

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

HANSEL NOFFSINGER,

PLAINTIFF,

VS.

CV NO.: 5:24-cv-900-HDM

**CULLMAN REGIONAL
MEDICAL CENTER, INC.,**

DEFENDANT.

**PLAINTIFF'S BRIEF IN OPPOSITION TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

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I. INTRODUCTION

Defendant's management operates with blinders as to its discriminatory conduct and its motion for summary judgment reflects the inability to recognize that a jury can find that but-for Plaintiff's age, 66, Defendant would not have terminated Plaintiff's employment. Defendant's motion fails to take the facts in the light most favorable to the Plaintiff such that summary judgment is due to be denied. A reasonable jury can conclude from the convincing mosaic of evidence that Defendant terminated Plaintiff's employment because of his age.

II. STATEMENT OF FACTS

A. RESPONSE TO DEFENDANT'S STATEMENT OF UNDISPUTED FACTS

¶2. Clarification. Vice President Lisa Courtney commenced her employment in 2018 with the purpose of growing Defendant's physicians working directly under its employ. (Doc. 25-50: 30:11-14). At that time, Defendant had two clinics consisting of a Cardiology Clinic, a Primary Care Clinic that had just started and employed only one nurse practitioner, and a single urologist. (Doc. 25-50: 31:8-14). Defendant actively grew the Primary Care Clinic and created an Urgent Care, General Surgery, and "Ortho" by 2020 and then finally "ten or so" clinics by 2022. (Doc. 25-50: 31:16-32:19).

¶¶7-9. Denied as Stated. Defendant omits the facts in the light most favorable to the Plaintiff. Defendant utilizes an "Employee Discipline and Misconduct"

policy. (Doc. 25-52, pp. 42-45). The policy allows for discipline for “improper conduct” and is “progressive” in nature with a Verbal Warning, a First Written Warning, a Final Written Warning, Disciplinary Suspension, Probation and Termination. *Id.* Verbal warnings and First Written Warnings given by supervisors or managers do not require approval from Defendant’s Human Resources Department. *Id.* Defendant’s Vice President Lisa Courtney is Plaintiff’s supervisor for purposes of this policy. (Doc. 25-50: 109:5-7). Courtney did not consider the incident as even a “verbal warning” pursuant to its “Employee Discipline and Misconduct” policy. (Doc. 25-50: 109:14-110:5). March 11, 2021, was one year, three months, and four days prior to June 15, 2022.

¶10. Denied as Stated. Defendant omits the facts in the light most favorable to the Plaintiff. Defendant omits that Stacy Graves wrote down Plaintiff’s immediate contrition for making the comment. (Doc. 25-53, p. 8). Defendant also omits that one employee believed the other employee was offended by the “Black Dogs” comment and that employee, when asked, stated she was not offended. *Id.* Further, Courtney testified that neither she nor anyone else issued Plaintiff any written discipline for this incident or any other incident. (Doc. 25-50: 129:3-5). May 3, 2021, was one year, one month, and twelve days prior to June 15, 2022.

¶¶11-12. Denied as Stated. Defendant glosses over the facts in the light most favorable to the Plaintiff: “That investigation determined that Plaintiff’s actions with

patients were appropriate.” (Doc. 24, p. 7, ¶12). Defendant omits that during the EEOC investigation, it relied on this allegation as a reason for termination, despite its internal findings that cleared Plaintiff of wrongdoing. (Doc. 25-55, p. 10). August 24, 2021, was nine months and twenty-two days prior to June 15, 2022.

¶¶13-21. Because no evidence exists, a jury is not required to believe that Plaintiff made any requests regarding his monthly bonus from September 28, 2021, through May 6, 2022. Defendant omits that it made the choice to amend Plaintiff’s contract from a six-month payment to a monthly bonus structure to avoid “huge swings/payouts every 6 months.” (Doc. 25-53, pp. 13, 15). Defendant omits that after changing Plaintiff’s bonus to a monthly payment, it withheld the first payment due to an IRS audit. (Compare Doc. 25-53, p. 16 with Doc. 24, p. 9, ¶17).

¶¶22-24. Defendant has no witnesses for this alleged incident. (Doc. 25-59: 57:9-58:7). July 21, 2021, was ten months and twenty-five days prior to June 15, 2022.

¶¶25-27. A jury will hear that “*Clostridioides difficile*, or C. diff, is a highly contagious bacterium that causes diarrhea and colitis. It often infects people who’ve recently taken antibiotics. Antibiotics that kill other bacteria in your gut but don’t kill C. diff allow it to quickly grow out of control. You have to take a different

antibiotic to treat C. diff.”¹ Further, Land testified that she never formally disciplined Plaintiff in any way. (Doc. 25-59: 80:18-23). September 2021 is at least eight months prior to June 15, 2022.

¶¶28-29. Denied as Stated. Defendant omits the facts in the light most favorable to the Plaintiff. A jury can reasonably conclude Defendant, in error, sent a letter to Plaintiff identifying a failure to adhere to his professional responsibilities. (Doc. 24, ¶¶28-29). A failure to maintain proper Continuing Medical Education credits may lead to a suspension of a physician’s license.² Plaintiff’s contract with Defendants states that “Automatic Termination for Cause” includes when “Physician becomes legally disqualified to practice medicine in the state of Alabama.” (Doc. 25-52, pp. 19, 21). Defendant seems surprised that a physician might be upset about an administrative error that could lead to the suspension of his license and be cause for termination.³ October 6, 2021, was eight months and nine days prior to June 15, 2022.

¶¶30-31. Denied as Stated. Defendant omits the facts in the light most favorable to the Plaintiff. Courtney testified that Plaintiff’s displeasure did not have anything to do with his bonus compensation. (Doc. 25-50: 177:19-178:19).

¹ See <<https://my.clevelandclinic.org/health/diseases/15548-c-diff-infection>> (last accessed March 30, 2026).

² See <<https://admincode.legislature.state.al.us/api/chapter/540-X-14>> See also Alabama Code § 34-24-360, 361, 381 (last accessed March 30, 2026).

³ The Court is well aware that no attorney wants to see his or her name in the back of The Alabama Lawyer stating a disciplinary action of any kind, including failure to maintain annual CLE credits.

¶32. Denied. Defendant fails to state the facts in the light most favorable to the Plaintiff. A reasonable jury can conclude Plaintiff sought to use the chain of command regarding a complaint about his subordinate. May 4, 2021, was one year, one month, and eleven days prior to June 15, 2022.

¶33. Denied. Defendant fails to state the facts in the light most favorable to the Plaintiff. A reasonable jury can conclude Plaintiff sought to use the chain of command, the Office Manager Stacy Graves, regarding a complaint about staff not under his supervision. August 26, 2021, was nine months and twenty days prior to June 15, 2022.

¶34. Denied. Defendant offers no evidence that Plaintiff failed to use the chain of command or “went to HR” regarding his complaint. Defendant employed Dr. Amber Whitfield. (Doc. 25-50: 98:18-21). Courtney testified that Dr. Whitfield “was actively trying to get medical staff to get our chief medical officer fired and talking derogatory about [the CMO] to other medical staff and trying to stage a coup basically.” (Doc. 25-50: 99:7-11). A reasonable jury can infer that Defendant’s workplace is not a place where co-workers trust one another.

¶¶35-39. Denied as Stated. Defendant omits the facts in the light most favorable to the Plaintiff: specifically, even with such delays, Plaintiff generated more cash payments for Defendant than any other healthcare provider in the Primary Care Health Clinic. (Doc. 25-52, pp.30-32).

¶¶44. Defendant omits that Defendant’s policy requires a second audit be performed within two weeks of the first “non-pass audit”, and that Defendant failed to perform such audit until February 2022 (seven months later). (Doc. 25-53, p. 43).

¶45. Plaintiff emphasizes the date of November 15, 2021 – seven months prior to June 15, 2022.

¶¶48-49. Plaintiff emphasizes that Defendant cannot identify or produce evidence of issues with Plaintiff’s performance or relationships between November 16, 2021 and his June 15, 2022, termination.

¶51. Defendant’s averment fails to adhere to the summary judgment standard. In light of the termination decision that occurred during the June 6, 2022, meeting with Clements and Donaldson, a jury is not required to believe Courtney’s statement that did not “desire” Plaintiff to leave and may disregard Courtney’s alleged prediction.

¶53. Denied. Donaldson confirmed that Defendant did not analyze physician salaries to cash collections in 2022. (Doc. 25-57: 46:5-47:3). Donaldson testified that she recalled nothing of the meeting. (Doc. 25-57: 34:6-14). Clements testified he recalled nothing at all about the termination meeting or any incidents whatsoever regarding Dr. Noffsinger. (Doc. 25-48: 25:7-26:12).

¶55. Denied. Defendant informed the Equal Employment Opportunity Commission: “Despite his RVUs, Noffsinger did not generate sufficient revenues

for the Hospital to justify his compensation level under his current employment agreement.” (Doc. 25-55, pp. 10-11).

¶¶56-57. Denied. Plaintiff generated more cash payments for Defendant than any other healthcare provider in the Primary Care Health Clinic. (Doc. 25-52, pp.30-32). Defendant produced no evidence to support Courtney’s testimony regarding payments returned to insurers and a jury is not required to believe this testimony.

¶58. Denied as Stated. Defendant failed to state the facts in the light most favorable to the non-moving party. “Cullman Regional admits that Plaintiff generally asked about the reasons for termination.” (Doc. 3, ¶25). “Cullman Regional admits that it declined at the time to elaborate on the circumstances and reasons for Plaintiff’s termination.” (Doc. 3, ¶¶26, 28).

¶59. Denied as Stated. Defendant failed to state the facts in the light most favorable to the non-moving party. Villar, Morgan, and Gonzalez are Family Practice practitioners. (Doc. 25-51, p. 17). Defendant retained the less profitable Internal Medicine practitioners, Alam (age 34), Brimer (age 31), and Studdard (age 32). (Doc. 25-51, pp. 18-19, 23). These younger Internal Medicine doctors were new to Defendant, new to private practice, and Defendant was well aware that these younger Internal Medicine doctors needed two years to build up their practice. (Doc. 25-59: 49:11-19). Defendant “admits that its standard practice is to invite patients to continue their treatment at Cullman Regional with another physician.” (Doc. 3,

¶29). After Defendant terminated Plaintiff's employment, Courtney did not hesitate to assign Plaintiff's patients with current care needs to the younger Drs. Alam and Brimer. (Doc. 25-54, p 50; 25-55, p. 1).

¶60. Defendant failed to state the facts in the light most favorable to the non-moving party. Plaintiff will testify to this statement and a reasonable jury will have to ask where this statement came from, why it was, and who said it. Drawing all inferences in Plaintiff's favor it is obvious that such a statement, on an employee's first day of work, more likely than not arose during a conversation with the decisionmakers who hired/onboarded Dr. Alam and informed him who he would be working with for the foreseeable future.

¶64. Objection. Hearsay. Fed. R. Evid. 801, Defendant produces no evidence of such "yelling at nurses and other staff."

B. ADDITIONAL UNDISPUTED FACTS

1. After Courtney's meeting with Donaldson and Love, Courtney texted Land that she intended to terminate Plaintiff. (Doc. 25-60, p. 38). Land questioned why Defendant did not also terminate Dr. Villar, age 60. *Id.*

III. DEFENDANT DID NOT ADHERE TO THE SUMMARY JUDGMENT STANDARD

The Eleventh Circuit has held that "the summary judgment rule applies in job discrimination cases just as in other cases. No thumb is to be placed on either side of the scale." *Chapman v. A1 Transport*, 229 F. 3d 1012, 1026 (11th Cir. 2000)(en

banc). In *Tynes v. Fla. Dep't. of Juv. Just.* [the Eleventh Circuit] emphasized that, at summary judgment, "we ask only one question: whether there is sufficient evidentiary basis for the jury to find that the defendant intentionally discriminated against the plaintiff." 88 F. 4th 939, 947 (11th Cir. 2023). When considering summary judgment, whether in a discrimination context or otherwise, courts must be mindful that the state of a person's mind is a fact⁴ which, if in dispute, must be resolved by a jury. For example, in *Croley v. Matson Navigation Company*, 434 F. 2d 73 (5th Cir. 1970), plaintiffs sought to recover for the injury of one shipyard employee and the death of another due to an explosion occurring aboard a ship and the shipyard's state of mind regarding safety was in question. The Fifth Circuit explained that district courts "should be cautious in granting a motion for summary judgment when resolution of the dispositive issue requires a determination of state of mind. Much depends on the credibility of the witnesses testifying as to their *own states of mind*. In these circumstances the jury should be given an opportunity to observe the demeanor, during direct and cross-examination, of the witnesses whose states of mind are at issue." *Croley*, 434 F. 2d at 77. (emphasis added).

⁴ The state of a man's mind is as much a fact as the state of his digestion. It is true that it is very difficult to prove what the state of a man's mind at a particular time, but if it can be ascertained it is much a fact as anything else. *Eddington v. Fitzmaurice*, 29 Ch. Div. 459, 483 (1885)(as cited in *Aikens*, 460 U.S. at 716-717).

“In general, summary judgment is an inappropriate tool for resolving claims of employment discrimination, which involve nebulous questions of motivation and intent. ... Often, motivation and intent can only be proved through circumstantial evidence; determinations regarding motivation and intent depend on complicated inferences from the evidence and are therefore peculiarly within the province of the fact-finder.” *Thornburgh v. Columbus and Greenville R. Co.*, 760 F. 2d 633, 640-41 (5th Cir. 1985)(*overruled on other grounds*, *St. Mary’s Honor Ctr. v. Hicks*, 509 U.S. 502, 512 (1993)). Therefore, when considering an employment discrimination case for summary judgment, courts must carefully scrutinize the affidavits, exhibits, and depositions for circumstantial proof which, if believed, would show retaliation. *Dais v. Laney Bryant*, 168 F. Supp. 2d 62, 70 (S.D.N.Y. 2001).

Defendant leads this Court astray by asking it to overlook its shifting reasons for termination, the pretextual reason regarding the lack of generating sufficient revenues, and the suspicious timing wherein workplace issues occurring more than seven months prior to the termination is suddenly the make-or-break basis of its termination decision. Since “no thumb is to be placed on either side of the scale” in employment cases, no special deference or inferences should be drawn from the testimony of its decisionmaker(s). *Wilson v. B/E Aero, Inc.*, 376 F, 3d 1079, 1086 (11th Cir. 2004). The court must not draw from the facts any inferences which favor the movant. *Anderson v. Liberty*, 477 U.S. 242, 255 (1986).

IV. ARGUMENT AND AUTHORITIES

As is common for any employee that is a professional or upper management, Plaintiff relies on the “convincing mosaic” of evidence to support his discrimination claim. Claims brought pursuant to the ADEA require the Plaintiff prove that age is a “but for” cause of the termination decision. *Gross v. FBL Fin. Servs.*, 557 U.S. 167 (2009). Claims under the “but for” causation may rely on the “convincing mosaic” evidentiary burden. *See Ismael v. Roundtree*, 161 F. 4th 752, 761-762 (11th Cir. 2025). In *Smith v. Lockheed-Martin Corp.*, 644 F.3d 1321, 1328 (11th Cir. 2011), the Eleventh Circuit held “(1) that a ‘plaintiff will always survive summary judgment if he presents circumstantial evidence that creates a triable issue concerning the employer's discriminatory intent’ and (2) that a ‘triable issue of fact exists if the record, viewed in a light most favorable to the plaintiff, presents a convincing mosaic of circumstantial evidence that would allow a jury to infer intentional discrimination by the decisionmaker.’” *See Ismael v. Roundtree*, 161 F. 4th 752, 760 (11th Cir. 2025)(internal citations omitted). “As in other contexts, a plaintiff may avoid summary judgment by presenting a wide range of circumstantial evidence. Such evidence may include ‘(1) suspicious timing, ambiguous statements . . . , and other bits and pieces from which an inference of discriminatory intent might be drawn, (2) systematically better treatment of similarly situated employees, and (3) that the employer's justification is pretextual.’” *Id.* Notably, *Ismael* is a claim

pursued pursuant to 42 U.S.C. § 1981 and uses the same “but for” causation standard required for ADEA cases as held *Gross v. FBL Fin. Servs.*, 557 U.S. 167 (2009). *See also Comcast v. Nat’l. Assn. of African American Owned Media*, 589 U.S. 327 (2020). “But it is not required, under either § 1981 or Title VII, to show that the unlawful purpose was the *only* contributing factor.” *Ismael*, 161 F. 4th at 761. The same “but for” causation principles logically flow to the ADEA. *See Gallimore v. City of Opa-Locka*, 2025 U.S. App. LEXIS 19811 (11th Cir. 2025)(reversing summary judgment of ADEA claim relying on convincing mosaic of evidence).

Defendant’s brief fails to inform the Court of some crucial law held by the Eleventh Circuit that makes clear Plaintiff is not required to negate Defendant’s stated reason for termination:

A plaintiff can even succeed where there are multiple but for causes: "so long as the plaintiff's [protected characteristic] was *one but-for cause* of [the adverse] decision, that is enough to trigger the law." *Id.* at 656, 140 S. Ct. at 1739 (emphasis added). In this situation, the employer's reason might be both factually grounded and directly causal—in other words, unassailable as pretext. If we require the plaintiff to negate their counterparty's rationale, we permit the absurd result of a plaintiff losing on summary judgment for failing to demonstrate a falsity that she would not need to show at trial.

Ismael, 161 F. 4th at 761. Plaintiff has successfully established a convincing mosaic of discrimination under the ADEA. The testimony and documentary evidence, when taken in light of the non-moving party, indicate that (1) even incorporating delayed payments, Plaintiff was Defendant’s most profitable physician at the time it terminated his employment, (2) Defendant’s witnesses repeatedly misrepresented

facts and evidence when attempting to justify Plaintiff's termination, (3) Defendant's arguments regarding Plaintiff's alleged lack of professionalism are so far back in time that a reasonable jury may regard those reasons as suspicious in nature, (4) any Plaintiff's workplace issues had been effectively eliminated as a result of Defendant's counseling, and (5) in 2022, Defendant considered eliminating its two oldest physicians (Plaintiff and Dr. Villar) in order to offset the loss incurred from the gap between its substantially younger physicians' revenue and compensation packages.

Defendant incorrectly informs the Court that it *must* rely on non-binding authority that Plaintiff carries a "more difficult" burden because its decisionmaker,⁵ Lisa Courtney, is over the age of 40. Both *Moore v. Ala. Dep't of Corr.*, 137 Fed. Appx. 235 (2005) and *Vahey v. Phillips Elec. North Amer. Corp.*, 461 Fed. Appx. 873 (2012) rely on *Elrod v. Sears, Roebuck & Co.*, 939 F.2d 1466 (11th Cir. 1991). As noted in *Kohser v. Protective Life Ins. Co.*, "*Elrod* was decided on a trial record and does not directly address to what degree the same group inference can be invoked by the court on summary judgment." 2015 U.S. Dist. LEXIS 37518 [*31]

⁵ Clements and Donaldson have no recollection of the meeting; therefore, a jury is not required to believe Courtney's testimony that the three of them made a joint decision. Clements and Donaldson's lack of recollection allows a jury to conclude that Clements and Donaldson *did* consider age a factor and chose to remember nothing when placed under oath.

(N.D. AL 2015). Persuasively, the United States Court of Appeals for the Seventh Circuit:

Offer[s] the counterdictum that the relative ages of the terminating and terminated employee are relatively unimportant. For it is altogether common and natural for older people, first, to exempt themselves from what they believe to be the characteristic decline of energy and ability with age; second, to want to surround themselves with younger people; third to want to protect their own jobs by making sure the workforce is not too old, which might, if "ageist" prejudice is rampant, lead to RIFs of which they themselves might be the victims; and fourth, to be oblivious to the prejudices they hold, especially perhaps prejudices against the group to which they belong.

Kadas v. MCI Systemhouse Corp, 255 F. 3d 359, 361 (7th Cir. 2001). Courtney, 46, is “substantially younger” than Plaintiff, 66. *See Damon v. Fleming Supermarkets of Fla., Inc.*, 196 F.3d 1354, 1360 (11th Cir. 1999) (holding that a 37-year-old was “**substantially younger**” than a 42-year-old plaintiff). Defendant’s argument that Plaintiff is held to a higher burden at this stage leads this Court to reversible error.

A. Follow the Money and the Jury will Only Discover Pretext

Without question, Plaintiff presents evidence of a convincing mosaic that can allow a jury to determine that but for his age, he would not have been terminated. Defendant admits “that Plaintiff’s employment was terminated on June 15, 2022;” “that Plaintiff generally asked about the reasons for termination;” and “that it declined at the time to elaborate on the circumstances and reasons for Plaintiff’s termination.” (Doc, 3, ¶¶24, 25-26).⁶ Out of the gate, Defendant engaged in actions

⁶ Plaintiff and Defendant entered a contract of employment that began on or about April 1, 2020. (Doc. 25-38, pp. 19-20). Defendant could terminate the contract “without cause” or “for cause.”

that allow a jury to infer any reason given after the termination is a pretext for a discriminatory motive. See *Mock v. Bell Helicopter Textron*, 196 Fed. App. 773, 774 (11th Cir. 2006). In *Mock*, the employee insisted the employer provide a reason for its termination decision. *Id.* The employer refused and only later provided a reason in a letter. *Id.* The Eleventh Circuit held that a jury could find that the letter constituted a pretext for discrimination. *Id.* In this case, Defendant's first time providing a reason for termination is its position statement filed in response to the Plaintiff's Charge of Discrimination. (Doc. 25-55, pp. 10-11). As seen herein, Defendant's letter stated reasons for termination that were not true and also raised issues that allow a jury to be suspicious of the timing.

Defendant's financial reason for terminating Plaintiff's employment is without question false. Defendant's letter to the EEOC stated "Despite his RVUs, Noffsinger did not generate sufficient revenues for the Hospital to justify his compensation level under his current employment agreement." (Doc. 25-55, pp. 10-11). Defendant's Vice President Lisa Courtney testified that Defendant "didn't allocate any costs directly to any physician. We didn't do any financials by physician" (Doc. 25-50: 90:14-91:1). Defendant does no analysis to determine the profitability of each individual physician in its Primary Care Group. (Doc. 25-

(Doc. 25-39, pp. 5, 7). "Cullman Regional admits that it did not invoke the portion of Plaintiff's contract entitled "Automatic Termination for Cause." (Doc. 3, ¶50).

50: 91:2-20). Defendant alleged insufficient profitability to the EEOC knowing it had no evidence to support such a position. (Doc. 25-57: 46:5-47:3). In other words, a jury can conclude that Defendant's alleged financial reason for terminating Plaintiff's employment was baseless and that any statement offered by its employees regarding Plaintiff is also misleading.

Defendant's financial reasoning falls further apart when the evidence - provided only via compulsion - shows that the data is discriminatory. A jury will hear the following facts about Plaintiff and his fellow healthcare providers working in the Defendant's clinics.

Physician	Age⁷	Hire Date	Compensation	Record Cite
Noffsinger	66	4/1/2020	\$275,000.00	Doc. 24, SOF ¶2; Doc. 25-53, p. 15
Alam	34	7/1/2021	\$350,000.00	Doc. 25-51, p. 18, 49
Brimer	31	8/31/2021	\$350,001.60	Doc. 25-51, p. 19; Doc. 25-52, p. 2
Gonzales	57	5/1/2021	\$260,000.00	Doc. 25-51, p. 20; Doc. 25-52, p.1;
Mangum	43	11/30/2020	\$110,011.20	Doc. 25-51, p. 21, 30; Doc. 25-50: 53-13-54:21
Morgan	57	1/3/2022	\$260,000.00	Doc. 25-51, p. 22; Doc. 25-52, p. 12
Studdard	32	8/2/2021	\$225,401.40	Doc. 25-51, p. 23; Doc. 25-52, p. 9
Villar	60	7/1/2019	\$235,000.00	Doc. 25-51, p. 24-25

Plaintiff, Drs. Alam, Brimer, and Studdard are Internal Medicine practitioners; Drs. Gonzalez, Mangum, Morgan, and Villar are Family Practice practitioners. (Doc. 25-51, p. 17). A jury will hear that after hiring Plaintiff, Lisa Courtney hired Drs. Alam and Brimer (two Internal Medicine in their thirties) at a substantially higher rate than

⁷ Ages for all healthcare providers were as of the date of termination.

Plaintiff despite substantially less experience. (Doc. 25-51, pp.18-19, 49; 25-52, p. 2; Doc. 25-53, p. 15).

A jury will also hear that at the time Defendant terminated Plaintiff, allegedly due to insufficient profitability, he was the only Internal Medicine Practitioner who generated sufficient revenue to *cover* his compensation level. Under compulsion, Defendant provided evidence of the cash payments generated by the above physicians. (Doc. 25-52, pp. 30-35). Cash payments are the actual money received for the healthcare providers services. (Doc. 25-50: 89:2-11). Defendant resisted this discovery for good reason as it demonstrated its baseless reason for Plaintiff's termination being a pretext, thus allowing a jury to conclude Plaintiff's age is a but-for cause for his termination.

The numbers speak for themselves:

Month/Year	Alam Cash Payments	Brimer Cash Payments	Studdard Cash Payments	Plaintiff Cash Payments
July 2021	\$823.40			\$22,825.26
August 2021	\$1,779.66		\$1,434.21	\$42,776.79
September 2021	\$3,473.23	\$929.18	\$5,015.33	\$61,038.03
October 2021	\$25,193.00	\$2,739.92	\$7,821.83	\$45,767.96
November 2021	\$26,890.20	\$13,130.84	\$9,349.33	\$58,365.88
December 2021	\$17,099.14	\$6,687.43	\$8,104.48	\$36,725.25
January 2022	\$18,463.00	\$9,992.83	\$7,117.05	\$34,475.95
February 2022	\$27,296.16	\$14,298.09	\$11,594.26	\$46,855.61
March 2022	\$12,616.33	\$14,885.07	\$9,399.79	\$60,036.72
April 2022	\$16,012.50	\$10,197.90	\$9,647.58	\$38,929.32
May 2022	\$12,621.88	\$10,257.35	\$10,312.77	\$46,917.23
June 2022	\$9,669.65	\$9,719.02	\$5,645.74	\$33,162.99
Cash to Def.	\$171,938.46	\$92,837.63	\$85,442.37	\$527,876.99
Salary & Bonuses	\$350,000.00	\$291,666.67	\$206,263.20	\$474,965.50
Profit/Loss to Def.	(\$178,061.54)	(\$198,829.04)	(\$120,820.83)	\$52,911.49

Status:	Retained	Retained	Retained	Terminated
Age	34	31	32	66
Citations	Doc. 25-50: 60:3-19; Doc. 25-52, pp. 30-32	Doc. 25-50: 70:4-71:5; Doc. 25-52, pp. 30-32	Doc. 25-50: 70:4-71:5; Doc. 25-52, pp. 30-32	Doc. 25-53, p. 15; Doc. 25-54, pp. 34-44

A jury can reasonably dismiss Defendant’s argument that Plaintiff’s lack of profitability resulted from his overbilling, resulting in a repayment to insurers. Defendant provided no evidence to support Courtney’s statement that it repaid insurers (See Fed. R. 26.); instead, a jury will review evidence showing that Lisa Courtney set Plaintiff’s salary at \$275,000, that Plaintiff earned bonuses for his RVU production in the amount of \$199,965.50 (for a total compensation of \$474,965.50), and that Defendant received \$527,876.99 in cash payments for the services he rendered, resulting in a positive cash flow of \$52,911.49. (Doc. 25-53, p. 15; Doc. 25-54, pp. 33-44).⁸

The evidence reveals that Defendant’s only profitable Internal Medicine physician (Plaintiff) was significantly over the age of forty, and that despite allegedly making the decision to terminate staff due to its “bad overall financial year” it terminated its only profitable physician –Defendant claims that Plaintiff being its oldest physician is merely a coincidence. In recognition of the deficiencies

⁸ Plaintiff’s bonuses for months July 2021 through June 2022 are respectively \$19,251; \$23,507.50; \$21,434.50; \$19,000; \$14,741.50; \$12,918, \$11,550.50; \$18,350, \$25,744; \$15,325.50; \$17,340.50; and \$802.50 for a total of \$199,965.50. (Doc. 25-54, pp. 34-44: Bates Stamp Nos.: 2517, 2519-20, 2545, 2547, 2550-53, 2556).

in its argument, Defendant implicitly concedes that its argument regarding profitability is a false reason for termination. (Doc. 24, p. 29).⁹

The Court may ask why age discrimination is a “but for” cause of the termination as it relates to profitability? A jury will also hear Defendant’s Executive Director over the Primary Care Group Schinley Land testify that “when a practice starts, it takes about two years for a physician to build up.” (Doc. 25-59: 49:11-19). A jury can reasonably conclude that Defendant is willing to tolerate the negative cash flow of younger internal medicine doctors Alam, Brimer, and Studdard and provide them with time to build up their respective practices in hopes that they will remain employed for a long time in a rural healthcare setting.

B. Defendant’s Argument Regarding Professionalism Only Works if a Jury Disregards the Very Suspicious Timing

1. Defendant’s First Failed Attempt Regarding Professionalism

Defendant contends a second reason for terminating Dr. Noffsinger is his lack of professionalism. (Doc. 24, p 29). During the EEOC investigation, Defendant contended that Plaintiff’s lack of professionalism was yelling at a coder, making sexual jokes in the workplace (referred to as “off-color” in the briefing), and the use

⁹“Proof that the defendant’s explanation is unworthy of credence is simply one form of circumstantial evidence that is probative of intentional discrimination, and it may be quite persuasive.” *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 147 (2000).

of chaperones when examining patients in areas near the breasts or genitals. (Doc. 25-55, pp. 10-11).

Defendant’s argument fails as none of the incidents raised by Defendant have any temporal proximity at the time of the termination decision. Defendant terminated Plaintiff on June 15, 2022, yet identified incidents that occurred in February, May, and August 2021. Consider the issues of temporal proximity in an employment retaliation case: “[w]hile “an employee's termination within days -- or at the most within two weeks -- of [her] protected activity can be circumstantial evidence of a causal connection between the two,” *Jefferson*, 891 F.3d at 926, a gap of multiple months, in the absence of some other evidence . . . , is too large a temporal gap.” *See Gallimore v. City of Opa-Locka*, 2025 U.S. App. LEXIS 19811 (11th Cir. 2025). Applying the transitive property learned in eighth grade science, “an employee's termination within days -- or at the most within two weeks -- of his [offensive conduct] can be circumstantial evidence of a causal connection between the two,”; however “a gap of multiple months, in the absence of some other evidence is too large a temporal gap” and allows jury to infer “suspicious timing.” Defendant’s argument is a classic example of “rules for thee, not rules for me.”

Plaintiff does not deny the February 2021 incidents of off-color jokes. (Doc. 24, SOF ¶¶7-9). Courtney did not consider the incident as even a “Verbal Warning” regarding the incident pursuant to its “Employee Discipline and Misconduct” policy.

(Doc. 25:50 109:14-110:5). Defendant omits that the professional that performed Plaintiff's sensitivity training stated "I had what turned out to be a very good training session with Dr. Noffsinger yesterday ... He really opened up and began buying into the training when we started going through the interpersonal behavioral trait portion of the program. He was 'learning something new' and that was positive for him." (Doc. 25-40, p. 6). A jury will hear that Defendant presents no evidence that Plaintiff engaged in any other "off color jokes" after this training. Defendant's timing is suspicious as it relies on incidents that were in excess of *fifteen months* prior to the termination. Defendant's reliance on this incident may be disregarded by the jury as it clearly did not find the "off color jokes" worthy of disciplinary action.

Plaintiff does not deny the "Black Dogs" incident. However, Defendant omits the full picture of the incident. Graves informed Plaintiff "that he just needed to be careful on what he said." (Doc. 25-53, p. 8). Defendant also omits that one employee *believed* the other employee was offended by the "Black Dogs" comment and that employee, when asked, stated "that nothing offended her and she was OK." *Id.* A jury will hear that Defendant presents no evidence that Plaintiff engaged in any other similar behavior - if it can be considered ill-behavior at all - after this counseling. Defendant's timing is suspicious as it relies on incidents that were in excess of thirteen months prior to the termination.

Defendant dedicates two statements of fact in its brief regarding Plaintiff's frustration regarding patient complaints that occurred in August and September 2021, which related to physical examinations allegedly performed without the presence of a chaperone. Defendant buries in the middle of the averments the most important part: "That investigation determined that investigation determined that Noffsinger's actions were appropriate." (Doc. 24, p. 7, ¶12). Land testified that *she* did not conclude any such exams were inappropriate. (Doc. 25-59: 70:17-19). Defendant wishes to make much ado about nothing wherein Plaintiff believes the incident, where he did nothing wrong, now undermined his authority with his staff. Illogically, these *appropriate* exams were included in Defendant's Position Statement to the EEOC as a reason for its termination decision. (Doc. 25-55, p. 10). A jury can reasonably conclude that another of Defendant's reasons for termination is false and the timing is suspicious as it relies on incidents that were more than nine months prior to the termination.

2. Defendant's Second Attempt to Argue a Lack of Professionalism Provides Shifting Reasons for Termination and also invokes Suspicious Timing for a Jury's Consideration

The Eleventh Circuit has stated that "the shifting reasons given by [its decision-maker] allowed the jury to find [the employer's] explanation unworthy of credence, and consequently to infer the real reason was [the employee's protected class]. *Cleveland v. Home Shopping Network, Inc.*, 369 F.3d 1189, 1195 (11th Cir.

2004). In *Spivey v. Royston, LLC*, the District Court denied summary judgment as it stated that

“[S]ummary judgment is inappropriate where the defendant changes its reasoning for a termination. *See Mock v. Bell Helicopter Textron Inc.*, 196 Fed. Appx. 773, 774 (11th Cir. Aug. 23, 2006) (finding a genuine issue of material fact where the defendant refused to provide a reason for the termination at the time of dismissal and later cited poor performance in a letter); *Staten v. New Palace Casino, LLC*, 187 Fed. Appx. 350, 358-59 (5th Cir. June 9, 2006) (collecting cases) (finding genuine issue of material fact where reasons given before the Equal Employment Opportunity Commission ("EEOC") and in deposition differed from reasons proffered in affidavit); *Rossi v. Fulton Cnty.*, Civil Action File No. 1:10-CV-4254-RWS-AJB, 2013 U.S. Dist. LEXIS 44755, 2013 WL 1213205 at *27-29 (N.D. Ga. Feb. 8, 2013) (Baverman, M.J.) (finding a genuine issue of material fact where the reason proffered for the termination upon summary judgment (poor performance) was different from the one stated at the time of the plaintiff's forced resignation ("moving in a different direction")), *adopted at* 2013 U.S. Dist. LEXIS 40889, 2013 WL 1213139 (N.D. Ga. Mar. 22, 2013) (Story, J.); *EEOC v. Eagle Mgmt. Grp.*, Civ. Action File No. 1:05-CV-1215-WBH/AJB, 2006 U.S. Dist. LEXIS 117632, 2006 WL 8435746, at *16 (N.D. Ga. Sept. 18, 2006) (Baverman, M.J.) (finding a genuine issue of material fact where the defendant shifted its reasons for the adverse action between the EEOC administrative proceedings and the motion for summary judgment), *adopted at* 2007 WL 8710021 (N.D. Ga. Jan. 31, 2007); *Dickson v. Amoco Performance Prods., Inc.*, 910 F. Supp. 629, 637 (N.D. Ga. 1994) (Hull, J.) (concluding that the plaintiff could establish pretext, in part, because the employer gave one reason for the plaintiff's termination during EEOC proceedings and another in the motion for summary judgment).

2019 U.S. Dist. LEXIS 241917 [*26-27] (N.D. Ga. 2019). After its initial reasons presented to the Equal Employment Opportunity Commission were rebutted, Defendant then piled on what information it claims to have omitted; however, none of the issues raised in the issues captioned as “demanding nature” (Doc. 24, pp. 7-15) occur within any reasonable time frame to justify termination; rather, whatever storm stirred the seas during 2021 was all calm for a period of seven months (or more) prior to the June 15, 2022 termination.

Defendant identifies text messages expressing their discontent with Plaintiff that occurred on May 4, 2021, and August 26, 2021. (Doc. 24, pp. 14-15, ¶¶32-33). Defendant's timing is suspicious as it relies on an alleged incident that was in excess of one year to eight months prior to the June 15, 2022, termination.

Defendant cites an alleged July 21, 2021, incident regarding a poor interaction between Plaintiff and its shredding service. (Doc. 24, p. 10, ¶¶22-24). Defendant's timing is suspicious as it relies on an alleged incident that was ten months prior to the June 15, 2022, termination. A jury will hear that Defendant presents no evidence that Plaintiff engaged in the accused behavior. (Doc. 25-59: 59:6-10). Defendant has no evidence Plaintiff engaged in any other similar behavior towards vendors after speaking with Land.

Defendant cites an alleged September incident that occurred on the 7 and/or 8, 2021, regarding Plaintiff's reaction to a test cancellation regarding a patient a test for C. Diff.¹⁰ A reasonable jury will agree that a test for a condition that may result in hospitalization and/or death may warrant a sense of urgency. Defendant's timing is suspicious as it relies on an alleged incident that was nine months prior to the June 15, 2022, termination.

¹⁰ <https://www.cdc.gov/c-diff/about/index.html> (last accessed March 30, 2026). The condition can lead to sepsis or death.

Defendant alleges that Plaintiff was demanding the prompt payment of his monthly bonuses. (Doc. 24, p. 7-8, SOF ¶¶13-21). Defendant's evidence makes clear that Plaintiff's last exchange regarding his bonus occurred on September 28, 2021. (SOF ¶¶18-21). In regard to text messages that occurred after September 28, 2021, Land's Declaration fails to identify any text message that is demanding in nature. A jury must assess Land's credibility regarding any verbal communication. (Doc. 28, pp. 3-13). Defendant's timing is suspicious as it relies on an incident that was eight months prior to the June 15, 2022, termination and no other evidence exists to support the notion the problem persisted.

Defendant then cites its own clerical error, jeopardizing Plaintiff's contract and/or license regarding Plaintiff's October 6, 2021, response regarding Continuing Medical Education requirements. (Doc. 24, ¶¶28-29). Again, a reasonable jury will notice the pattern emerging that Defendant's timing is suspicious as it relies on an alleged incident that was in excess of eight months prior to the June 15, 2022, termination.

Defendant then cites an alleged incident regarding the January 2022 hiring of Dr. Morgan, a Family Medicine physician. A jury can reasonably conclude that Plaintiff saw the writing on the wall - younger doctors were being hired. During 2021, Defendant hired Dr. Alam (age 34); Dr. Brimer (age 31) and Dr. Studdard (age 32) as Internal Medicine doctors. (Doc. 25-51, pp. 17-19, 23). Dr. Morgan (age 57)

is the next person hired and he is substantially younger than the Plaintiff. (Doc. 25-51, p. 22). *See Damon v. Fleming Supermarkets of Fla., Inc.*, 196 F.3d 1354, 1360 (11th Cir. 1999) (holding that a 37-year-old was "substantially younger" than a 42-year-old plaintiff); *Carter v. DecisionOne Corp.*, 122 F.3d 997, 1003 (11th Cir. 1997) (holding that a 39-year-old was "substantially younger" than a 42-year-old).¹¹ Defendant makes the argument that it never “replaced” Plaintiff (Doc. 24, p. 27), yet the Eleventh Circuit has noted that “a replacement” can be hired before the termination of the employee. *Rollins v. TechSouth, Inc.*, 833 F. 2d 1525 (11th Cir. 1987). A reasonable jury can and should consider that Defendant is hiring younger physicians that can later on assume care for Plaintiff’s existing patients should he be terminated.

Defendant then identifies one of the most non-sensical issues of alleged unprofessional conduct: on March 2, 2022, Plaintiff expressed displeasure with a subordinate and took the matter to Defendant’s Human Resources Department. (Doc. 24, p. 15, ¶34). Defendant does not allege that Plaintiff was unprofessional when reporting his issue. A reasonable jury can conclude that after previous

¹¹ In full candor with the Court, *see also Steele v. United States VA*, 2011 U.S. Dist. LEXIS 58200, 2011 WL 2160343 at *10 (M.D. Fla. June 1, 2011) (concluding that a 13-year age difference, without more, is insufficient to meet this standard); *Matthews v. City of Dothan*, 2006 U.S. Dist. LEXIS 91711, 2006 WL 3742237 at *12 (M.D. Fla. Dec. 18, 2006) (ruling that a six-year age difference was insufficient to create an inference of age discrimination, when no other evidence of discriminatory animus was present). Distinguishing these footnoted cases, Plaintiff has sufficient evidence showing pretext and suspicious timing that those employees lacked.

counseling and training regarding his communication style, Plaintiff took an issue regarding a subordinate employee to the proper department to allow Defendant to handle as it saw fit.

C. Defendant Adds Yet Another Untimely New Reason in which its Purported Counseling of Plaintiff Resulted in Corrected Behavior

Defendant complains that Plaintiff's performance of completing notes limits its cash flow. (Doc. 24, p. 15, ¶35). A jury is not required to believe this argument in any way. As noted above, Plaintiff, the oldest Internal Medicine Doctor in its Primary Care Clinic, created more cash payments during his last twelve months of employment than any other Internal Medicine doctor (as well as any Family Practice doctor). (Doc. 25-52, pp. 30-35). A reasonable jury can determine that Defendant's complaints about his work resulting in a lack of cash flow are without merit. Defendant's last document regarding Plaintiff's completion of notes occurred December 21, 2021, almost six months prior to termination. (Doc. 24, p. 16, ¶39).

Defendant then cites issues related to an audit of Plaintiff's billings and Plaintiff's response to Defendant's constructive criticism. Plaintiff expressed disbelief regarding the July 2021 audit, yet during the February 2022 audit meeting, Land stated that Plaintiff was "absolutely delightful" and in response to Courtney's disbelief stated "I also have to give him credit when he's nice. Today he was really engaging." (Doc. 24, p. 19, ¶47). A jury is not required to give any weight to the purported seriousness of these audits. Defendant maintains a policy regarding audits

and proper billing coding. (Doc. 25-50: 154:10-155:1; Doc. 25-53, p. 43). Defendant's policy states that after a first non-pass audit, a second audit is due to occur within two weeks. (Doc. 25-53, p. 43). A jury will hear evidence that (1) Courtney approved the policy regarding audits, (2) that Defendant failed to conduct a second audit within two weeks of the first audit as required by its policy, and (3) that Defendant has no evidence directing Plaintiff to engage in any online coding course. (Doc. 25-50: 158:5-11; Doc. 25-53, p. 43). In light of these facts, a jury can reasonably disregard Defendant's argument regarding the audits of Plaintiff's billings.

Schinley Land, the Executive Director working daily with Plaintiff, testified that "we did not formally discipline Dr. Noffsinger with me." (Doc. 25-59: 80:22-23). Defendant produced an "Employee Discipline and Misconduct" policy. (Doc. 25-52, pp. 42-45). Lisa Courtney has no recollection of ever reviewing this policy regarding the Plaintiff. (Doc. 25-50: 108:3-22). Courtney stated that she is the supervisor that implements discipline regarding this policy. (Doc. 25-50: 108:23-109:7). Land testified that "there were times that was really difficult. There's time he was a delight." (Doc. 25-59: 81:6-7). A reasonable jury can conclude that none of Plaintiff's behavior amounted to any sort of warning, suspension, or probation pursuant to Defendant's "Employee Discipline and Misconduct" policy and if such conduct was considered actual misconduct, then disciplinary action would have been

taken. *See Jefferson v. Sewon Am. Inc.*, 891 F.3d 911, 926 (11th Cir. 2018)(failure to follow a progressive discipline policy, with other evidence, is a question for a jury). A reasonable jury can also conclude that after Defendant counseled Plaintiff, such counseling was effective because the behavior did not repeat. A jury will consider the complete lack of formal or informal documentation from December 2021 through the date of termination, and the only other documented interaction during those last six months resulted in Plaintiff being “really engaging.” A reasonable jury can conclude any issues that existed were rectified, and that the reasons set forth by Defendant regarding professionalism lack any temporal proximity (i.e. suspicious timing – why does 2021 interactions matter now in June 2022?) and lack of any invocation of its formal disciplinary process are efforts to derive some reason to mask its discriminatory actions.

Most telling is what happens after Defendant terminates Plaintiff’s employment. On June 16, 2022, at 10:15 a.m., a staff worker emailed Courtney seeking direction on the healthcare provider in the Primary Care Clinic in which to “register patients returning for lab work which Dr. N. ordered.” (Doc. 25-55, p. 1). At 10:20 a.m., Courtney responded “Alam or Brimer” and Land assuaged the physicians’ concerns over taking over another doctor’s patients midway through treatment. (Doc. 25-54, p 50). A reasonable jury will hear *that within five minutes of being asked about who was to assume Plaintiff’s patients, Courtney identified the*

two Internal Medicine doctors under the age of thirty-five. A jury can conclude that these two younger physicians were Courtney's top choice to care for Plaintiff's existing patients, and these two younger physicians are only halfway in the process starting their practice wherein "it takes about two years for a physician to build up" and those younger physicians are currently a financial loss for the Defendant. (Doc. 25-59: 49:11-19).

V. CONCLUSION

A reasonable jury can return a verdict in Plaintiff's favor that his age was *a* but for cause of Defendant's decision to terminate his employment. Defendant initially provided no reason for terminating Plaintiff's employment. When forced to provide a reason, Defendant provided two false reasons to a government agency (failure to generate sufficient revenue & stating appropriate patient exams were otherwise) and another reason that occurred more than fifteen months prior to the termination. Knowing these reasons are false, Defendant shifted its reasons that allowing a jury to infer suspicious timing as the examples of Plaintiff's alleged unprofessional behavior occurred without any issuance of discipline pursuant to Defendant's own policy; and were so far removed from the termination date that the reasons cannot be causally related. After Plaintiff's termination, Defendant's Vice President did not hesitate to assign Plaintiff's current patients to younger physicians. Defendant's Motion for Summary Judgment is due to be **DENIED**.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2026, I filed a copy of the foregoing with the Clerk of this Court using the CM/ECF system of filing which will forward a copy to counsel for the Defendant at the following address:

Robert Lockwood



Of Counsel