

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

HANSEL NOFFSINGER,	)	
	)	
PLAINTIFF,	)	
	)	
VS.	)	Case No. 5:24-cv-00900-HDM
	)	
CULLMAN REGIONAL	)	
MEDICAL CENTER, INC.,	)	
	)	
DEFENDANT.	)	

CRMC’S REPLY BRIEF SUPPORTING SUMMARY JUDGMENT

I. Introduction

Noffsinger does not provide any evidence that connects his age to his termination. Yet, he must show that age was a “necessary condition” for him to be terminated. *Yelling v. St. Vincent's Health Sys.*, 82 F.4th 1329, 1339 (11th Cir. 2023). He can’t do that. Instead, he only shows that he was 67 and he was terminated. With those meager facts, age is a merely a “tagalong consideration” which cannot defeat summary judgment. *Yelling*, 82 F.4th at 1340.

II. CRMC disputes Noffsinger’s “undisputed” fact.

Noffsinger’s additional statement of “undisputed” fact is actually disputed. (Doc. 29 at 10.) Noffsinger misrepresents the statements in the text exchange and never questioned Land or Courtney about that exchange.

III. Noffsinger does not connect his “suspicious timing” argument to his age.

Noffsinger has plastered the label of “suspicious timing” on the un rebutted fact that he was unprofessional throughout the course of his employment. He asks: “why does 2021 interactions matter now in June 2022?” (Doc. 29 at 31.) The answer is simple: Noffsinger was unprofessional in 2021 and he continued to be unprofessional in 2022. And, that continuing unprofessionalism led to termination.

Noffsinger finds it “suspicious” that CRMC waited until June 15, 2022 to terminate his employment, when his conduct started in 2021. That argument misses the point, because it doesn’t connect his age to the “delayed” termination. And, any evidence of suspicious timing must help prove that age discrimination was the reason for termination. *Ismael v. Roundtree*, 161 F.4th 752, 763 (11th Cir. 2025).

Notably, Noffsinger doesn’t have any authority to support this creative argument. That’s probably because it runs afoul of the Eleventh Circuit’s analysis in *Akridge v. Alfa Ins. Cos.*, 93 F.4th 1181 (11th Cir. 2024). *Akridge* was an ADA case where the plaintiff had Multiple Sclerosis and her employer incurred substantial costs in paying for her healthcare. *Akridge*, 93 F.4th at 1185. When she was terminated, she sued under the ADA. But, she failed to show she was terminated because of her MS and increased healthcare costs. *See Akridge*, 93 F.4th at 1197. The *Akridge* court considered the issue of timing and concluded “the timing of the relevant events in this case is anything but suspicious.” *Akridge*, 93 F.4th at 1198.

That was because the diagnosis and increased health costs commenced in 1993, but Alfa continued to employ her “for decades” thereafter. *Id.*

Noffsinger was not employed by CRMC for decades. But, he *was* 64 when he was hired in 2020. CRMC employed him for more than two years thereafter. As *Akridge* put it, “it is hard to understand why [CRMC] would wait” two years to terminate Noffsinger if it was biased against his age. *Akridge*, 94 F.4th at 1198.

Finally, Noffsinger’s “suspicious timing” argument hinges on an effort to paint himself as a model employee starting on January 1, 2022. To do so, he falsely says: “Defendant’s evidence makes clear that Plaintiff’s last exchange regarding his bonus occurred on September 28, 2021.” (Doc. 29 at 27.) Yet, he texted Land on May 6, 2022: “still trying to find my bonus.” (Doc. 25-4 at 37.) He also ignores that he hung up on CRMC’s help desk when they tried to assist with his computer on January 5, 2022. (Doc. 25-30.) He threatened “going to the CEO” because his computer froze-up at home on February 12, 2022. (Doc. 25-4 at 32.) On February 23, 2022, his practice manager opined that he had “gone mad” and feared he would “run off all of his help.” (Doc. 25-8.) On Sunday, March 20, 2022, he complained about wasting his entire day because CRMC’s server allegedly required him to turn his computer on and off. (Doc. 25-4 at 34.) Indeed, his attitude was such that when Courtney proposed changing his bonus methodology on June 6, 2022, she was afraid he would “blow up on us” and “walk out the door.” (Doc. 25-50 at 50 pg 98.)

IV. Noffsinger has not demonstrated pretext.

A. Noffsinger ignores the profitability issues that led to termination.

In demonstrating pretext, a plaintiff is “not allowed to recast an employer's proffered nondiscriminatory reasons or substitute his business judgment for that of the employer.” *Phillips v. Legacy Cabinets*, 87 F.4th 1313, 1324 (11th Cir. 2023). Undeterred, Noffsinger ignores the real profitability reasons that led to his termination -- the costs associated with his delayed record keeping and rampant upcoding. Instead, he recasts those with a straw man to his liking -- that he collected more “cash payments” than others. (Doc. 29 at 19.) Then, he substitutes his business judgment for CRMC’s -- if his “cash payments” were so high, he must be profitable.

Noffsinger neglects to tell the Court that his “cash payments” report was specifically created for him by CRMC after the parties compromised regarding a discovery dispute. (The Joint Statement of the Parties regarding that discovery dispute is attached hereto as Exhibit “A.”) And, CRMC’s witnesses repeatedly educated Noffsinger that CRMC does not track “cash payments” by physicians and only created the report at his request. (Doc. 25-50 at 23 pg 91 ln 21-22; Doc. 25-59 at 12 pg 48 ln 10 to 13 page 49 ln 10; Doc. 25-57 at 12 pg at 46 ln 16 to 47 ln 3.)

In short, in discovery Noffsinger asked CRMC to create a report fulfilling his self-imposed definition of “profitability” -- focusing on cash payments. It’s unsurprising that he now says CRMC can’t meet his definition. But, Noffsinger’s

self-definition of profitability is irrelevant: “[T]he pretext inquiry centers on the employer's beliefs, not the employee's beliefs and, to be blunt about it, not on reality as it exists outside the decision maker's head.” *Akridge*, 93 F.4th at 1196.

In its EEOC position statement, CRMC made clear that: “Dr. Noffsinger had a full patient load at the Hospital. RVU’s, however, are not necessarily an accurate reflection of the actual payments that the Hospital received for his services.” (Doc. 25-55 at 13.) Thus, CRMC told the EEOC: “Dr. Noffsinger’s employment was terminated due to concerns with his professionalism and profitability.” (*Id.*) CRMC reiterated that point in its interrogatory answers. (Doc. 25-51 at 9.) Notably, Noffsinger never asked Courtney any questions about CRMC’s concerns with his profitability. (*See* Doc. 25-50.) But, her declaration makes clear that Noffsinger was unprofitable in two ways: (1) his failure to timely complete records impacted CRMC’s cash flows; and, (2) CRMC had to expend labor re-paying his overbilled charges, and lost money by re-paying for his overbilling while he kept the bonus money that resulted from overbilling. (Doc. 25-16 at 10-22, ¶¶ 33-34.)

Noffsinger’s “cash payments” argument only quibbles with that business judgment. Yet, while termination of Noffsinger’s employment “may seem to some to be bad business judgment, and to others to be good business judgment, ... federal courts do not sit to second-guess the business judgment of employers.” *Combs v. Plantation Patterns*, 106 F.3d 1519, 1543 (11th Cir. 1997).

B. There is no connection between profitability and age.

Noffsinger acknowledges: “The Court may ask why age discrimination is a ‘but for’ cause of the termination as it relates to profitability?” (Doc. 29 at 21.) Indeed, there is no connection *whatsoever* between profitability and age. Undeterred, Noffsinger engages in rank speculation: “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.” (*Id.*) Yet, Noffsinger provides no evidence about: (1) CRMC’s tolerance of negative cash flows of *any* physicians¹; or, (2) how long CRMC expects *any* physician to remain an employee.

“[A]n inference is not reasonable if it is only a guess or a possibility, for such an inference is not based on the evidence but is pure conjecture and speculation.” *Daniels v. Twin Oaks Nursing Home*, 692 F.2d 1321, 1324 (11th Cir. 1982) “Speculation does not create a *genuine* issue of fact; instead, it creates a false issue, the demolition of which is a primary goal of summary judgment.” *Cordoba v. Dillard's Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005) (emphasis in original).

¹ It’s undisputed CRMC does not measure revenue generated by individual physicians for fear of violating federal laws. (Doc. 25-16 at 10 ¶ 32.) CRMC knew about Noffsinger’s profitability issues because he refused to timely complete his records and he engaged in rampant overcoding. Noffsinger offers no evidence any other physician engaged in that type of conduct or that CRMC “tolerated” it.

Noffsinger is guessing at a reason why age might, possibly, have some tangential relationship to profitability. But, that speculation can't create a genuine issue of fact.

C. Paying younger doctors a higher salary does not create an inference that Noffsinger was terminated because of his age.

Noffsinger notes that Drs. Alam and Brimer were paid more than him while ignoring the fact that Dr. Studdard was paid less than him. (Doc. 29 at 18.) But, Alam's and Brimer's *salaries* don't create an inference that Noffsinger was *terminated* because of his age. Indeed, Noffsinger never asked CRMC why *any* doctor's salary was set at a particular level. As a result, it would take the rankest of speculation to assume that age discrimination was at play. A more likely explanation is that COVID made salaries "go nuts." (Doc. 25-50 at 21 pg 82 ln 1 to 82 ln 20.)

D. Failure to provide a reason for termination on June 15, 2022 does not establish pretext.

Noffsinger argues that pretext is automatically established because CRMC did not provide him with the reasons for his termination. (Doc. 29 at 16-17.) At least one District Court has demonstrated that the Eleventh Circuit "got it wrong" in *Mock v. Bell Helicopter*. See *Trapp v. Great Expressions Dental of Ga.*, No. 1:13-CV-316-TCB, 2014 WL 12784474 at *11 (N.D. Ga. Jul. 16, 2014).

Moreover, *Mock* contravenes the published decision in *Wascura v. City of South Miami*, 257 F.3d 1238 (11th Cir. 2001). The plaintiff in *Wascura* argued: "As evidence of pretext, Wascura next points to Carver's failure to give her a reason why

he wanted her to resign at the meeting on May 12, 1995, and the Commission's failure to give her a reason for her termination on May 16, 1995.” *Wascura*, 257 F.3d at 1245-46. The Eleventh Circuit disagreed: “This is not a case where ‘the defendant's witnesses never articulated clearly and consistently the reason that the plaintiff was discharged.’ ... Instead, each of the Commissioners testified as to his or her reasons for voting to terminate Wascura.” *Id.* at 1246. Courtney has testified to her reasons for recommending Noffsinger’s termination. This Court should follow *Wascura* and decline to adopt *Mock*. *See also Doyle v. City of Cullman Bd. of Educ.*, No. 5:06-cv-0877-RRA, 2008 WL 11422113 at * 9 (N.D. Ala. Mar. 28, 2008)(“The mere failure to give a reason for termination is not, alone, evidence of pretext.”)

E. Noffsinger’s arguments about CRMC policy don’t show pretext.

1. Noffsinger wasn’t terminated for violating the audit policy.

Noffsinger says that this Court should just ignore his audits and rampant upcoding because CRMC allegedly deviated from the procedures found in its audit policy. (Doc. 29 at 30.) But, Noffsinger wasn’t terminated for violating the audit policy. He was terminated, in part, for being unprofitable. The audit results simply prove one aspect of his unprofitability -- that CRMC was re-paying amounts for which he overbilled while Noffsinger retained bonuses generated by overbilling.

2. Noffsinger wasn’t terminated for misconduct.

Noffsinger next suggests that his termination was pretextual because CRMC did not issue formal discipline under its Discipline and Misconduct policy. (Doc. 29 at 30.) Of course, Noffsinger again ignores the fact that he was not terminated for misconduct, but for profitability and professionalism. Moreover, he ignores the language of the policy which says: “Any of the following types of progressive disciplinary actions may be given independently of any other and steps may be skipped depending on the severity of the offense, past performance, prior discipline, or other reasons.” (Doc. 25-52 at 42.) Thus, if the policy even applied, CRMC had discretion in applying it. “[I]f management has discretion as to whether to follow the discipline policy, then a failure to follow the policy does not show pretext.” *Ritchie v. Indus. Steel, Inc.*, 426 Fed.Appx. 867, 873 (11th Cir. 2011).

F. Referral of patients does not establish pretext.

Finally, Noffsinger says that he’s proven pretext because CRMC referred his patients to younger physicians employed by CRMC. (Doc. 29 at 31.) But, as Noffsinger points out, *all* of CRMC’s primary care providers were “substantially younger” than him as that term is contemplated by the ADEA. (Doc. 29 at 27-28.) CRMC could have referred the patients to its oldest physician, 60-year-old Dr. Carlos Villar, and Noffsinger would still accuse CRMC of discrimination. *See Liebman v. Metro. Life Ins. Co.*, 808 F.3d 1294, 1299 (11th Cir. 2015)(7 year difference is “substantially younger”). Fortunately, Noffsinger admits that business,

not age, was the motivating factor behind the referrals. As he puts it, Alam and Brimer needed patients, not because of their age, but because they were “only halfway in the process of starting their practice.” (Doc. 29 at 32.)

V. Conclusion

Based upon the foregoing, CRMC requests that this Court grant summary judgment and dismiss this action, with prejudice.

Respectfully submitted this 10th day of April, 2026.

/s/ Robert C. Lockwood
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CERTIFICATE OF SERVICE

I certify that I have served a copy of this pleading upon counsel for the Plaintiff by utilization of the Court’s electronic filing system, with service to:

Allen D. Arnold
Whitney Morgan Brown
6 Office Park Circle, Suite 209
Birmingham, AL 35223

Done this the 10th day of April, 2026.

By: /s/ Robert C. Lockwood
Of Counsel

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

HANSEL NOFFSINGER,

PLAINTIFF,

VS.

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

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

DEFENDANT.

JOINT STATEMENT FOR DISCOVERY DISPUTE TELEPHONE CALL

1. The matter before this Court is a single-count Complaint wherein Plaintiff alleges that Defendant terminated his employment in violation of the Age Discrimination in Employment Act.
2. Plaintiff propounded discovery requests to Defendant on November 11, 2024.
3. After mutually agreed upon extensions, Defendant served responses to Plaintiff's discovery requests on March 14, 2025.
4. Plaintiff and Defendant resolved supplementation regarding most discovery requests prior to the request for the Court's intervention.
5. The parties have attempted in good faith to resolve the below dispute without the Court's intervention.



6. Plaintiff propounded discovery requests that were derived from the emphasized language in the following paragraph of Defendant's position statement to the Equal Employment Opportunity Commission:

Dr. Noffsinger is correct that he had a full patient load, as would be expected for a physician of his experience and tenure at the Hospital. Dr. Noffsinger, however, was also highly compensated relative to his peers. Despite his RVU's, Dr. Noffsinger did not generate sufficient revenues for the Hospital to justify his compensation level under his current employment agreement. Given the concerns about his professionalism and anticipated reaction to a proposed reduction in pay, the Hospital did not believe it would be productive to attempt to negotiate a new agreement and made the decision that it would be mutually beneficial to end the employment relationship.

(See attached Position Statement at 1-2 (emphasis added))

7. Defendant's position statement also included the following:

The Hospital had issues with Dr. Noffsinger's conduct throughout his employment.

....

The Hospital also had to warn Dr. Noffsinger on multiple occasions about following best practices and procedures.

....

Dr. Noffsinger had a full patient load at the Hospital. RVU's, however, are not necessarily an accurate reflection of the actual payments that the Hospital received for his services. Further, Dr. Noffsinger was paid more than the other physicians, and his productivity did not support his compensation.

....

Dr. Noffsinger's employment was terminated due to concerns with his professionalism and profitability. The decision had nothing to do with his age.

(See attached Position Statement.)

7. Plaintiff's Interrogatory No. 5 asked:

Identify all information, documents, evaluations, metrics, reports, analysis, or any other materials supporting Defendant's position that Plaintiff "did not generate sufficient revenues for the [Defendant] to justify his compensation level under the current employment agreement."

8. The Defendant provided the following response to Interrogatory No. 5:

ANSWER: Under his employment contract, Dr. Noffsinger received a monthly bonus based upon the number of RVUs he generated. Under that bonus structure, he received significant monthly bonuses in 2022 ranging from \$11,550.50 to \$25,744.00. This resulted in compensation to Dr. Noffsinger that was significantly higher than his peers. The issues with Dr. Noffsinger's monthly bonuses were compounded by difficulties in coding, billing and documentation which impacted the Hospital's ability to obtain reimbursement. Additionally, Dr. Noffsinger's employment was generally disruptive because of his demanding nature and complaints from patients, employees and at least one vendor. The Hospital determined that the revenues generated by Dr. Noffsinger were not sufficiently profitable when weighed against the disruptions associated with his employment, particularly during a time in which the Hospital was considering several cost savings measures. So, the Hospital decided that Dr. Noffsinger's bonus calculation needed to be revised and reduced. But, the Hospital also did not believe it would be productive to negotiate a new agreement with him. Therefore, the Hospital decided to terminate his employment. There are no "metrics" related to termination of Dr. Noffsinger's employment. Even so, the documents produced by the Hospital reflect the issues that led to the termination decision.

9. Plaintiff's Interrogatory No. 6 asked:

For all information identified by Defendant in Interrogatory No. 3, provide the same information for Shadeem Alam, Cameron Brimer, Caroline Studdard, Carlos Villar, John Morgan, Richard Gonzales and Nicole Mangum that was in effect from April 2020 through June 15, 2022 that demonstrate these persons generated sufficient revenues for Defendant to justify his or her compensation level pursuant to his or her current employment agreement.

10. Defendant provided the following response to Interrogatory No. 6:

ANSWER: The "same information" is not available for the requested individuals because they did not experience the same degree of issues in coding, billing and documentation which Dr. Noffsinger demonstrated. The requested individuals also did not exhibit the demanding nature and were not the subject of the same types of complaints as Dr. Noffsinger. The requested individuals were not highly compensated when compared to their peers.

11. Plaintiff's Interrogatory No. 7 asked:

Describe fully the Defendant's policies, formulas, analyses or other methods regarding the generation of "sufficient revenues" for the Plaintiff, Shadeem

Alam, Cameron Brimer, Caroline Studdard, Carlos Villar, John Morgan, Richard Gonzales and Nicole Mangum that were in effect from April 2020 through June 15, 2022; and the policies, formulas, analyses or other methods used to terminate the Plaintiff.

12. Defendant provided the following response to Interrogatory No. 7:

ANSWER: Defendant objects to this interrogatory on the ground that it is vague and does not define the terms “policies, formulas, analyses or other methods.” Defendant further objects on the ground that it assumes facts not in evidence. Defendants state that none of its other primary care doctors had the same amount of difficulties with proper documentation, timely documentation, coding or auditing that Dr. Noffsinger experienced. The requested individuals also did not exhibit the demanding nature and were not the subject of the same types of complaints as Dr. Noffsinger. The requested individuals were not highly compensated when compared to their peers.

13. Plaintiff’s Interrogatory No. 8 asked:

Identify each and every employee of Defendant that was subject to the policies, formulas, analyses or other methods of generation of “sufficient revenues.”

14. Defendant provided the following response to Interrogatory No. 8:

ANSWER: Defendant objects to this interrogatory on the ground that it is vague and does not define the terms “policies, formulas, analyses or other methods.” Defendant further objects on the ground that it assumes that anybody was subject to “policies, formulas, analyses or other methods of generation of ‘sufficient revenues.’” Defendant states that none of its other primary care doctors had the same amount of difficulties with proper documentation, timely documentation, coding or auditing that Dr. Noffsinger experienced. Other primary care doctors did not exhibit the demanding nature and were not the subject of the same types of complaints as Dr. Noffsinger. Other primary care doctors were not highly compensated when compared to their peers.

15. Plaintiff’s Interrogatory No. 9 asked:

Identify each and every employee of Defendant that evaluated, reviewed or otherwise participated in the application of the policies, formulas, analyses or other methods of generation of “sufficient revenues.”

16. Defendant provided the following response to Interrogatory No. 9:

Defendant objects to this interrogatory on the ground that it is overbroad, vague and does not define the terms “policies, formulas, analyses or other methods.”

Defendant further objects on the ground that it assumes Defendant further objects on the ground that it assumes that anybody was subject to “policies, formulas, analyses or other methods of generation of ‘sufficient revenues.’” The Hospital states that employees who reviewed the reviewed information and participated in the decision to terminate employment of Dr. Noffsinger included Lisa Courtney and Schinley Land.

17. Plaintiff’s Request for Production No. 4 sought:

For Shadeem Alam, Cameron Brimer, Caroline Studdard, Carlos Villar, John Morgan, Richard Gonzales and Nicole Mangum produce the personnel file; all documents kept in compliance with 29 C.F.R. § 516.2; supervisor’s file; attendance records; all emails directed to/from, and/or concerning each employee’s generation of revenue and/or personal conduct, attendance records of each employee along with employee’s job description for each job held while employed with Defendant.

18. Defendant provided the following response to Request for Production No. 4:

RESPONSE: Defendant objects to this request on the grounds that it is vague, overbroad, unduly burdensome and confusing. Defendant further objects on the ground that the term “supervisor’s file” is not defined. Without waiver of any objection, personnel files are produced. (Docs. 124-727.)

19. On June 26, 2025, Defendant provided a response to Plaintiff’s request for additional information, which included the following:

It appears that the majority of our disagreements are based upon your view that failure to generate sufficient revenue is “identified as the reason for termination in [Cullman Regional’s] Position Statement to the Equal Employment Opportunity Commission.” That is not the reason identified in Cullman Regional’s position statement. That position statement speaks for itself but identifies a number of factors that went into the termination decision. To that end, Cullman Regional provided the following answer to Interrogatory Number Five:

....

It appears that you want somebody from Cullman Regional to perform a calculation of Dr. Noffsinger’s revenues and then compare that to a calculation of revenues for other physicians. But, no such calculation was part of the termination decision. Accordingly, Cullman Regional declines your request to perform those calculations because they would not be relevant to any claim or defense, or proportional to the needs of the case.

20. Plaintiff's position: Defendant has made the above statement regarding the generation of revenues, in comparison to other physicians (some who are not of the Plaintiff's protected class) to the Equal Employment Opportunity Commission. Defendant has objected and declined to provide any evidence identifying the revenues generated by Plaintiff or the comparators. Defendant's supplementation does not satisfy the discovery requests.

Defendant informed the EEOC that the inability to "generate sufficient revenues" as one of its reasons for termination but now claims "no such calculation was part of the termination decision." (Compare Position Statement to Letter). While the assertion of this reason without factual support should suffice as a pretext, Plaintiff seeks to show that Defendant's reason is factually false and that Plaintiff was one of Defendant's top-producer of revenue in relation to the comparators, thus further casting doubt on Defendant's produced legitimate non-discriminatory reason(s) for termination.

Defendant has provided the salary information for the comparators identified in the Complaint. Defendant is in sole possession of information regarding the revenue production generated by Plaintiff and the revenue production of his peers. Such discovery will allow the Court to determine whether compensation levels relative to the revenue production is a legitimate non-discriminatory reason or a

pretext for discrimination and without such discovery Plaintiff will be unable to rebut Defendant's legitimate non-discriminatory reason for termination "head-on."

Plaintiff requests the Court enter an Order compelling Defendant to produce the revenue production information sought in Interrogatory Nos. 5-9 signed under oath and provide responsive documentation regarding Request for Production No. 4 regarding the comparators identified in the above discovery requests.

21. Defendant's position: Dr. Noffsinger is asking Cullman Regional to create a revenue report of some kind that does not exist and was not a part of the decision to terminate his employment. Certainly, financial issues were considered in the termination decision. But, those issues arose because of Dr. Noffsinger's documentation and coding practices.

Dr. Noffsinger provided medical care to patients. To be paid for Dr. Noffsinger's work, Cullman Regional had to represent to Medicare, insurance companies and other payors that it possessed documentation of the care provided by Dr. Noffsinger. But, Dr. Noffsinger did not cooperate in providing timely documentation to support his work. As a result, Cullman Regional could not bill for his work, or generate revenue from his work, in a timely manner.

Similarly, Dr. Noffsinger was required to designate Revenue Value Unit ("RVU") Codes for his treatment of patients. And, Dr. Noffsinger's compensation was tied to his RVU's. He was paid more based upon the number of RVUs he

generated. But, audits demonstrated that Dr. Noffsinger was miscoding and upcoding -- such that his RVUs were greater.

Cullman Regional paid Dr. Noffsinger based upon the RVUs that he recorded. But, the actual invoices submitted by Cullman Regional to payers for RVUs were lower to compensate for his miscoding and upcoding. Thus, despite his RVU's, Dr. Noffsinger was not generating sufficient revenues for the hospital to justify his compensation level under his employment agreement. The primary decisionmaker, Lisa Courtney, knew that Cullman Regional was not generating revenues commensurate with the RVU payments.

Did Ms. Courtney run a report or look at a specific revenue figure to reach that conclusion? No. Instead, based upon her knowledge, training and experience in the profession, she knew that Dr. Noffsinger's documentation and coding practices were not generating the revenues that Cullman Regional was paying Dr. Noffsinger for. And, to be clear, Dr. Noffsinger's revenues were only one factor in Ms. Courtney's decision-making process.

Counsel for the parties confirm this dispute regarding discovery is a good faith disagreement regarding our clients' positions and neither party is seeking attorneys' fees as a sanction for this submission.

/s/ Allen D. Arnold

Allen D. Arnold

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