By: _____


Brace Kern (P75695)

Attorney for Plaintiffs

3434 Veterans Drive

Traverse City, MI 49684

(231) 499-5380

Info@BraceKern.com



KALKASKA MEMORIAL HEALTH CENTER

Partnering with **MUNSON HEALTHCARE**

March 01, 2024

Oliver Township Board of Trustees
5472 Kniss Road
Kalkaska, MI 49646

Re: Kalkaska Memorial Health Center

Dear Oliver Township Trustees,

By now, you have probably heard of the action taken by the Kalkaska Memorial Health Center Board of Trustees at its last meeting held on February 20, 2024, to publicly condemn and censure the actions of four of its board members for violating the Open Meetings Act and breaching their duties to the hospital and its board.

In order to avoid any misunderstandings about what action it took, the KMHC Board felt it important to share a copy of the Resolution it adopted with all of the municipalities that make up the KMHC Authority. Accordingly, a copy is enclosed with this letter.

Thank you for your ongoing support of KMHC and its mission to bring quality healthcare to all of the residents of Kalkaska County and the surrounding area.

If you should have any questions, please don't hesitate to contact me.

Sincerely,

Karl Klimek, Chair
Kalkaska Memorial Hospital Center
Board of Trustees

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

STUART MCKINNON & MICHAEL COX,

Plaintiffs,

File No. _____

Hon. _____

v

KALKASKA COUNTY BOARD OF COMMISSIONERS,
KALKASKA MEMORIAL HEALTH CENTER,
KALKASKA COUNTY HOSPITAL AUTHORITY,
KALKASKA MEMORIAL HEALTH CENTER
BOARD OF TRUSTEES, KEVIN ROGOLS,
NELSON JERRY CANNON, KARL KLIMEK,
TRACY NICHOL, BRUCE ZENNER, and
R. TROY STOBERT,

Defendants.

EXHIBIT 21

To The Complaint

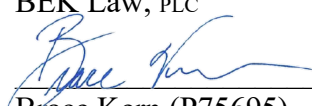
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing was filed on this 22nd day of April 2024, with the Clerk of the Court via the Court's CM/ECF system for electronic service on all counsel of record.

Respectfully submitted,

BEK Law, PLC

By: _____


Brace Kern (P75695)

Attorney for Plaintiffs

3434 Veterans Drive

Traverse City, MI 49684

(231) 499-5380

Info@BraceKern.com

Dated: April 22, 2024

Whiting, Chandra

Subject: Board Leadership Meeting w/Kevin
Location: Kevin's Office

Start: Fri 3/15/2024 11:00 AM
End: Fri 3/15/2024 12:00 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Whiting, Chandra
Required Attendees: Rogols, Kevin; Karl Klimek; Troy Stobert; Jerry Cannon; Tracy Nichol

Whiting, Chandra

From: Whiting, Chandra
Sent: Friday, March 8, 2024 8:43 AM
To: 50jmcx@gmail.com; Bruce Zenner (bazenner@gmail.com); Bud Banker (bltsupervisor@gmail.com); cervonelynnette@gmail.com; Charlie Stiehl; Dale De Korne (dekornedale@yahoo.com); Diana Needham (ladydianaIn@gmail.com); Eric Hendricks (ehendricks@acegroup.cc); Gregory Bradley (greg@torchlake.com); gs.gentelia@gmail.com; Jerry Cannon (kalkaskaso@yahoo.com); Karl Klimek (karlklimek@mac.com); Kimberly Stephens (kimberly.stephens@itwsf.com); Melanie Pauch (melaniepauch@yahoo.com); Noreen Broering (nbroering3@gmail.com); Paul Erickson (erickson82@yahoo.com); R. Troy Stobert; Robert Barr (bobausable@gmail.com); Stuart McKinnon (torch.plumbing@yahoo.com); Tracy Nichol (nicholtracy1@hotmail.com)
Subject: Discussion Meeting Scheduled - Potential KMHC Board Governance Committee
Importance: High

Good morning,

This email is to inform you that a meeting has been scheduled for next Friday, March 15, 2024, at 10:00 AM in Classrooms A & B to discuss the potential creation of a KMHC Board Governance Committee. All KMHC Board Members are invited to attend, and this meeting is open to the public.

Please let me know if you have any questions.

Thank you,

Chandra Whiting

Chandra S. Whiting
Executive Assistant

Kalkaska Memorial Health Center
419 S Coral Street
Kalkaska MI 49646
231-258-7502 (phone)
231-258-7527 (fax)
cwhiting3@mhc.net

Whiting, Chandra

From: Whiting, Chandra
Sent: Thursday, March 7, 2024 4:34 PM
To: Karl Klimek (karlklimek@mac.com); Jerry Cannon (kalkaskaso@yahoo.com); troy.stobert@gmail.com; Tracy Nichol (nicholtracy1@hotmail.com)
Subject: RE: Meeting (KMHC Board Leadership)
Importance: High

Thank you all for the responses and flexibility!!

We are scheduling the meeting of the Board Leadership next **Friday, March 15th at 11:00 AM in Kevin's office.** This will be after the 10:00 AM meeting of the potential Governance Committee.

Have a great weekend!!

Thank you,

Chandra Whiting

Chandra S. Whiting
Executive Assistant

Kalkaska Memorial Health Center
419 S Coral Street
Kalkaska MI 49646
231-258-7502 (phone)
231-258-7527 (fax)
cwhiting3@mhc.net

From: Whiting, Chandra
Sent: Thursday, March 7, 2024 2:45 PM
To: Karl Klimek (karlklimek@mac.com) <karlklimek@mac.com>; Jerry Cannon (kalkaskaso@yahoo.com) <kalkaskaso@yahoo.com>; troy.stobert@gmail.com; Tracy Nichol (nicholtracy1@hotmail.com) <nicholtracy1@hotmail.com>
Subject: RE: Meeting (KMHC Board Leadership)
Importance: High

Good afternoon,

Hoping to be able to get all of you together to met with Kevin. Would you possibly be able to meet next Friday, March 15th at 11:00 AM?

Thank you,

Chandra Whiting

Chandra S. Whiting
Executive Assistant

Kalkaska Memorial Health Center
419 S Coral Street
Kalkaska MI 49646
231-258-7502 (phone)
231-258-7527 (fax)
cwhiting3@mhc.net

From: Whiting, Chandra
Sent: Wednesday, March 6, 2024 8:32 AM
To: Karl Klimek (karlklimek@mac.com) <karlklimek@mac.com>; Jerry Cannon (kalkaskaso@yahoo.com) <kalkaskaso@yahoo.com>; troy.stobert@gmail.com; Tracy Nichol (nicholtracy1@hotmail.com) <nicholtracy1@hotmail.com>
Subject: RE: Meeting (KMHC Board Leadership)
Importance: High

Good morning,

Looking to set up this meeting with Board Leadership and Kevin as requested. Please respond back if the following dates/times would work in your schedules:

Monday March 18th 12:00 PM
Friday March 22nd 10:00 AM

Thank you,

Chandra Whiting

Chandra S. Whiting
Executive Assistant

Kalkaska Memorial Health Center
419 S Coral Street
Kalkaska MI 49646
231-258-7502 (phone)
231-258-7527 (fax)
cwhiting3@mhc.net

From: Rogols, Kevin <krogols@mhc.net>
Sent: Monday, March 4, 2024 11:45 AM
To: Whiting, Chandra <cwhiting3@mhc.net>
Cc: Karl Klimek <karlklimek@mac.com>; Jerry Cannon <kalkaskaso@yahoo.com>; Tracy Nichol <nicholtracy1@hotmail.com>; Troy Stobert <troy.stobert@gmail.com>
Subject: Meeting

Please set up a meeting with Board leadership to discuss succession planning.

Whiting, Chandra

From: Whiting, Chandra
Sent: Friday, March 8, 2024 8:43 AM
To: 50jmcox@gmail.com; Bruce Zenner (bazenner@gmail.com); Bud Banker (bltsupervisor@gmail.com); cervonelynnette@gmail.com; Charlie Stiehl; Dale De Korne (dekornedale@yahoo.com); Diana Needham (ladydianaln@gmail.com); Eric Hendricks (ehendricks@acegroup.cc); Gregory Bradley (greg@torchlake.com); gs.gentelia@gmail.com; Jerry Cannon (kalkaskaso@yahoo.com); Karl Klimek (karlklimek@mac.com); Kimberly Stephens (kimberly.stephens@itwsf.com); Melanie Pauch (melaniepauch@yahoo.com); Noreen Broering (nbroering3@gmail.com); Paul Erickson (erickson82@yahoo.com); R. Troy Stobert; Robert Barr (bobausable@gmail.com); Stuart McKinnon (torch.plumbing@yahoo.com); Tracy Nichol (nicholtracy1@hotmail.com)
Subject: Discussion Meeting Scheduled - Potential KMHC Board Governance Committee
Importance: High

Good morning,

This email is to inform you that a meeting has been scheduled for next **Friday, March 15, 2024, at 10:00 AM in Classrooms A & B** to discuss the potential creation of a KMHC Board Governance Committee. All KMHC Board Members are invited to attend, and this meeting is open to the public.

Please let me know if you have any questions.

Thank you,

Chandra Whiting

Chandra S. Whiting
Executive Assistant

Kalkaska Memorial Health Center
419 S Coral Street
Kalkaska MI 49646
231-258-7502 (phone)
231-258-7527 (fax)
cwhiting3@mhc.net

Whiting, Chandra

From: Whiting, Chandra
Sent: Thursday, March 7, 2024 4:07 PM
To: Karl Klimek (karlklimek@mac.com); Jerry Cannon (kalkaskaso@yahoo.com); Tracy Nichol (nicholtracy1@hotmail.com); troy.stobert@gmail.com; Diana Needham (ladydianaln@gmail.com); Robert Barr (bobausable@gmail.com); Bruce Zenner (bazenner@gmail.com)
Subject: RE: Discussion Meeting - Potential KMHC Governance Committee
Importance: High

Good afternoon,

Thank you all for the responses regarding the first meeting for a discussion regarding the potential KMHC Board Governance Committee.

We have scheduled the meeting for next **Friday, March 15, 2024, at 10:00 AM in Classrooms A & B.**

Thank you,

Chandra Whiting

Chandra S. Whiting
Executive Assistant

Kalkaska Memorial Health Center
419 S Coral Street
Kalkaska MI 49646
231-258-7502 (phone)
231-258-7527 (fax)
cwhiting3@mhc.net

From: Whiting, Chandra
Sent: Tuesday, March 5, 2024 9:24 AM
To: Karl Klimek (karlklimek@mac.com) <karlklimek@mac.com>; Jerry Cannon (kalkaskaso@yahoo.com) <kalkaskaso@yahoo.com>; Tracy Nichol (nicholtracy1@hotmail.com) <nicholtracy1@hotmail.com>; troy.stobert@gmail.com; Diana Needham (ladydianaln@gmail.com) <ladydianaln@gmail.com>; Robert Barr (bobausable@gmail.com) <bobausable@gmail.com>; Bruce Zenner (bazenner@gmail.com) <bazenner@gmail.com>
Subject: Discussion Meeting - Potential KMHC Governance Committee
Importance: High

Good morning,

Karl has asked that I set up a meeting with all of you to start discussions regarding the potential Governance Committee for the KMHC Board of Trustees.

Please let me know which of the following dates/times may work in your schedule for a meeting here at KMHC:

Thursday March 14th 11:00 AM

Thursday March 14th 3:00 PM

Friday March 15th 10:00 AM

Thank you,

Chandra Whiting

Chandra S. Whiting

Executive Assistant

Kalkaska Memorial Health Center

419 S Coral Street

Kalkaska MI 49646

231-258-7502 (phone)

231-258-7527 (fax)

cwhiting3@mhc.net

Whiting, Chandra

From: Whiting, Chandra
Sent: Thursday, March 7, 2024 2:47 PM
To: Jerry Cannon (kalkaskaso@yahoo.com); Tracy Nichol (nicholtracy1@hotmail.com); troy.stobert@gmail.com; Diana Needham (ladydianaln@gmail.com); Robert Barr (bobausable@gmail.com); Bruce Zenner (bazenner@gmail.com)
Subject: RE: Discussion Meeting - Potential KMHC Governance Committee
Importance: High

Good afternoon,

Hoping to set up the meeting next week for the Governance group to have a discussion. Already received a response for Friday, March 15th at 10:00 AM. Please let me know what will work in your schedules.

Thank you,

Chandra Whiting

Chandra S. Whiting
Executive Assistant

Kalkaska Memorial Health Center
419 S Coral Street
Kalkaska MI 49646
231-258-7502 (phone)
231-258-7527 (fax)
cwhiting3@mhc.net

From: Whiting, Chandra
Sent: Tuesday, March 5, 2024 9:24 AM
To: Karl Klimek (karlklimek@mac.com) <karlklimek@mac.com>; Jerry Cannon (kalkaskaso@yahoo.com) <kalkaskaso@yahoo.com>; Tracy Nichol (nicholtracy1@hotmail.com) <nicholtracy1@hotmail.com>; troy.stobert@gmail.com; Diana Needham (ladydianaln@gmail.com) <ladydianaln@gmail.com>; Robert Barr (bobausable@gmail.com) <bobausable@gmail.com>; Bruce Zenner (bazenner@gmail.com) <bazenner@gmail.com>
Subject: Discussion Meeting - Potential KMHC Governance Committee
Importance: High

Good morning,

Karl has asked that I set up a meeting with all of you to start discussions regarding the potential Governance Committee for the KMHC Board of Trustees.

Please let me know which of the following dates/times may work in your schedule for a meeting here at KMHC:

Thursday March 14th 11:00 AM
Thursday March 14th 3:00 PM
Friday March 15th 10:00 AM

Thank you,

Chandra Whiting

Chandra S. Whiting
Executive Assistant

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231-258-7527 (fax)
cwhiting3@mhc.net

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To: Karl Klimek (karlklimek@mac.com); Jerry Cannon (kalkaskaso@yahoo.com); troy.stobert@gmail.com; Tracy Nichol (nicholtracy1@hotmail.com)
Subject: RE: Meeting (KMHC Board Leadership)
Importance: High

Good afternoon,

Hoping to be able to get all of you together to met with Kevin. Would you possibly be able to meet next Friday, March 15th at 11:00 AM?

Thank you,

Chandra Whiting

Chandra S. Whiting
Executive Assistant

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231-258-7502 (phone)
231-258-7527 (fax)
cwhiting3@mhc.net

From: Whiting, Chandra
Sent: Wednesday, March 6, 2024 8:32 AM
To: Karl Klimek (karlklimek@mac.com) <karlklimek@mac.com>; Jerry Cannon (kalkaskaso@yahoo.com) <kalkaskaso@yahoo.com>; troy.stobert@gmail.com; Tracy Nichol (nicholtracy1@hotmail.com) <nicholtracy1@hotmail.com>
Subject: RE: Meeting (KMHC Board Leadership)
Importance: High

Good morning,

Looking to set up this meting with Board Leadership and Kevin as requested. Please respond back if the following dates/times would work in your schedules:

Monday March 18th 12:00 PM
Friday March 22nd 10:00 AM

Thank you,

Chandra Whiting
Chandra S. Whiting

Executive Assistant

Kalkaska Memorial Health Center
419 S Coral Street
Kalkaska MI 49646
231-258-7502 (phone)
231-258-7527 (fax)
cwhiting3@mhc.net

From: Rogols, Kevin <krogols@mhc.net>

Sent: Monday, March 4, 2024 11:45 AM

To: Whiting, Chandra <cwhiting3@mhc.net>

Cc: Karl Klimek <karlklimek@mac.com>; Jerry Cannon <kalkaskaso@yahoo.com>; Tracy Nichol <nicholtracy1@hotmail.com>; Troy Stobert <troy.stobert@gmail.com>

Subject: Meeting

Please set up a meeting with Board leadership to discuss succession planning.

Whiting, Chandra

From: Whiting, Chandra
Sent: Wednesday, March 6, 2024 8:32 AM
To: Karl Klimek (karlklimek@mac.com); Jerry Cannon (kalkaskaso@yahoo.com); troy.stobert@gmail.com; Tracy Nichol (nicholtracy1@hotmail.com)
Subject: RE: Meeting (KMHC Board Leadership)
Importance: High

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Thank you,

Chandra Whiting

Chandra S. Whiting
Executive Assistant

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231-258-7527 (fax)
cwhiting3@mhc.net

From: Rogols, Kevin <krogols@mhc.net>
Sent: Monday, March 4, 2024 11:45 AM
To: Whiting, Chandra <cwhiting3@mhc.net>
Cc: Karl Klimek <karlklimek@mac.com>; Jerry Cannon <kalkaskaso@yahoo.com>; Tracy Nichol <nicholtracy1@hotmail.com>; Troy Stobert <troy.stobert@gmail.com>
Subject: Meeting

Please set up a meeting with Board leadership to discuss succession planning.

Whiting, Chandra

From: Whiting, Chandra
Sent: Friday, March 1, 2024 4:01 PM
To: Todd Jones (smokeydabear666@yahoo.com); clerk@garfieldtwsp.com; Terri Sibole; Bryan Moore
Cc: Karl Klimek (karlklimek@mac.com); Jerry Cannon (kalkaskaso@yahoo.com)
Subject: Kalkaska Memorial Health Center - Important Information
Attachments: Garfield Twp Letter - 03 01 24.pdf

Importance: High

Dear Garfield Township Trustees,

Please see the attached communication pertaining to Kalkaska Memorial Health Center being sent on behalf of the KMHC Board of Trustees Board Chair, Karl Klimek.

The important documents include a letter from the Board Chair and a Resolution of Censure.

Thank you,

Chandra Whiting

Chandra S. Whiting
Executive Assistant

Kalkaska Memorial Health Center
419 S Coral Street
Kalkaska MI 49646
231-258-7502 (phone)
231-258-7527 (fax)
cwhiting3@mhc.net

Whiting, Chandra

From: Whiting, Chandra
Sent: Wednesday, February 28, 2024 12:20 PM
To: Jerry Cannon (kalkaskaso@yahoo.com)
Subject: FW: KMHC Strategic Planning Committee Meeting - 03/13/24

Importance: High

Good afternoon,

We have scheduled a meeting of the KMHC Strategic Planning Committee on **March 13, 2024, at 12:00 PM in the Dr. William W. Kitti Education Center (Stonehouse)**. Please respond and let me know if you will be able to attend this meeting.

I am also in the process of getting the finalized dates out to you for the meeting schedules for the committees for the remainder of year.

Please let me know if you have any questions.

Thank you,

Chandra Whiting

Chandra S. Whiting
Executive Assistant

Kalkaska Memorial Health Center
419 S Coral Street
Kalkaska MI 49646
231-258-7502 (phone)
231-258-7527 (fax)
cwhiting3@mhc.net

From: Whiting, Chandra
Sent: Wednesday, February 28, 2024 12:17 PM
To: Cannon, Jeremy <JCANNON1@mhc.net>; Karl Klimek (karlklimek@mac.com) <karlklimek@mac.com>; Bud Banker (bltsupervisor@gmail.com) <bltsupervisor@gmail.com>; Tracy Nichol (nicholtracy1@hotmail.com) <nicholtracy1@hotmail.com>; Kimberly Stephens (kimberly.stephens@itwsf.com) <kimberly.stephens@itwsf.com>; Robert Barr (bobausable@gmail.com) <bobausable@gmail.com>
Subject: KMHC Strategic Planning Committee Meeting - 03/13/24
Importance: High

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I am also in the process of getting the finalized dates out to you for the meeting schedules for the committees for the remainder of year.

Please let me know if you have any questions.

Thank you,

Chandra Whiting

Chandra S. Whiting
Executive Assistant

Kalkaska Memorial Health Center
419 S Coral Street
Kalkaska MI 49646
231-258-7502 (phone)
231-258-7527 (fax)
cwhiting3@mhc.net

Whiting, Chandra

From: Whiting, Chandra
Sent: Wednesday, February 14, 2024 9:43 AM
To: Jerry Cannon
Subject: RE: [EXTERNAL] Re: Meeting Materials are now available for KMHC Nominating Committee Meeting - Thursday, February 15, 2024 12:00 - 1:30 PM ET

Good morning Jerry,

I don't have the ability to send it as a word document. I will have a packet printed for you and you can pick it up today when you come in for the Board Leadership Meeting.

As far as number of candidates, the ones you are seeing listed are for the Board Quality, Safety and Patient Experience Community Member Applicants. The information for the At-Large applicants will be provided at the nominating Committee Meeting on Thursday.

Thank you,

Chandra Whiting

Chandra S. Whiting
Executive Assistant

Kalkaska Memorial Health Center
419 S Coral Street
Kalkaska MI 49646
231-258-7502 (phone)
231-258-7527 (fax)
cwhiting3@mhc.net

From: Jerry Cannon <kalkaskaso@yahoo.com>
Sent: Tuesday, February 13, 2024 9:41 PM
To: Whiting, Chandra <cwhiting3@mhc.net>
Subject: [EXTERNAL] Re: Meeting Materials are now available for KMHC Nominating Committee Meeting - Thursday, February 15, 2024 12:00 - 1:30 PM ET

I do not have Director Desk capability; can you send a Word Doc? I thought we had four candidates?

On Tuesday, February 13, 2024 at 02:57:39 PM EST, Whiting, Chandra <mailer@secure.directorsdesk.com> wrote:

RE: KMHC Nominating Committee Meeting - Thursday, February 15, 2024 12:00 - 1:30 PM ET

Meeting documents are ready for you to review in your Munson Healthcare Directors Desk account.

NOMINATING COMMITTEE MEETING MINUTES - MARCH 12, 2020
- Final Minutes - Nominating Committee Mtg Minutes - 03 12 20
CANDIDATE - LISA ANDERSON

- Nominating Committee Applicant - Anderson
- CANDIDATE - NOLA KNIGHT
- Nominating Committee Applicant - Knight

Click the link below to view the meeting/event:

Apple (iOS) Mobile User: [Please click here to open the meeting/event on your Apple mobile Directors Desk app](#)

Web User: <https://secure.directorsdesk.com/Login.aspx?anc=e2686424-d146-45ae-a67a-63cc20d97db8>

[Please click here to RSVP](#)

Please click on the attachment to sync this meeting to your calendar

Whiting, Chandra

From: Whiting, Chandra
Sent: Wednesday, February 14, 2024 8:28 AM
To: Karl Klimek (karlklimek@mac.com); Jerry Cannon (kalkaskaso@yahoo.com); Tracy Nichol (nicholtracy1@hotmail.com); troy.stobert@gmail.com
Subject: Documents for Today's KMHC Board Leadership Meeting - 12 PM
Attachments: Board Mtg Agenda - 02 20 24.pdf; Closed Session Agenda - 02 20 24.pdf
Importance: High

Good morning,

Please see the attached documents that will be discussed at the meeting of the KMHC Board Leadership **today at 12PM**. Reminder the meeting will be in Kevin's office in Administration.

Thank you,

Chandra Whiting

Chandra S. Whiting
Executive Assistant

Kalkaska Memorial Health Center
419 S Coral Street
Kalkaska MI 49646
231-258-7502 (phone)
231-258-7527 (fax)
cwhiting3@mhc.net

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

STUART MCKINNON & MICHAEL COX,

Plaintiffs,

File No. _____

Hon. _____

v

KALKASKA COUNTY BOARD OF COMMISSIONERS,
KALKASKA MEMORIAL HEALTH CENTER,
KALKASKA COUNTY HOSPITAL AUTHORITY,
KALKASKA MEMORIAL HEALTH CENTER
BOARD OF TRUSTEES, KEVIN ROGOLS,
NELSON JERRY CANNON, KARL KLIMEK,
TRACY NICHOL, BRUCE ZENNER, and
R. TROY STOBERT,

Defendants.

EXHIBIT 22

To The Complaint

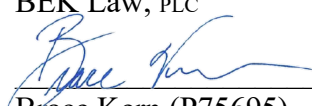
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing was filed on this 22nd day of April 2024, with the Clerk of the Court via the Court's CM/ECF system for electronic service on all counsel of record.

Respectfully submitted,

BEK Law, PLC

By: _____


Brace Kern (P75695)

Attorney for Plaintiffs

3434 Veterans Drive

Traverse City, MI 49684

(231) 499-5380

Info@BraceKern.com

Dated: April 22, 2024

Act No. 131
Public Acts of 2022
Approved by the Governor
June 29, 2022
Filed with the Secretary of State
June 29, 2022
EFFECTIVE DATE: June 29, 2022

**STATE OF MICHIGAN
101ST LEGISLATURE
REGULAR SESSION OF 2022**

Introduced by Reps. VanWoerkom and Lilly

ENROLLED HOUSE BILL No. 5876

AN ACT to amend 1945 PA 47, entitled “An act to authorize 2 or more cities, townships, and villages, or any combination of cities, townships, and villages, to incorporate a hospital authority for planning, promoting, acquiring, constructing, improving, enlarging, extending, owning, maintaining, and operating 1 or more community hospitals and related buildings or structures and related facilities; to provide for the sale, lease, or other transfer of a hospital owned by a hospital authority to a nonprofit corporation established under the laws of this state for no or nominal monetary consideration; to define hospitals and community hospitals; to provide for changes in the membership therein; to authorize the cities, townships, and villages to levy taxes for community hospital purposes; to provide for the issuance of bonds; to provide for the pledge of assessments; to provide for borrowing money for operation and maintenance and issuing notes for operation and maintenance; to validate elections heretofore held and notes heretofore issued; to validate bonds heretofore issued; to authorize condemnation proceedings; to grant certain powers of a body corporate; to validate and ratify the organization, existence, and membership of entities acting as hospital authorities under the act and the actions taken by hospital authorities and by the members of the hospital authorities; and to prescribe penalties and provide remedies,” by amending section 9 (MCL 331.9), as amended by 1990 PA 69.

The People of the State of Michigan enact:

Sec. 9. (1) For purposes of a hospital authority established under this act, the hospital board may purchase, lease, accept by gift or devise, or condemn private property. The hospital board may sell, exchange or otherwise transfer, lease, hold, manage, and control a property, asset, or hospital owned by the hospital board. Subject to subsections (2), (14), and (19), the sale, exchange, transfer, or lease of a property, asset, or hospital must be for its market value and the money received from that sale, exchange, transfer, or lease must be retained by the hospital authority. If acquired by condemnation, 1911 PA 149, MCL 213.21 to 213.25, and the uniform condemnation procedures act, 1980 PA 87, MCL 213.51 to 213.75, apply.

(2) Except as otherwise provided in subsection (19), a hospital authority whose jurisdiction has a member population of fewer than 300,000 may, by resolution, provide for the sale, lease, or other transfer of a hospital owned by the hospital board, under this subsection and subsections (3) to (12). The resolution must include a copy of the document proposed to effect the sale, lease, or other transfer. If a hospital authority passes a resolution described in this subsection, the hospital authority also shall provide by resolution for a public vote of the electors at large of all cities, villages, and townships in the hospital authority on the question of the sale, lease, or other transfer of the hospital. The election must be conducted in the same manner as provided in section 4 for the approval of an additional tax for capital improvements. If the sale, lease, or other transfer of the hospital is approved by a majority of the voters, the hospital board may sell, lease, or otherwise transfer a hospital owned by

the hospital board on terms and conditions considered reasonable by the hospital board, including a sale, lease, or other transfer for no or nominal monetary consideration, subject to subsections (6) to (8) and all of the following conditions:

(a) The sale, lease, or other transfer from the hospital authority must be to a nonprofit corporation established under the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, and organized specifically for the ownership and operation of the hospital. The nonprofit corporation shall meet both of the following requirements:

(i) At the time of the sale, lease, or other transfer or within 6 months after the date of the sale, lease, or other transfer, be an entity exempt from federal income tax under section 501(c) of the internal revenue code of 1986, 26 USC 501, or a comparable successor provision.

(ii) At the time of the sale, lease, or other transfer from the hospital authority, the majority of the members of the board of directors of the nonprofit corporation are also members of the board of the hospital authority.

(b) At the time of the sale, lease, or other transfer from the hospital authority, the articles of incorporation of the nonprofit corporation and the contractual arrangements between the hospital authority and the nonprofit corporation must require that the nonprofit corporation operate the hospital as a nonprofit community hospital open to the general public that serves the general population residing in the service area of the hospital authority.

(c) At the time of the sale, lease, or other transfer from the hospital authority, the articles of incorporation of the nonprofit corporation and the contractual arrangements between the hospital authority and the nonprofit corporation must require that the nonprofit corporation shall not sell, lease, or otherwise transfer the hospital without the express consent of the hospital authority. If the sale, lease, or other transfer of the hospital by the nonprofit corporation is approved by the hospital authority, the nonprofit corporation may sell, lease, or otherwise transfer the hospital on terms and conditions considered reasonable by the nonprofit corporation, including a sale, lease, or other transfer for no or nominal monetary consideration.

(d) If the hospital authority has ever levied an additional tax for capital improvements under section 4, the hospital authority shall pay back to each member unit of the hospital authority, on terms and conditions as agreed upon by the hospital board and each member unit, an amount equal to all taxes for capital improvement collected within the 60 months immediately preceding the sale, lease, or other transfer with respect to property located in the member unit, and any remaining uncollected portion of the tax levy must not then be collected.

(3) As used in subsection (2), "hospital" includes all property, real and personal, tangible and intangible, including without limitation cash and accounts receivable, used in the operation and management of the hospital.

(4) If self-liquidating bonds have been issued by the hospital authority under this act, and if the bonds are outstanding, a lease of a hospital under subsection (2), with or without a transfer to the nonprofit corporation at the expiration of the lease term and with or without monetary consideration, is not a violation of this act or of any bond resolution or ordinance adopted under this act if the lease does all of the following:

(a) Requires the lessee to pay rent to the hospital authority in an amount sufficient to pay the principal and interest obligations of the bonds as they become due.

(b) Requires the lessee to maintain the various bond funds as required by this act and by the bond resolution or ordinance.

(c) Provides for the continuation of the lien created by this act and by the bond resolution or ordinance on the net revenues of the hospital.

(d) Requires the lessee to operate the hospital in a manner consistent with the bond resolution or ordinance.

(5) If self-liquidating bonds have been issued by the hospital authority under this act, and if the bonds are outstanding, a sale of a hospital under subsection (2) is not a violation of this act or of any bond resolution or ordinance adopted under this act if all of the following conditions are met:

(a) The outstanding bonds are defeased.

(b) Defeasance of the existing bonded indebtedness is accomplished by depositing sufficient cash or United States treasury obligations, or both, in escrow in an amount sufficient, including interest to be earned on the funds and obligations placed in escrow, to provide for payment of all interest, principal, and premium, if any, when and as due on the outstanding bonds, including final payment. As used in this subdivision, "final payment" means the final payment due at the maturity of the bonds or on the redemption of the bonds before maturity on a date on which the bonds are callable for redemption if irrevocable arrangements have been made to call the bonds for redemption on that date.

(c) The contract of sale contains provisions implementing this subsection.

(6) Subject to subsection (9), if a hospital authority passes a resolution providing for an election as provided in subsection (2), the legislative body of a city, village, or township participating in the hospital authority may, within 90 days after the date the resolution is passed by the hospital authority, pass a resolution to withdraw

from membership in the authority. If the resolution to withdraw as a member of the authority is passed by the legislative body, the election under subsection (2) must not be held unless a majority of the hospital authority board concurs in the withdrawal of that member unit. If the board concurs in the withdrawal, the withdrawal is effective on the date of the sale, lease, or other transfer of the hospital after the election under subsection (2). After the effective date of the withdrawal, the withdrawing member unit is not subject to any tax levy or other request for funds made by the hospital authority under this act or otherwise, and is not entitled to any of the assets of the hospital authority.

(7) Subject to subsection (9) and except as otherwise provided in this subsection, if a hospital authority passes a resolution providing for an election under subsection (2), the legislative body of a city, village, or township participating in the hospital authority may, within 90 days after the date the resolution is passed by the hospital authority, provide by resolution for a public vote of the electors of the city, village, or township on the question of the withdrawal of that unit from membership in the hospital authority. The election must be held at the same time as the at large election held under subsection (2) and conducted in the same manner as provided in section 4 for the approval of an additional tax for capital improvements. If an election is called by a member unit under this subsection, its vote is a separate vote for that unit on the question of withdrawal from the hospital authority. However, an election under this subsection or under subsection (2) must not be conducted unless the hospital board has by majority vote consented to the withdrawal of the member unit that has resolved to hold an election on the question of withdrawal from the authority under this subsection. If the board concurs in the withdrawal, the withdrawal is effective on the date of the sale, lease, or other transfer of the hospital after the election under subsection (2). After the effective date of the withdrawal, the withdrawing member unit is not subject to any tax levy or other request for funds made by the hospital authority under this act or otherwise, and is not entitled to any of the assets of the hospital authority.

(8) Subject to subsection (9) and except as otherwise provided in this subsection, if a hospital authority passes a resolution providing for an election under subsection (2), the electors of a city, village, or township participating in the hospital authority may, by petition signed by a number of qualified and registered electors residing within the city, village, or township equal to not less than 5% of the number of votes cast by the qualified and registered electors in that city, village, or township for secretary of state at the last general election in which a secretary of state was elected, require a public vote of the electors in that city, village, or township on the question of the withdrawal of that unit from membership in the hospital authority. The petitions must be submitted to the clerk of the city, village, or township within 90 days after the passage of the resolution by the hospital authority providing for an election under subsection (2). If a sufficient number of signatures are submitted, the clerk of the city, village, or township shall take the steps necessary to provide for an election. The election must be held at the same time as the at large election held under subsection (2) and conducted in the same manner as provided in section 4 for the approval of an additional tax for capital improvements. If an election is required in a member unit under this subsection, its vote is a separate vote for that unit on the question of withdrawal from the hospital authority. However, an election under this subsection or under subsection (2) must not be conducted unless by a majority vote the hospital board has consented to the withdrawal of the member unit. If the board concurs in the withdrawal, the withdrawal is effective on the date of the sale, lease, or other transfer of the hospital after the election under subsection (2). After the effective date of the withdrawal, the withdrawing member unit is not subject to any tax levy or other request for funds made by the hospital authority under this act or otherwise, and is not entitled to any of the assets of the hospital authority.

(9) If, at the election held under subsection (2), a majority of the electors at large do not vote to approve the sale, lease, or other transfer of the hospital to a nonprofit corporation, a resolution passed under subsection (6) or an election held under subsection (7) or (8) to withdraw a city, village, or township from participation in the hospital authority is void.

(10) An election held under subsection (8) takes precedence over a resolution passed under subsection (6).

(11) For a lease or other transfer of a hospital under subsection (2), the total bonded indebtedness of the hospital after the lease or transfer must not be increased so as to exceed 60% of the total asset value of the hospital without a majority vote of the members serving on the hospital authority board. As used in this subsection and subsection (12), "total asset value" means the total value of the various assets of the hospital, including assets to be constructed or acquired by means of the additional proposed bonded indebtedness, as shown on an audited financial statement that includes all bonded indebtedness of the hospital.

(12) For a lease or other transfer of a hospital under subsection (2), the total bonded indebtedness of the hospital after the lease or transfer must not be increased so as to exceed 80% of the total asset value of the hospital unless authorized at a general or special election and approved by a majority vote of the total qualified and registered electors voting on the question in each city, village, and township participating in the hospital authority. The election must be conducted in the same manner as provided in section 4 for the approval of an additional tax for capital improvements.

(13) On the sale, lease, or other transfer of a hospital under this section, the nonprofit corporation or subsequent profit entity shall assume and is bound by any existing labor agreement applicable to the hospital, for the remainder of the term of the agreement. A representative of the employees or a group of employees who is entitled to represent the employees or group of employees under 1947 PA 336, MCL 423.201 to 423.217, shall continue to be the representative of the employees or group of employees if the employees become employees of the nonprofit corporation or subsequent profit entity. This subsection does not limit the rights of the hospital employees, under applicable law, to assert that a bargaining representative protected by this subsection is no longer the representative of the employees.

(14) A hospital authority whose jurisdiction has a member population of more than 300,000 may, by resolution adopted by a majority vote of the hospital board, provide for the sale, lease, or other transfer of a hospital owned by the hospital board on any terms and conditions considered reasonable by the hospital board, including sale, lease, or other transfer for no or nominal monetary consideration, subject to all of the following terms and conditions:

(a) The sale, lease, or other transfer is to a nonprofit corporation established under the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, and organized specifically for the ownership and operation of the hospital. The nonprofit corporation shall at the time of the sale, lease, or other transfer or within 6 months after the date of the sale, lease, or other transfer, be an entity exempt from federal income tax under section 501(c) of the internal revenue code of 1986, 26 USC 501, or a comparable successor provision.

(b) The articles of incorporation of the nonprofit corporation and the contractual arrangements between the hospital authority and the nonprofit corporation must at all times require that the nonprofit corporation operate the hospital as a nonprofit community health facility open to the general public that serves the general population residing in the service area of the hospital authority.

(c) The articles of incorporation of the nonprofit corporation and the contractual arrangements between the hospital authority and the nonprofit corporation must at all times require that the nonprofit corporation shall not sell all of the transferred assets without the express consent of the hospital authority and the approval by a majority of the voters in an election conducted in the same manner as provided in section 4 for the approval of an additional tax for capital improvements. If all of the transferred assets are sold under this subdivision, the sale must be for market value and the proceeds of the transaction must be turned over to the hospital authority and used for health care needs within the service area of the hospital authority.

(d) The articles of incorporation of the nonprofit corporation and the contractual arrangements between the hospital authority and the nonprofit corporation must at all times require that the nonprofit corporation adopt and carry out policies designed to ensure that the hospital complies with the requirement of section 20201(2)(a) of the public health code, 1978 PA 368, MCL 333.20201, that patients not be denied appropriate care on the basis of source of payment.

(15) As used in subsection (14), "hospital" includes all property, real and personal, tangible and intangible, including without limitation cash, accounts receivable, and pension reserves used in the operation and management of 1 or more hospitals.

(16) If self-liquidating bonds have been issued by the hospital authority under this act, and if the bonds are outstanding, a sale, lease, or other transfer of a hospital under subsection (14) is not a violation of this act or of any bond resolution or ordinance adopted under this act if all of the following conditions are met:

(a) The outstanding bonds are defeased.

(b) Defeasance of the existing bonded indebtedness is accomplished by depositing sufficient cash or United States treasury obligations, or both, in escrow in an amount sufficient, including interest to be earned on the funds and obligations placed in escrow, to provide for payment of all interest, principal, and premium, if any, when and as due on the outstanding bonds, including final payment. As used in this subdivision, "final payment" means the final payment due at the maturity of the bonds or on redemption of the bonds before maturity on a date on which the bonds are callable for redemption if irrevocable arrangements have been made to call the bonds for redemption on that date.

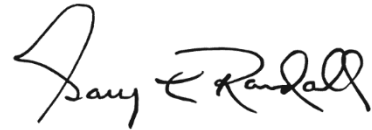
(17) If a hospital authority passes a resolution providing for the sale, lease, or other transfer of a hospital under subsection (14), the legislative body of a city, village, or township participating in the hospital authority may, within 60 days after the resolution is passed by the hospital authority, pass a resolution to withdraw from membership in the authority. If a legislative body of a member city, village, or township in the authority passes a resolution to withdraw under this subsection, the resolution adopted by the hospital authority under subsection (14) is not effective until a majority of the hospital authority board concurs in the withdrawal of that city, village, or township. However, if the sale, lease, or other transfer of the hospital is not carried out, the resolution to withdraw and the hospital authority's resolution of concurrence in the withdrawal are void.

(18) On the sale, lease, or other transfer of a hospital under subsection (14), the nonprofit corporation shall assume and is bound by any existing labor agreement applicable to the hospital, for the remainder of the term of the agreement. A representative of the employees or a group of employees under 1947 PA 336, MCL 423.201 to 423.217, shall continue to be the representative of the employees or group of employees when the employees become employees of the nonprofit corporation or subsequent profit entity. This subsection does not limit the rights of the hospital employees, under applicable law, to assert that a bargaining representative protected by this subsection is no longer the representative of the employees.

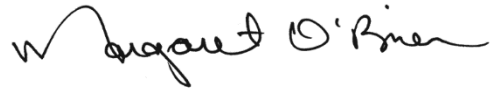
(19) A hospital authority whose jurisdiction has a member population of fewer than 5,000 may by resolution adopted by a majority vote of the hospital board provide for the sale, lease, or other transfer of real property owned by the hospital board to the county in which the member units of the hospital authority are located on any terms and conditions considered reasonable by the hospital board, including sale, lease, or other transfer for no or nominal monetary consideration.

(20) If a hospital authority has completed the purposes for which it was organized, the hospital board, by a vote of the majority of the entire hospital board, may provide for the dissolution of the hospital authority. A hospital authority has not completed the purposes for which it was organized if it has bonds outstanding that have not been defeased as described in this section.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

STUART MCKINNON & MICHAEL COX,

Plaintiffs,

File No. _____

Hon. _____

v

KALKASKA COUNTY BOARD OF COMMISSIONERS,
KALKASKA MEMORIAL HEALTH CENTER,
KALKASKA COUNTY HOSPITAL AUTHORITY,
KALKASKA MEMORIAL HEALTH CENTER
BOARD OF TRUSTEES, KEVIN ROGOLS,
NELSON JERRY CANNON, KARL KLIMEK,
TRACY NICHOL, BRUCE ZENNER, and
R. TROY STOBERT,

Defendants.

EXHIBIT 23

To The Complaint

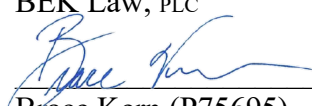
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing was filed on this 22nd day of April 2024, with the Clerk of the Court via the Court's CM/ECF system for electronic service on all counsel of record.

Respectfully submitted,

BEK Law, PLC

By: _____


Brace Kern (P75695)

Attorney for Plaintiffs

3434 Veterans Drive

Traverse City, MI 49684

(231) 499-5380

Info@BraceKern.com

Dated: April 22, 2024

February 28, 2024

To: Kalkaska Memorial Health Center Board of Trustees
Freedom of Information Act (FOIA) Coordinator:
c/o Kevin Rogols, CEO via email: krogols@mhc.net
c/o Karl Klimek, Chair of the Board of Trustees via email: karlklimek@mac.com

From: Stuart McKinnon
(Address, Phone & Email
Redacted by BEK Law)



Re: Freedom of Information Act Request

Dear FOIA Coordinator:

Please be advised that if you are not the proper FOIA Coordinator, you have an affirmative duty to forward this request to the proper FOIA Coordinator.

I hereby request, under the authority of Michigan's Freedom of Information Act, a copy of the following public records, which were prepared, owned, used, in the possession of, or retained by the Kalkaska Memorial Health Center Board of Trustees and their agents or employees:

1. All procedures and guidelines established by the Kalkaska Memorial Health Center's Board of Trustees, pursuant to MCL 15.234(4), to implement Michigan's FOIA.
2. All written public summaries created by the Kalkaska Memorial Health Center's Board of Trustees regarding the specific procedures and guidelines, adopted pursuant to MCL 15.234(4), that outline how the public should submit written FOIA requests and explaining how to understand your written responses, deposit requirements, fee calculations, and avenues for challenge and appeal.
3. All public records demonstrating whether the Kalkaska Memorial Health Center's Board of Trustees have ever posted and maintained, pursuant to MCL 15.234(4), their FOIA procedures and guidelines and their related written public summaries on its website.
4. All board rules or policies adopted by the Kalkaska Memorial Health Center Board of Trustees in the years of 2020, 2021, 2022, 2023 and 2024.
5. All audio and video recordings of all meetings held by the Kalkaska Memorial Health Center Board of Trustees and any of its committees in the years of 2020, 2021, 2022, 2023 and 2024.
6. All attorney invoices for legal services submitted to Kalkaska Memorial Health Center Board of Trustees, the Kalkaska Memorial Health Center's Senior Leadership Team and the Kalkaska Memorial Health Center in the years of 2020, 2021, 2022, 2023 and 2024.

7. All payment documentation related to all attorney invoices for legal services that have been submitted to Kalkaska Memorial Health Center Board of Trustees, the Kalkaska Memorial Health Center's Senior Leadership Team and the Kalkaska Memorial Health Center in the years of 2020, 2021, 2022, 2023 and 2024.
8. All fee agreements and retainer agreements for any attorneys that have represented the Kalkaska Memorial Health Center Board of Trustees and the Kalkaska Memorial Health Center's Senior Leadership Team in the years of 2020, 2021, 2022, 2023 and 2024.
9. All written communications, letters, text messages and emails received from any attorneys that have represented the Kalkaska Memorial Health Center Board of Trustees, the Kalkaska Memorial Health Center's Senior Leadership Team and the Kalkaska Memorial Health Center in the years of 2020, 2021, 2022, 2023 and 2024.
10. All written communications, letters, text messages and emails sent to any attorneys that have represented the Kalkaska Memorial Health Center Board of Trustees, the Kalkaska Memorial Health Center's Senior Leadership Team and the Kalkaska Memorial Health Center, in the years of 2020, 2021, 2022, 2023 and 2024.
11. All minutes, meeting notices and agendas pertaining to all committees and subcommittees of the Kalkaska Memorial Health Center Board of Trustees for the years of 2020, 2021, 2022, 2023 and 2024.
12. All FOIA requests that have been received to Kalkaska Memorial Health Center Board of Trustees, the Kalkaska Memorial Health Center's Senior Leadership Team and the Kalkaska Memorial Health Center, in the years of 2020, 2021, 2022, 2023 and 2024.
13. All FOIA requests that have been submitted to any other public bodies by the Kalkaska Memorial Health Center Board of Trustees, the Kalkaska Memorial Health Center's Senior Leadership Team and the Kalkaska Memorial Health Center, in the years of 2020, 2021, 2022, 2023 and 2024.
14. All board packets prepared for the Kalkaska Memorial Health Center Board of Trustees in the years of 2020, 2021, 2022, 2023 and 2024.
15. All Board Member support manuals prepared for the Kalkaska Memorial Health Center Board of Trustees in 2022, 2023 and 2024.
16. All discussion documents provided by Mr. Rogols on or around May 23, 2023, to the Kalkaska Memorial Health Center Board of Trustees regarding the topic of Act 47 versus not-for-profit in addition to alternate structures for healthcare affiliations.
17. All proposed timelines for the Act 47 vs. Not-for-Profit evaluation that were recommended by the Strategic Planning Committee and the Executive/Finance Committee.
18. All documents related to actual examples of KMHC vendor agreements that fell short of expectations, which were referenced in your September 26, 2023 meeting minutes.

19. All flow charts regarding a high-level overview of examples of possible joint ventures and how they could be structured, which were referenced in your September 26, 2023 meeting minutes.
20. All public records, emails, committee meeting minutes, and any other communications pertaining to the proposal from a law firm, Honigman LLP, and associated work plan to investigate/submit potential Act 47 legislative changes to the Michigan Legislature.
21. All Act 47 decision matrix documentation provided by Mr. Rogols on or around September 26, 2023, to the Kalkaska Memorial Health Center Board of Trustees.
22. All Act 47 decision matrix forms that were completed by each Kalkaska Memorial Health Center Board of Trustee.
23. All summaries of the Act 47 decision matrix results that were compiled from the forms completed by the Kalkaska Memorial Health Center Board of Trustees.
24. All other public records, emails or other communications related to the Act 47 decision matrix and associated results.
25. All written communications, text messages and emails exchanged between any Mika Meyers attorneys/employees and all members of the Kalkaska Memorial Health Center's Senior Leadership Team in the years of 2023 and 2024.
26. All written communications, text messages and emails exchanged between all Mika Meyers attorneys/employees and all Kalkaska Memorial Health Center Board of Trustees in the years of 2023 and 2024.
27. All audio and video recordings related to the meeting of the Kalkaska Memorial Health Center Board of Trustees that occurred on January 23, 2024.
28. All audio and video recordings capturing thumb-drives being discussed and distributed to the Kalkaska Memorial Health Center Board of Trustees, after their meeting was adjourned on January 23, 2024.
29. All written communications, text messages and emails exchanged between Nelson "Jerry" Cannon and Administrator Kevin Rogols in the years of 2023 and 2024.
30. All written communications, text messages and emails exchanged between Nelson "Jerry" Cannon and Executive Assistant Chandra Whiting in the years of 2023 and 2024.
31. All written communications, text messages and emails exchanged between any members of the Kalkaska Memorial Health Center's Senior Leadership Team and Kalkaska County Clerk Deborah Hill in the years of 2023 and 2024.

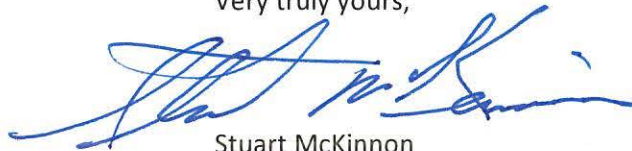
32. All written communications, text messages and emails exchanged between any members of the Kalkaska Memorial Health Center's Senior Leadership Team and Kalkaska County Sheriff Patrick Whiteford in the years of 2023 and 2024.

Because there is significant public interest in these matters of public concern, I hereby request that you (a) expedite this FOIA request; and (b) waive all fees associated with producing the above requested items because searching for and furnishing copies of these public records will primarily benefit the general public.

Lastly, I'd appreciate it if you would reply to this email to confirm receipt of this FOIA request. All written responses, communications, public records and writings related to this FOIA request may be provided in their original digital file form, or, if they are documents, please provide them in PDF format. A flash drive is preferred, which I will pick up upon notice from you that is ready to be retrieved.

Should you have any questions, please feel free to call or email me. Thank you for your anticipated cooperation.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Stuart McKinnon", is written over a horizontal line.

Stuart McKinnon

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

STUART MCKINNON & MICHAEL COX,

Plaintiffs,

File No. _____

Hon. _____

v

KALKASKA COUNTY BOARD OF COMMISSIONERS,
KALKASKA MEMORIAL HEALTH CENTER,
KALKASKA COUNTY HOSPITAL AUTHORITY,
KALKASKA MEMORIAL HEALTH CENTER
BOARD OF TRUSTEES, KEVIN ROGOLS,
NELSON JERRY CANNON, KARL KLIMEK,
TRACY NICHOL, BRUCE ZENNER, and
R. TROY STOBERT,

Defendants.

EXHIBIT 24

To The Complaint

CERTIFICATE OF SERVICE

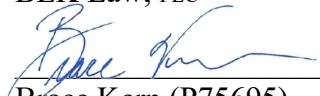
The undersigned hereby certifies that a true and correct copy of the above and foregoing was filed on this 22nd day of April 2024, with the Clerk of the Court via the Court's CM/ECF system for electronic service on all counsel of record.

Respectfully submitted,

BEK Law, PLC

Dated: April 22, 2024

By: _____


Brace Kern (P75695)

Attorney for Plaintiffs

3434 Veterans Drive

Traverse City, MI 49684

(231) 499-5380

Info@BraceKern.com

March 19, 2024

Stuart McKinnon
(Address, Phone Number &
Email redacted by BEK
LAW)

RE: Response to Freedom of Information Act ("FOIA") Request Received via email on February 28, 2024.

Dear Mr. McKinnon:

Your recent request for public record(s) under the Michigan Freedom of Information Act ("FOIA"), MCL §15.231 et seq., as amended, is hereby:

- X Granted, requested record(s) available.
- ☐ Please remit \$0.00 to cover costs (see Work Sheet Estimated Costs).
- ☐ No fee assessed. Costs estimated to be less than \$20.00.
- ☐ Granted, however since the cost of responding to your request is estimated to exceed \$0.00, a deposit of \$ 0.00 (1/2 estimated cost) is required. Upon receipt of your deposit, the City will compile the requested record(s).
- ☐ Granted, your name will be placed on a subscription list for future issuances of the requested record(s) disseminated on a regular basis. This subscription shall be valid for six (6) months and shall be renewable only upon written request each six (6) months.
- X Denied a public record does not exist under the name given or by another name reasonably known by the FOIA Coordinator.
- X Denied, pursuant to MCL 15.243 the requested records(s) are exempt from disclosure for the following reason(s):
- ☐ Requested record(s) contains information of a personal nature and the disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.
- ☐ Requested records are investigative records compiled for law enforcement purposes and:
- ☐ Disclosure would interfere with law enforcement proceedings.

- ☐ Disclosure would deprive a person of the right to a fair trial or impartial administrative adjudication.
- ☐ Disclosure would constitute an unwarranted invasion of personal privacy.
- ☐ Disclosure would disclose the identity of a confidential source or if the record is compiled by a law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source.
- ☐ Disclosure of law enforcement investigative techniques or procedures.
- ☐ Disclosure would endanger the life or physical safety of law enforcement personnel.
- ☐ Requested records or information are specifically described and exempted from disclosure by statute.
- ☐ Requested record(s) that is furnished by the City to a public officer or public body in connection with the performance of the duties of that public officer or public body, if the considerations originally giving rise to the exempt nature of the public record remain applicable.
- ☐ Requested record(s) are trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy, if
 - ☐ The information is submitted upon a promise of confidentiality by the public body.
 - ☐ The promise of confidentiality is authorized by the chief administrative officer of the public body or by an elected official at the time the promise is made.
 - ☐ A description of the information is recorded by the public body within a reasonable time after it has been submitted, maintained in a central place within the public body, and made available to a person upon request.
- X Requested record(s) are subject to the attorney-client privilege.
- ☐ Requested record(s) are subject to the physician-patient, psychologist-patient, minister, priest, or Christian Science practitioner privilege, or other privilege recognized by statute or court rule.
- ☐ Requested record(s) are a bid or proposal to enter into a contract or agreement prior to the time established for submission or public opening.
- ☐ Requested record(s) are appraisals of real property to be acquired by the City until either of the following occurs:
 - ☐ An agreement is entered into.
 - ☐ Three (3) years have elapsed since the making of the appraisal, unless litigation relative to the acquisition has not yet terminated.
- ☐ Requested record comprises test questions and answers, scoring keys, and other examination instruments or data used to administer a license, public employment, or academic examination
 - ☐ The public interest in disclosure under this act outweighs the public interest in nondisclosure
 - ☐ The public interest in disclosure under this act does not outweigh the public interest in nondisclosure

- ☐ Requested record(s) are medical, counseling, or psychological facts or evaluations which would disclose an individual's identity, or include protected health information as defined in 45 CFR 160.103.
- ☐ Requested record(s) are communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final determination of policy or action.
 - ☐ Encouraging frank communications between officials and employees of the City clearly outweighs the public interest in disclosure.
- ☐ Requested record(s) are law enforcement communication codes or plans for deployment that if disclosed would prejudice the public body's ability to protect the public safety.
 - ☐ In this instance, the public interest in disclosure does not outweigh the public interest in nondisclosure.
- ☐ Requested record(s) are testing data for determining whether bidder's products meet the specifications for purchase of those products by the City, provided that only 1 bidder has met the specifications and no more than one year has elapsed from the time the City completed the testing.
- ☐ Unless the public interest in disclosure outweighs the public interest in nondisclosure, requested records are public records of a law enforcement agency, the release of which would do any of the following:
 - ☐ (i) identify or provide a means of identifying an informant;
 - ☐ (ii) identify or provide means to identify an undercover officer, agent or plain clothes officer;
 - ☐ (iii) disclose the personal address or telephone number of active or retired law enforcement personnel or a special skill they may have;
 - ☐ (iv) disclose the name, address or phone number of family members, relatives, children or parents of active or retired law enforcement personnel;
 - ☐ (v) disclose operational instructions;
 - ☐ (vi) reveal the contents of staff manuals provided to law enforcement personnel;
 - ☐ (vii) endanger the life or safety of law enforcement personnel or their family members or those who furnish information to law enforcement agencies;
 - ☐ (viii) identify or provide means of identifying a person as a law enforcement officer, agent or informant;
 - ☐ (ix) disclose personnel records; or
 - ☐ (x) identify or provide means to identifying residences that law enforcement personnel are requested to check in the absence of the owners or tenants.
- ☐ Requested record(s) are records of security measures, including security plans, security codes and combinations, passwords, passes, keys, and security procedures, to the extent that the records relate to the ongoing security of the City.
- ☐ Requested record(s) are information relating to a civil action in which the requesting party and the City are parties.
- ☐ Requested record(s) would disclose the social security number of an individual.

X Granted in part, denied in part, see above for explanation, record(s) enclosed.

- ☐ Pursuant to MCL 15.235 Section 5(2)(d), we are extending the period to respond to your request by ten (10) business days.

If your request for record(s) is denied, you may submit a written appeal, specifically stating “appeal” and stating the reasons for appeal, to the Kalkaska Memorial Health Center Board of Trustees (“Board”), or seek judicial review under Section 10 of the Act within 180 days after the public body’s final determination. Within ten (10) days of receiving a request for an appeal, the Board shall a) reverse the denial; b) issue a written notice upholding the denial; c) reverse in part and uphold in part by written notice; or d) issue a notice extending by ten (10) business days the time to decide the appeal. The Board is considered to have received your appeal at its first regularly scheduled meeting following the submission of the appeal in writing.

If after judicial review, the Circuit Court determines that Kalkaska Memorial Health Center has not complied fully with the disclosure requirements, the Court shall award reasonable attorneys’ fees, costs, and disbursements. If the Court determines that Kalkaska Memorial Health Center has arbitrarily and capriciously violated the Act, the Court shall award punitive damages in the amount of \$1,000.00.

Pursuant to the mandates of the Freedom of Information Act, being 1976 PA 442 (MCL 15.231 to 15.246) (“FOIA”) Kalkaska Memorial Health Center has established Procedures and Guidelines for handling FOIA requests to ensure that members of the public receive full and complete information requested regarding the affairs of government, while not unduly burdening hospital functions. Please be advised that a copy of these Procedures and Guidelines and a Summary of these Procedures and Guidelines is available at the hospital office.

A copy of this request will be kept on file for no less than one (1) year.

A handwritten signature in blue ink, appearing to read "K. L. [unclear]", is written over a horizontal line.

FOIA Coordinator