STATE OF MINNESOTA

COUNTY OF OLMSTED

DISTRICT COURT
CIVIL DIVISION
THIRD JUDICIAL DISTRICT

Michael Joyner, M.D.,

Plaintiff,

vs.

Mayo Clinic, Gianrico Farrugia, M.D., and Carlos Mantilla, M.D., Ph.D.,

Defendants.

Court File No. 55-CV-23-7708
Case Type: Employment

ORDER AND MEMORANDUM

On April 4, 2025, the above-captioned matter came on for a hearing on parties' respective motions for summary judgment before the Honorable Kathy M. Wallace in Olmsted County District Court. Plaintiff was present and represented by Kellie J. Miller, Esq., of Allen Harris PLLC and Samuel W. Diehl, Esq. of CrossCastle PLLC. Defendants were represented by Ryan E. Mick and Jillian Kornblatt, Esqs., of Dorsey & Whitney LLP.

The Court, based upon all of the files, records, and proceedings herein, and otherwise being fully advised in the matter, hereby makes the following:

ORDER

1. Plaintiff's Motion for Partial Summary Judgment as to Count I is **DENIED**. Defendants' Motion for Summary Judgment as to Count I is **GRANTED in part** and **DENIED in part**. Defendants' Motion for Summary Judgment as to Count I is **GRANTED** only as to an alleged breach of step 13 of the Appeals Procedure.
2. Plaintiff's Motion for Partial Summary Judgment as to Count II is **DENIED**. Defendants' Motion for Summary Judgment as to Count II is **GRANTED in**

part and **DENIED in part**. Defendants' Motion for Summary Judgment as to Count II is **GRANTED** only as to step 13 of the Appeals Procedure.

3. Plaintiff's Motion for Partial Summary Judgment as to Count III is **DENIED**. Defendants' Motion for Summary Judgment as to Count III is **GRANTED** and Count III is dismissed with prejudice.

4. Plaintiff's Motion for Partial Summary Judgment as to Count IV is **DENIED**. Defendants' Motion for Summary Judgment as to Count IV is **GRANTED** and Count IV is dismissed with prejudice.

5. Defendants' Motion for Summary Judgment as to Count V is **GRANTED in part** and **DENIED in part**. Defendants' Motion for Summary Judgment as to Count V is **GRANTED** as to Defendant Dr. Farrugia only. Count V as to Defendant Dr. Farrugia is dismissed with prejudice and Defendant Dr. Farrugia is removed from this case. Defendants' Motion for Summary Judgment as to Count V is **DENIED** as to Defendant Dr. Mantilla.

6. Plaintiff's Motion to Amend Complaint to Add Punitive Damages is **DENIED.**

7. The attached Memorandum is hereby incorporated and made a part of this Order.

BY THE COURT:

Wallace, Katherine
2025.06.30
10:32:32 -05'00'

Kathy M. Wallace
Judge of District Court

MEMORANDUM

PROCEDURAL HISTORY

On November 13, 2023, Plaintiff filed a Complaint alleging Breach of Contract, Promissory Estoppel, Violation of the Minnesota Personnel Record Statute, and Violation of the Minnesota Whistleblower Act against Defendant Mayo Clinic, and alleging Tortious Interference with Contract against Defendants Dr. Gianrico Farrugia and Dr. Carlos Mantilla. On November 27, 2023, parties filed a stipulation which amended the case caption and also provided Defendants with extended time to respond to the Complaint. On December 19, 2023, Defendants filed a Motion to Dismiss the Breach of Contract, Promissory Estoppel, and Tortious Interference with Contract claims (Counts I, II, and V). On January 8, 2024, Plaintiff filed an Amended Complaint. On January 22, 2024, Defendants filed a Partial Motion to Dismiss the Amended Complaint. Defendants sought to dismiss the breach of contract, promissory estoppel, and tortious interference with contract claims (Counts I, II, and V) on the grounds that the policies cited in Plaintiff's Complaint do not meet the legal definition of contracts or promises, that Defendant Mayo Clinic did not violate these policies, that as the policies were not contracts there could be no tortious interference with the policies, and that Defendants cannot tortiously interfere with their own contract. Defendants also argued that in dismissing Count V, Defendants Dr. Gianrico Farrugia and Dr. Carlos Mantilla should also be dismissed, as Count V is the only claim made against these two Defendants. On February 12, 2024, the Court issued a Scheduling Order. On March 25, 2024, Plaintiff filed a Memorandum of Law

in Opposition to Defendants' Partial Motion to Dismiss, arguing that Defendant Mayo Clinic's policies create enforceable contractual obligations, that Plaintiff has alleged sufficient facts for the claim of promissory estoppel, and that Plaintiff's claim of tortious interference with contract contains allegations of malice against Defendants Dr. Gianrico Farrugia and Dr. Carlos Mantilla, thereby defeating Defendants' Partial Motion to Dismiss. Defendants filed a Reply Memorandum of Law in Support of the Partial Motion to Dismiss the Amended Complaint on April 1, 2024, arguing that Defendant Mayo Clinic's policies at issue are not enforceable unilateral contracts, that Defendant Mayo Clinic did not violate said policies, that Plaintiff's claims regarding tenure do not alter the analysis of Defendant Mayo Clinic's policies, and that a claim for tortious interference of contract requires the existence of a contract, which Defendant Mayo Clinic's policies did not create.

On April 8, 2024, a motion hearing was held during which parties' counsel presented argument on Defendants' Partial Motion to Dismiss. The Court took the matter under advisement on April 8, 2024. On July 1, 2024, the Court issued an order on Defendants' Partial Motion to Dismiss. In the order, the Court granted Defendants' Partial Motion to Dismiss as to the breach of contract and promissory estoppel claims under the Freedom of Expression and Academic Freedom Policy. The Court denied Defendants' Partial Motion to Dismiss as to the breach of contract and promissory estoppel claims under the Anti-Retaliation Policy and Appeals Procedure. The Court also denied Defendants' Partial Motion to Dismiss as to the Tortious Interference with Contract claim.

On July 15, 2024, Defendants filed an Answer to Plaintiff's First Amended Complaint. On August 21, 2024, parties filed a Joint Stipulation to Extend Discovery and Dispositive Motion Deadlines. On August 26, 2024 the Court issued an Amended Scheduling Order. On August 28, 2024, the Court issued another Amended Scheduling Order to correct clerical errors in the August 26 Amended Scheduling Order. The Amended Scheduling Order had deadlines of December 30, 2024 for completion of discovery; January 15, 2025 for nondispositive motion hearings; March 17, 2025 for dispositive motion hearings; May 1, 2025 for completion of Alternative Dispute Resolution; September 12, 2025 for pretrial submissions; September 19 for the pretrial hearing; and the week of September 29 for trial.

On December 9, 2024, Defendants filed correspondence requesting a summary judgment motion hearing. Defendants informed the Court that they were told the Court had no availability for a summary judgment motion hearing prior to the dispositive motion hearing deadline provided in parties' Amended Scheduling Order. On December 13, 2024, the Court filed a Second Amended Scheduling Order, amending the dispositive motion hearing deadline to April 4, 2025 to accommodate Defendants' motion hearing request. On December 24, 2024, the Court issued an order stating that the April 4, 2025 motion hearing would take place in-person.

On December 24, 2024, Plaintiff filed a Motion to Amend the Scheduling Order. Plaintiff requested that the Second Amended Scheduling Order deadline of January 15, 2025 for nondispositive motions be modified to allow hearing of Plaintiff's Motion to Amend to add a claim of punitive damages. On January 13, 2025, Defendants filed

a memorandum opposing Plaintiff's Motion to Amend. On January 21, 2025, Plaintiff filed a Reply Memorandum in Support of Plaintiff's Motion to Amend the Scheduling Order. On January 27, 2025, a hearing was held on Plaintiff's Motion to Amend the Scheduling Order. During the hearing, the Court granted Plaintiff's Motion to Amend the Scheduling Order. On January 28, 2025, the Court issued an Order striking the Second Amended Scheduling Order nondispositive motion deadline of January 15, 2025, and extending the deadline to April 4, 2025, to allow Plaintiff's Motion to Amend the Complaint to be heard on April 4, 2025.

On March 7, 2025, Defendants filed a Motion for Summary Judgment, seeking a grant of summary judgment in their favor as to all of Plaintiff's counts. On March 7, 2025, Plaintiff filed a Motion for Partial Summary Judgment, seeking a grant of summary judgment in Plaintiff's favor as to Plaintiff's Counts I-IV, with the issue of damages on each count to be heard at trial.

On March 14, 2025, Plaintiff filed two motions: a Motion to Amend the Complaint to Claim Punitive Damages and a Motion to Strike Hearsay. On March 21, 2025, Defendants filed three memoranda: a Response to Plaintiff's Partial Motion for Summary Judgment, a Response to Plaintiff's Motion to Amend, and a Response to Plaintiff's Motion to Strike Hearsay. On March 21, 2025, Plaintiff filed a Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment.

On March 25, 2025, Plaintiff's counsel submitted correspondence to the Court requesting an extension of parties' reply submissions. On March 26, 2025, the Court granted the request, extending parties' reply deadline until March 31, 2025. On

March 31, 2025, Plaintiff filed three reply memoranda: a Reply in Support of Motion for Partial Summary Judgment, a Reply in Support of Motion to Amend Complaint for Punitive Damages, and a Reply in Support of Plaintiff's Motion to Strike. On March 31, 2025, Defendants filed a Reply Memorandum in Support of Motion for Summary Judgment.

On April 4, 2025, a Motion Hearing was held to address parties' respective motions for summary judgment, Plaintiff's Motion to Strike Hearsay, and Plaintiff's Motion to Amend the Complaint to Claim Punitive Damages. Both parties presented arguments on the motions and the Court took the issues under advisement.

On April 24, 2025, parties filed a Joint Motion to Amend the Scheduling Order requesting that the deadline for completion of alternative dispute resolution be modified from May 1, 2025 to August 2, 2025 as the Court's Order on the issues under advisement, which includes dispositive issues, is not due until July 3, 2025. On May 28, 2025, the Court signed an Order Amending the Second Amended Scheduling Order, amending the deadline for completion of alternative despite resolution to August 2, 2025. On May 23, 2025, the Court issued an Order denying Plaintiff's Motion to Strike Hearsay.

FACTUAL BACKGROUND

Plaintiff is Dr. Michael J. Joyner, a Physician and Professor of Anesthesiology at Defendant Mayo Clinic's College of Medicine and Science. Plaintiff is employed by Defendant Mayo Clinic, a healthcare system registered as a non-profit organization

in Minnesota, whose registered office is located in Rochester, County of Olmsted, State of Minnesota. Defendant Dr. Gianrico Farrugia is Defendant Mayo Clinic's President and Chief Executive Officer, as well as the Chair of the Mayo Clinic Board of Governors. Defendant Dr. Carlos Mantilla is the Chair of Defendant Mayo Clinic's Department of Anesthesiology & Perioperative Medicine and was Plaintiff's direct supervisor from April 2016 until August 2024.

Defendant Mayo Clinic maintains an online Policy Library, located on an internal website accessible to Mayo Clinic employees, which contains Mayo Clinic policies and procedures. Contained in the Policy Library are the Mayo Clinic Anti-Retaliation Policy and Mayo Clinic Appeals Procedure. The Anti-Retaliation Policy "[a]pplies to personnel when involved in possible retaliatory situations." The stated purpose for the Anti-Retaliation Policy is "[t]o establish protections for individuals who report, internally or externally, violations or other wrongdoings including, but not limited to, privacy, revenue, finance, research, quality of care, patient safety, and employment related concerns." The Appeals Procedure "[a]pplies to Consulting Staff and executive level administrative voting staff (as defined by Human Resources) when appealing an adverse action." The stated purpose for the Appeals Procedure Policy is "[t]o provide the steps for bringing an appeal to an adverse action."

Plaintiff has been employed by Defendant Mayo Clinic since 1992. In 1996, Plaintiff was promoted to the status of Consultant, after which Plaintiff was asked to sign a non-compete agreement should Plaintiff leave his employment at Mayo Clinic. Plaintiff signed this non-compete agreement. In 2002, Plaintiff was promoted to the

status of Clinician Investigator, whereby Plaintiff has responsibilities in patient care, research, and education. Under Plaintiff's appointment as Clinician Investigator, Plaintiff is expected to devote a minimum of 50% of his employment to research. Plaintiff specializes in the study of exercise physiology.

During the COVID-19 pandemic, Plaintiff researched the effect of convalescent plasma treatment for COVID-19 patients and was the Principal Investigator with the United States Expanded Access Program for Convalescent Plasma ("Convalescent Plasma Program" or "CPP"). Defendant Mayo Clinic received a government grant of approximately $53 million from the Biomedical Advanced Research and Development Authority ("BARDA") to conduct research into convalescent plasma as a treatment for COVID-19.

During the COVID-19 pandemic, Plaintiff worked his normal duties as a Mayo Clinic faculty member, as well as working as the Principal Investigator ("PI") on the Convalescent Plasma Program. Plaintiff received no additional compensation for his work on the CPP. As PI, Plaintiff was tasked with ensuring the CPP complied with all federal, state, and local laws, rules, regulations, and guidelines.

Dr. John Halamka, President of the Mayo Clinic Platform, facilitated Defendant Mayo Clinic's participation into the COVID-19 Healthcare Coalition ("Coalition"). The Coalition consisted of 1200 organizations that collaborated to find solutions to the COVID-19 pandemic. Dr. Halamka invited MITRE Corporation ("MITRE") to collaborate in the CPP. Through this collaboration, a MITRE representative began attending meetings regarding the CPP, which Plaintiff also

attended as PI.

In June 2020, Plaintiff sent text messages to Mr. Manu Nair and Mr. Andrew (Andy) Danielson, requesting a plan by which Plaintiff could receive financial recognition for various projects Plaintiff had worked on, including the CPP. Plaintiff requested "the outlines of a plan" for financial recognition within forty-eight (48) hours of his text message, stating that he had "other opportunities and unless Mayo is willing to step up I will be forced to redirect my efforts." In a later text message, Plaintiff stated that "I am out on Sat [sic] if there is not a fair solution in the works." A telephone call between Mr. Nair, Mr. Danielson, and Plaintiff occurred, during which the main areas Plaintiff was working on were discussed, including financial remuneration opportunities available for Plaintiff's work in each of those areas. During the phone call, Plaintiff asked for a plan within the next forty-eight (48) hours or he would "walk away."

On 10:56 a.m. on June 19, 2020, Dr. Halamka emailed Mr. Danielson, stating that Dr. Farrugia had asked Dr. Halamka to brief Dr. Farrugia on the requests Plaintiff made to Mr. Danielson. At 11:00 a.m. Mr. Danielson replied to Dr. Halamka, stating that the "[g]ist is he wants to be paid millions for bringing in the BARDA grant and benefactor funds. His offer was 10% of the $18M in BARDA indirects plus more. He said if he is not paid this by the weekend he is walking away." At 5:10 p.m. Dr. Halamka forwarded Mr. Danielson's email to Dr. Farrugia, Mr. Jeffrey Bolton, and Ms. Cathryn Fraser.

At 1:54 p.m. on June 19, 2020, Mr. Nair sent an email to Mr. James Rogers,

per Mr. Rogers' instruction, containing the summary of Mr. Nair's discussions with Plaintiff regarding Plaintiff's financial request. At 2:09 p.m., Mr. Danielson sent an email to Mr. James Rogers, providing notes on his interactions with Mr. Nair and Plaintiff related to Plaintiff's financial request. At 2:21 p.m. on June 19, 2020, Mr. Rogers forwarded both emails to Defendant Dr. Farrugia, who then forwarded the emails to Dr. Charanjit (Chet) Rihal at 3:39 p.m. on June 19, 2020.

On June 19, 2020, at 5:51 am, Plaintiff sent an email to Dr. John Halamka, and copied Defendant Dr. Farrugia and Dr. Scott Wright, Chair of the Mayo Clinic Institutional Review Board ("IRB"), on the email. Plaintiff's June 19, 2020 email was titled "whatever is up at the FDA" [sic] and stated,

> [T]here is apparently something up at the FDA and MITRE and 'the Coalition' are involved. As part of whatever is up, it would be a grave error for MITRE, the Coalition or whoever to attempt to highjack access to the EAP data and the ongoing analysis via some sort of back channel with the FDA. All these attempts do is distract people. We are very close to an answer, meanwhile your pals in the EHR world have not generated a single analysis of any utility.

Dr. Halamka replied to Plaintiff at 6:15 a.m. on June 19, 2020, stating,

> The only thing I'm aware of is that Mayo/EHR vendors/Mitre working together have completed the specifications for EHR extracts and will send multi-institutional data to Mayo for analysis.
>
> I'll ask FX Campion for an update as to which institutions will send Vitaly their data and when.
>
> I haven't heard anything from the FDA except their support for national data collection efforts supplementing what Mayo is already doing.

At 6:32 a.m. on June 19, 2020, Dr. Halamka sent an email to Dr. Farrugia, outlining behaviors he had seen from Plaintiff in the "first few months of serving as a diplomat

for [Plaintiff].” After outlining the behaviors, Dr. Halamka stated that they “are all consistent with Borderline Personality Disorder.” Dr. Halamka then wrote,

> I've been watching [Plaintiff] alienate just about every constituency such that no one wants to collaborate with him any longer.
>
> My approach has been to treat him with respect, support his efforts that are important to Mayo/patients, and hold things together until his convalescent plasma work is replaced by hyperimmune globulin.
>
> I will keep you informed, but from my years of treating borderline personalities I know that you can never fix them.

At 7:04 a.m. on June 19, 2020, Defendant Dr. Farrugia forwarded Dr. Halamka’s email to Mr. Jeffrey Bolton, Mayo Clinic's chief administrative officer, with the message “Did not take him long.” Mr. Bolton replied to Dr. Farrugia’s email at 8:06 a.m., stating, “And a very accurate diagnosis. Now what do we do, especially as his work becomes more and more important?” Dr. Farrugia responded at 2:13 p.m. on June 19, 2020, stating

> We manage day to day until either other solutions become available or it becomes intolerable and he alienated [sic] Scott Wright and then we will have to act. I keep speaking to him and Scott daily to know when the breaking point is approaching and to the FDA and john Halamka to do the same. Hoping for the first but likely will be the second. In the meantime we take advantage of the media exposure.

Id. At 9:29 a.m. on June 19, 2020, Dr. Halamka forwarded his 6:32 a.m. email to Dr. Clark Otley, Chief Medical Officer for Mayo Clinic Platform, for Dr. Otley’s “situational awareness,” informing Dr. Otley that Plaintiff “is making personal threats to companies and individuals.”

At 10:27 a.m. on June 19, 2020, Dr. Halamka emailed Dr. Farrugia stating,

> I was just informed that Dr. Joyner has made personal threats via text

> to individuals at the Mitre [sic] corporation. I have a conference call with those individuals this afternoon.
>
> Business development will brief me this afternoon about requests they received from Dr. Joyner which they believe are not rational and cross the line.
>
> Public Affairs/Marketing is receiving unusual emails from Dr. Joyner.
>
> National groups and the FDA are expressing concern.
>
> I believe that by the end of the day, we many need to seek the guidance of Human Resources to assist with escalating decompensation.
>
> I will help in any way I can and follow any process you recommend.

At 10:30 a.m. Dr. Farrugia responded and added Mr. Bolton and Ms. Cathy Fraser to the email thread. Dr. Farrugia told Dr. Halamka to forward to him the texts and concerns from Business Development. At 10:41 a.m. Dr. Halamka forwarded a text sent to him from Dr. Brian Anderson at MITRE. At 11:51 a.m., Dr. Farrugia responded, "Do you know if there were other texts? it would appear to be hard to act on this one." At 10:54 a.m., Dr. Halamka responded that he had "asked MITRE to share original texts received from [Plaintiff]." At 5:54 p.m., Ms. Fraser responded and stated, "I would typically immediately engage [Dr.] Chet [Charanjit Rihal] with this type of situation. Any concerns with that approach?"

At 3:34 p.m. on Friday, June 19, 2020, Dr. Halamka's 6:32 a.m. email was forwarded to Dr. Chet Rihal, Chair of the Mayo Clinic Personnel Committee, by Ms. Stephanie Wendorff. Ms. Wendorff also stated that

> This is the first of two emails that have been circulated today regarding comments from Dr. Joyner felt to be disrespectful by Dr. Halamka and team. I understand Dr. Farrugia has been brought in, I think by Dr. Halamka and Dr. Gazelka. I am happy to connect if

> helpful as this is a bit cryptic, I think there is other commentary outside the email/text feeding the concerns.
> I will also ask Brenda to check Dr. Joyner's file. I don't recall much surfacing in my time with PC. I am aware of reputation in years prior, just not sure how much, if anything is documented vs rumor.

Dr. Rihal responded at 3:44 p.m. on June 19, 2020, stating, "I just spoke with GF and JB about this."

On June 20, 2020, Dr. Rihal sent an email to Defendant Dr. Farrugia, Mr. Bolton, and Ms. Stephanie Wendorff. In the email, Dr. Rihal stated that he had reviewed the information sent to him and found that "[Plaintiff]'s behaviors are not in keeping with the Mayo model of professionalism, and likely to violate numerous policies." Dr. Rihal admitted that he did not have Plaintiff's version of events, but stated that "[w]e have removed individuals from leadership roles for lesser transgressions when requests for personal gain were made." Dr. Rihal then provided seven (7) recommendations, including that "If [Plaintiff] claims, as he likely will, that he is being treated unfairly you can refer the matter to PC and we can conduct a full investigation led by HR and legal" and that if Plaintiff is to keep his role at Mayo, "a full investigation needs to be performed first that he would have to pass."

On June 21, 2020, Plaintiff and Defendant Dr. Farrugia had a telephone conversation. During the conversation, Plaintiff requested financial renumeration and asked about future leadership roles. Dr. Farrugia informed Plaintiff that the Mayo Clinic Department of Business Development "will be fair and go by the rules without exceptions" in regard to Plaintiff's financial request. During the phone call, Dr. Farrugia informed Plaintiff that Dr. Farrugia would involve the Personnel

Committee ("PC") and "likely the chair of the PC would meet with [Plaintiff] or communicate with him."

On June 22, 2020, Plaintiff sent an email to Mr. Rogers, Mr. Danielson, and Mr. Nair, copying Dr. Farrugia on the email, apologizing for his behavior "over the last few days." Plaintiff asked to "reset the conversation" and stated that he was "fully on board." Dr. Farrugia forwarded this email to Dr. Rihal.

The matter was referred to the Personnel Committee ("PC") for an investigation. Dr. Rihal asked Dr. Matthew Callstrom and Ms. Amber Manning to conduct the investigation. During the investigation, Dr. Callstrom and Ms. Manning reviewed documents and interviewed witnesses, including Plaintiff. Dr. Callstrom and Ms. Manning provided an investigation report to the PC upon the conclusion of the investigation. The report highlighted Plaintiff's "Inappropriate Financial Request," "Behavior that undermines or interferes with the environment of mutual respect, professionalism, teamwork, cooperation and inclusiveness," and "Lack of alignment with Dr. Joyner's thought process/action with Mayo Clinic standards." The report further stated that

> Upon review of the Fair and Just Culture Grid, a final written warning and/or termination of employment could be warranted. Given there is a long-standing history of these types of behaviors and engagements by Dr. Joyner with no solid informal or formal coaching on file, we would recommend a written warning.

The PC Executive Committee decided to issue Plaintiff a Final Written Warning as a result of the investigation. Ms. Manning was directed to work with Defendant Dr. Mantilla in drafting the Final Written Warning. On August 13, 2020, Ms. Amber

Manning sent an email to Ms. Steffany Guidinger, and attached a draft of the Final Written Warning to the email. On August 19, 2020, at 6:38 p.m., Defendant Dr. Mantilla emailed Dr. Rihal, Chair of the Personnel Committee, "an edited letter" for Dr. Rihal's review and attached a draft of the Final Written Warning. On August 20, 2020, at 8:47 a.m., Dr. Rihal responded to the email, and indicated that "the edits seem fine" and Dr. Rihal "will ask the team to review."

On August 24, 2020, the PC delivered the Final Written Warning to Plaintiff for violations of Mayo Clinic's Mutual Respect Policy, Unacceptable Conduct Policy, and Model of Professionalism. The Final Written Warning stated that Plaintiff had a "right to appeal this corrective action and the process is described in the Consulting Staff Appeals policy." On August 27, 2020, Plaintiff met with Dr. Rihal, Defendant Dr. Mantilla, and Ms. Guidinger to discuss Plaintiff's questions about the Final Written Warning.

At 1:45 p.m. on August 19, 2020, Plaintiff received an email from Dr. Rickey Carter, expressing concerns about Dr. Carter's staff's discomfort at receiving data requests from MITRE. Plaintiff responded at 1:52 pm on August 19, 2020, stating that he was forwarding Dr. Carter's email to Dr. Scott Wright, due to Dr. Wright's "IRB role." Plaintiff also expressed that "we can't be sharing data without IRB oversight/approval." At 4:56 pm on August 19, 2020, Plaintiff sent an email to Dr. Halamka, copying Dr. Wright, Dr. Farrugia, and Dr. Carter on the email. In the email Plaintiff raised five issues, including that the CPP had "a contract with BARDA that has what we can communicate with whom rules in it.. ... [and] [t]here are people

pressuring jr. stats people on Rickey's team for data. Totally inappropriate." At 5:24 p.m. on August 19, 2020, Dr. Wright replied to all, thanking Plaintiff for "raising these concerns" and stating that he is "troubled at the potential coercion or perception of coercion by MITRE and Brian Anderson or his surrogates on this work and our statistical team in Florida." As a result of the concerns raised by Plaintiff, an IRB investigation was conducted, looking into MITRE's conduct. The results of the IRB investigation included a finding of undue influence, but not coercion, exerted by MITRE employees in attempting to obtain CPP data. The IRB investigation report stated that "Dr. Halamka invited MITRE into the collaboration, but did not set boundaries or provide direct oversight of their interactions." The IRB investigation provided two (2) recommendations: that "Dr. Halamka create boundaries for interaction and to monitor/enforce them regularly" and that Dr. Halamka speak with MITRE representatives to "provide coaching on how to improve interactions with the data and other teams at Mayo Clinic working on the US Convalescent plasma study."

On September 23, 2020, Plaintiff appealed the 2020 Final Written Warning in a letter to Dr. Rihal. Pursuant to the Mayo Clinic Appeals Procedure, an Appeals Committee was formed to review Plaintiff's appeal. The Appeals Committee unanimously recommended upholding the 2020 Final Written Warning. Dr. Farrugia accepted the Appeals Committee's recommendation and implemented the recommendation without any changes. Plaintiff received a letter on November 30, 2020 informing him of the result of Plaintiff's appeal.

On January 13, 2021, Plaintiff sent an email to seven Mayo Clinic employees,

including Dr. Scott Wright, Mayo Clinic IRB chair, stating Plaintiff's concerns about having received "a lot of pressure to turn over confidential EAP infrastructure data and other relevant material" to Duke University. In the email Plaintiff raised compliance and contractual concerns with turning over the data. Plaintiff further stated that "[s]ome of this pressure unfortunately seems to have emanated or been facilitated by folks inside of Mayo."

On March 19, 2021, Plaintiff sent an email to Mr. Jeffrey Bolton, outlining three concerns related to behavior of a "Mayo leader" in participating in, having knowledge of, or sponsoring attempts to obtain protected health data. Plaintiff also raised potential conflict of interest concerns related to a "Mayo leader." Plaintiff sent copies of this letter to other Mayo employees, including Dr. Wright. On March 22, 2021, Dr. Wright sent a request to the Mayo Clinic Office of Research Regulatory Support requesting a review of the concerns Plaintiff raised in his March 19 letter. In response to Dr. Wright's request, an investigation was conducted by Ms. Kathleen McNaughton. As part of the investigation, Ms. McNaughton met with Plaintiff on March 24, 2021 to have Plaintiff verbally discuss his concerns in more detail. Ms. McNaughton also met with Dr. Wright on March 25, 2021 as part of her investigation. On April 1, 2021, Ms. McNaughton concluded her investigation and prepared a summary of the steps she had taken during her investigation and her conclusions and recommendations. In her report, Ms. McNaughton determined that no additional IRB action was required related to Plaintiff's concerns, but she noted that "additional confidential concerns were expressed which are outside the scope of IRB review and

will be included in a separate memo addressed to the Chief Risk Officer and Legal Counsel." Ms. Naughton recommended additional review of Plaintiff's confidential concerns.

On April 16, 2021, Mayo Clinic's Chief Compliance Officer, Adam Briggs, and Mayo Clinic Compliance Officer Jason Wilke met with Plaintiff as part of the investigation into Plaintiff's retaliation complaint. During this interview, Plaintiff alleged that Defendant Dr. Farrugia directed that the Personnel Committee discipline Plaintiff as a means of retaliation for Plaintiff raising compliance concerns about MITRE. Plaintiff "repeatedly raised the possibility of having an outside organization investigation [sic] his allegations to ensure fairness." Following the interview, Mr. Briggs and Mr. Wilke noted that Plaintiff "has enunciated a retaliation concern (i.e. disciplined in response to raising good faith concerns)." As a result of Plaintiff's retaliation concern, Defendant Mayo Clinic hired an outside investigator, Judge Dulce Foster,[1] to investigate Plaintiff's concerns.

Judge Foster interviewed Plaintiff on June 4, 2021 regarding Plaintiff's retaliation complaint. On July 16, 2021, Judge Foster submitted her final report as to Plaintiff's retaliation complaint. In her report, Judge Foster stated that she investigated four (4) issues related to Plaintiff's allegations of retaliation: Plaintiff's demand for extra compensation, Plaintiff's complaints about Mayo Clinic Public Affairs, Plaintiff's compliance concerns about MITRE, and Plaintiff's letter regarding

[1] At the time of the investigation, Judge Dulce Foster was employed by Frederickson & Byron. She is now a United Stated Magistrate Judge for the United Stated District Court for the District of Minnesota.

Mr. Josh Murphy. Judge Foster found that Plaintiff's retaliation complaint was not "sufficiently substantiated to warrant further review."

On August 13, 2021, Plaintiff met with Dr. Chet Rihal, Chair of the Mayo Clinic Personnel Committee, and Ms. Sherry Hubert, Mayo Clinic Legal Counsel, to discuss the findings of the external investigation of Plaintiff's retaliation complaint. Dr. Rihal ended the meeting when he felt it would no longer be productive to speak with Plaintiff. Dr. Rihal sent a letter to Plaintiff, dated August 26, 2021, "to memorialize the key findings [of the external investigation] and to bring closure of this matter." In the letter, Dr. Rihal summarized the procedure followed by Judge Foster in conducting the investigation as well as some key findings made by her. In the last paragraph of the letter, Dr. Rihal discusses Plaintiff's behavior during the August 13 meeting, and Dr. Rihal's observations of Plaintiff's "longstanding resentment towards Public Affairs and others." Dr. Rihal stated that in order "to re-establish trust and professional working relationships" Plaintiff would need "to take affirmative steps."

Plaintiff has participated in media interviews during his employment at Mayo Clinic. In 2022, Plaintiff participated in an interview with the *New York Times*. The interview discussed the role of testosterone and athletic performance. In the published interview, Plaintiff stated that with regards to sports performance, "Testosterone is the 800-pound gorilla." Plaintiff additionally participated in two interviews with CNN, one in November 2022 and a follow-up in January 2023, regarding convalescent plasma treatments for immunocompromised COVID-19 patients. On January 12, 2023, CNN published the article from these interviews. In

the article, Plaintiff described the National Institutes of Health approval process as "bureaucratic rope-a-dope" and called "the agency's guidelines a 'wet blanket' that discourages doctors from trying convalescent plasma." The same day the article was published, Plaintiff received communication from Defendant Dr. Mantilla wherein Dr. Mantilla thanked Plaintiff for Plaintiff's "amazing impact."

On January 13, 2023, Dr. Halena Gazelka, Medical Director of Mayo Communications, sent an email to Dr. Mantilla and Dr. Abimbola Famuyide, regarding Plaintiff's comments in the CNN interview. Dr. Gazelka forwarded her email to Dr. Farrugia, who responded, "PC will need to act on this." Dr. Gazelka forwarded Dr. Farrugia's response to Dr. Mantilla and Dr. Famuyide. An investigation into Plaintiff then began.

Plaintiff received an email directing him to meet with Mayo Clinic Human Resources representative Amber Manning and Defendant Dr. Mantilla. During the meeting on January 16, 2023, Ms. Manning and Dr. Mantilla discussed Plaintiff's CNN interview comments. On January 24, 2023, Ms. Manning emailed Dr. Mantilla a draft SBAR (Situation, Background, Assessment, Recommendations) document, provided three (3) recommended options: bar Plaintiff from further media interviews, issue another Final Written Warning, or terminate Plaintiff's employment. On February 3, 2023, a final draft of the SBAR document was issued, recommending that Plaintiff receive a Final Written Warning and be required to get approval from Public Affairs for any media requests. Members of the Personnel Committee reviewed the matter and decided that Plaintiff would receive a Final Written Warning.

In the Final Written Warning letter from Dr. Mantilla, dated March 5, 2023, Plaintiff was cited for a "negative and unprofessional pattern of behavior exhibited by you for some time." The letter also stated that Plaintiff had "disrespectful communications with colleagues," describing his "tone as unpleasant and having a 'bullying' quality to it." The letter also cited Plaintiff for "fail[ing] to communicate in accordance with prescribed messaging" and Plaintiff's "use of idiomatic language," which was "viewed as inflammatory." The Final Written Warning letter stated that Plaintiff's actions had violated Mayo Clinic policies, including the Media Policy, Mayo Clinic Values Policy, Model of Professionalism Policy, Unacceptable Conduct Policy, and Mutual Respect Policy. Plaintiff received a punishment of an unpaid suspension, financial penalties, and restrictions on Plaintiff's communication with outside parties. The letter informed Plaintiff he was to cease "engagement in offline conversations with reporters." Plaintiff was further directed to "discuss approved topics only," "stick to prescribed messaging," and "eliminate the use of idiomatic language." Plaintiff was also required to receive approval from Mayo Clinic Public Affairs for future media requests and to "eliminate unnecessary push back or combative communications" if a media request is denied. Plaintiff was informed in the letter that "[t]hese behavior changes must be immediate and sustained."

Plaintiff had his annual review with Dr. Mantilla in early March 2023, during which Dr. Mantilla gave Plaintiff the highest possible marks on categories related to interpersonal and communication skills and professionalism. Dr. Mantilla stated that "[Plaintiff]'s emotional endurance in the face of immense personal and professional

stress is remarkable" and "[Plaintiff]'s ability to press on under stressful situations and move key 'needs of patient' goals forward is impressive." Dr. Mantilla ended his review by stating that Plaintiff "has significantly impacted the life and health of many patients, and we are most thankful for his many efforts. Dr. Joyner's service to the department is also most appreciated. I trust his partnership and look forward to supporting him in next steps."

On April 14, 2023, Plaintiff submitted a letter to Defendant Dr. Carlos Mantilla, appealing the discipline enumerated in the Final Written Warning letter. Plaintiff specifically requested that the 2023 Final Written Warning "be withdrawn and the financial and other penalties reversed." Plaintiff further requested a restorative process and dialogue to address the "troubled relationship" between Mayo Clinic Public Affairs and Plaintiff.

In preparation for this appeal, Plaintiff requested his personnel record from Mayo Clinic Human Resources on March 12, 2023. After not receiving his personnel record, Plaintiff followed up on his request on March 27, 2023. Plaintiff then received 400 pages of documents which Defendant Mayo Clinic determined constituted Plaintiff's personnel record. Defendant Mayo Clinic did not provide a copy of the 2021 letter from Dr. Rihal, information about Plaintiff's 2021 Team Science Award, or notices of commendation from colleagues in Plaintiff's personnel file.

Defendant Mayo Clinic confirmed receipt of Plaintiff's appeal on April 15, 2023, reiterating that Mayo Clinic policies provide for a sixty-day timeline for the appeal. Mayo Clinic's response indicated that "the goal [was] to have an appeal decision by

June 15, 2023, or sooner." On May 8, 2023, Steffany Guidinger of Mayo Clinic Human Resources contacted Plaintiff to inform him of the name of the designee for Plaintiff's appeal, the names of the members on Plaintiff's Appeals Committee, as well as Ms. Guidiner's role in the process.

Plaintiff sought access to any materials the Appeals Committee would use in making a determination on Plaintiff's appeal and asked Ms. Guidinger for such materials. No materials were provided to Plaintiff. On May 18, 2023, Plaintiff contacted Dr. John Caviness, Chair of the Mayo Clinic Personnel Committee, and designee for Plaintiff's appeal, regarding Plaintiff's concerns about not receiving materials the Appeals Committee would be considering in deciding Plaintiff's appeal. Dr. Caviness replied that it would be "inappropriate" for him to address Plaintiff's concerns as those concerns "are in the purview of the appeals committee, per policy."

Plaintiff's appeal hearing was scheduled for June 27, 2023. On June 23, 2023, Plaintiff, citing step 12 of the Appeals Procedure, sent an email to Ms. Guidinger and the Appeals Committee members with nine (9) attachments. On June 26, 2023, Plaintiff sent an updated version of his previous three (3) performance evaluations as there were problems with those attachments in Plaintiff's June 23 email. Ms. Guidinger responded to both of Plaintiff's emails by confirming receipt of the email and attached documentation.

On June 27, 2023, Plaintiff's appeal hearing was held. During the hearing, Ms. Guidinger questioned Plaintiff regarding Plaintiff's 2015 op-ed in the *New York Times* and Appeals Committee members questioned Plaintiff about the discipline he

received in 2020. Ms. Guidinger informed Plaintiff that the appeal decision could take time as there were 500 pages of material for the Appeals Committee to review. Despite Plaintiff's requests for the material, Plaintiff had not received access to the entire 500 pages of material the Appeals Committee was to review.

On June 28, 2023, Plaintiff emailed the Appeals Committee to "follow-up on a few things." Plaintiff expressed his surprise at Ms. Guidinger's direct questioning of Plaintiff during the hearing and the 500 pages of materials the Appeals Committee would be reviewing despite the fact that Plaintiff had not been given access to this material even after repeatedly requesting it. Plaintiff then expressed his "concerns that this turn of events raises about transparency, fairness, and due process." Plaintiff additionally stated his hope that the Committee "stick to the issues enumerated in the March 2023 FWW," which Plaintiff summarized. Dr. John Caviness, Chair of the Mayo Clinic Personnel Committee, and designee for Plaintiff's appeal, though not a direct recipient of Plaintiff's email, was informed of the contents of Plaintiff's email.

Dr. Caviness replied to Plaintiff, stating that "[a]s the Personnel Committee Chair designee for this process, these communications should be sent to [Dr. Caviness], not panel members. Such communication to panel members risks improperly influencing the appeals committee." Plaintiff had not previously been informed to refrain from communicating with Appeals Committee members. Furthermore, Dr. Caviness previously told Plaintiff that it would be inappropriate for Dr. Caviness to address Plaintiff's concerns about not receiving the materials the

Appeals Committee would be reviewing, as those issues were "in the purview of the appeals committee, per policy." In response to Plaintiff's June 28, 2023 email, Mayo Clinic attorney Mr. Joe Copa sent an email to Plaintiff's counsel, referring to Plaintiff's email as "an attempt by Dr. Joyner to evade normal processes and improperly influence the appeals committee." Mr. Copa then counseled Plaintiff's attorney to "direct your client to avoid any effort to directly or indirectly influence appeals committee members or interfere in their review process."

On July 6, 2023, Dr. Eric Moore, Chair of Plaintiff's Appeals Committee, sent the Committee's written recommendation to Defendant Dr. Farrugia and Dr. John Caviness. In the written recommendation, Dr. Moore cited Plaintiff's "continuation of a pattern of unprofessional behavior." The document contained an addendum listing "Historical and Relevant Facts," which included Plaintiff's 2015 New York Times Interview, the 2020 Final Written Warning, Plaintiff's 2021 retaliation complaint, as well as Plaintiff's 2022 and 2023 media interviews. The addendum stated that the 2023 Final Written Warning "identified [Plaintiff]'s use of idiomatic language even though the primary concern was that his actions reflected a continuing lack of professionalism." Dr. Moore stated that the Appeals Committee "believes the Final Written Warning should be removed from Dr. Joyner's personnel file as requested and replaced with a more precisely written corrective action document," but "does not believe Dr. Joyner should be reimbursed any lost pay."

On July 18, 2023, Dr. Caviness drafted a letter to Plaintiff informing him of the decision regarding Plaintiff's appeal, specifically that the unpaid one-week

suspension was warranted, that Plaintiff would not be reimbursed any lost pay, and that additional documentation would be appended to the 2023 Final Written Warning.

On July 27, 2023, Defendant Dr. Mantilla issued an Addendum to March 2023 Final Written Warning. The Addendum stated that Plaintiff has "continued to exhibit unprofessional behavior toward internal colleagues and external partners despite the issuance of the August 24, 2020, Final Written Warning," finding that Plaintiff's "behavior toward internal and external partners continues to be problematic." The Addendum required that Plaintiff review specific Mayo Clinic policies and send Dr. Mantilla an email once the policies were reviewed and understood; that Plaintiff complete a Professionalism Consult; and Plaintiff "immediately demonstrate professional and respective behavior in . . . interactions with colleagues and external partners in alignment with Mayo Clinic policies and values"; that Plaintiff demonstrate accountability and responsibility for his behavior; and that Plaintiff "demonstrate honesty and integrity in . . . dealings with others." The Addendum upheld the one-week unpaid suspension and also stated that Plaintiff was subject to further discipline "including and up to termination of employment" for "[a]dditional violations of Mayo Clinic policies, values, and expectations."

LEGAL ANALYSIS

Rule 56.01 of the Minnesota Rules of Civil Procedure provides that "[a] party may move for summary judgment identifying each claim or defense--or the part of

each claim or defense--on which summary judgment is sought." Minn. R. Civ. P. 56.01. A moving party is entitled to a grant of summary judgment "if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." *Id.* "A material fact is one of such a nature as will affect the result or outcome of the case depending on its resolution." *Zappa v. Fahey*, 245 N.W.2d 258, 259-60 (Minn. 1976). Additionally, "a 'genuine issue' of material fact for trial 'must be established by substantial evidence,'" which "'refers to legal sufficiency and not quantum of evidence.'" *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997) (quoting *Murphy v. Country House, Inc.*, 240 N.W.2d 507, 512 (Minn. 1976)).

In analyzing a summary judgment motion, the trial court is to view the evidence "in the light most favorable to the nonmoving party." *Stringer v. Minnesota Vikings Football Club, LLC*, 705 N.W.2d 746, 753 (Minn. 2005) (citations omitted). It is the moving party's "burden to show the absence of an issue of material fact." *Id.* at 754 (citation omitted). A trial court is not to "weigh facts or determine the credibility of affidavits and other evidence" when evaluating a motion for summary judgment, though "[t]he nonmoving party must do more than rest on averments or denials of the adverse party's pleading." *Id.* at 753 (citations omitted). "A defendant is entitled to summary judgment as a matter of law when the record reflects a complete lack of proof on an essential element of the plaintiff's claim." *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995). The trial court should not grant a motion for summary judgment "if reasonable persons might reach different conclusions after reviewing the evidence." *Wagner v. Schwegmann's S. Town Liquor, Inc.*, 485 N.W.2d 730, 733

(Minn. Ct. App. 1992) (citation omitted).

I. As there are genuine issues of material fact as to whether Defendant Mayo Clinic breached the contracts with Plaintiff, parties' respective motions for summary judgment as to Count I are denied.

Parties have filed competing summary judgment motions as to Count I. Plaintiff claims that Defendant Mayo Clinic breached both the Mayo Clinic Anti-Retaliation Policy ("Policy") and the Mayo Clinic Appeals Procedure ("Procedure"). Defendants, in addition to arguing that the Policy and Procedure are not contracts,[2] further argues that Defendant Mayo Clinic did not breach either the Policy or the Procedure.

The three elements of a breach of contract claim are: "(a) the formation of the contract; (b) performance by the plaintiff of any conditions precedent to his right to demand performance by defendant; and (c) a breach of the contract by defendant." *Briggs. Transp. Co. v. Ranzenberger*, 217 N.W.2d 198, 200 (Minn. 1974). "The formation of a contract requires communication of a specific and definite offer, acceptance, and consideration." *Commercial Associates, Inc. v. Work Connection, Inc.*, 712 N.W.2d 772, 782 (Minn. Ct. App. 2006) (citing *Pine River State Bank v. Mettille*, 333 N.W.2d 622, 626-27 (Minn. 1983)). In the July 1, 2024 Order, this Court determined, as a matter of law, that while Defendant Mayo Clinic's Freedom of Expression and Academic Freedom Policy were not definite enough to create a

[2] Defendants did not file a motion to reconsider the Court's July 1, 2024 Order and under the "law of the case" doctrine, the Court will not be revisiting those rulings. *Matter of Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990).

contract, the Mayo Clinic Anti-Retaliation Policy and Mayo Clinic Appeals Procedure were offers of binding contracts.

Once an employer's policy is found to be an offer for a unilateral contract, the analysis then shifts to an examination of whether the offer was communicated to the employee, whether the employee accepted the offer, and whether the employee provided consideration for the contract. *Martens v. Minnesota Min. & Mfg. Co.*, 616 N.W.2d 732, 742 (Minn. 2000) (citing *Pine River*, 333 N.W.2d at 626-27). In looking at the communication of the offer, "[a]n employer's offer of a unilateral contract may very well appear in a personnel handbook as the employer's response to the practical problem of transactional costs." *Pine River*, 333 N.W.2d at 627. Here, it is undisputed that both the Policy and the Procedure were contained in Defendant Mayo Clinic's online Policy Library. The Policy Library is located on an internal website accessible to Mayo Clinic employees. Therefore, the undisputed facts demonstrate that both the Policy and Procedure were communicated to Plaintiff.[3] Based on these undisputed facts, there is no genuine issue of material fact as to whether the Policy and Procedure were communicated to Plaintiff.

Once an offer for a unilateral contract has been made and communicated to an employee, the employee must both accept the offer and furnish consideration for that offer. *Martens*, 616 N.W.2d at 742 (citing *Pine River*, 333 N.W.2d at 626-27). Acceptance of a unilateral offer contained in an employee handbook or policy has been

[3] As further evidence of communication of the Policy, Plaintiff's March 19, 2021 letter to Mr. Jeffrey Bolton references Plaintiff's "yearly institutional compliance update" wherein Plaintiff cites principles of the Policy that were communicated to Plaintiff during this update.

found when an "employee retains employment with knowledge of new or changed conditions." *Pine River*, 333 N.W.2d at 627. Furthermore, an employee who continues in employment after knowledge of a unilateral contract offer made by their employer furnishes consideration in that "by continuing to stay on the job, although free to leave, the employee supplies the necessary consideration for the offer." *Id.* As a result, once an employee knows of an offer of a unilateral contract and continues in employment, the employee has both accepted the offer and furnished consideration for the contract. Defendants do not dispute that Plaintiff accepted the offers contained in the Policy and Procedure and furnished consideration by continuing in his employment with Mayo Clinic after the Policy and Procedure were communicated to Plaintiff. Based on the undisputed facts addressed above, Plaintiff has demonstrated the formation of a contract as to the Policy and Procedure.

Plaintiff must next demonstrate that he performed "conditions precedent to his right to demand performance by defendant." *Briggs. Transp.*, 217 N.W.2d at 200. The undisputed evidence demonstrates that the 2023 Final Written Warning, issued by Plaintiff's department chair Defendant Dr. Mantilla, imposed discipline on Plaintiff and was a formal corrective action such that the letter met the definition of an adverse action in the Procedure. The undisputed evidence further shows that as of April 14, 2023, Plaintiff was a Consultant at Defendant Mayo Clinic and on that date, Plaintiff initiated an appeal of his 2023 Final Written Warning. As the Appeal Procedure applies to "Consulting Staff . . . when appealing an adverse action," and the undisputed evidence demonstrates that Plaintiff, as Consulting Staff, appealed

an adverse action, there are no genuine issues of material fact to negate Plaintiff's performance of conditions precedent to his right to demand performance by Defendant Mayo Clinic regarding the Procedure.

The Mayo Clinic Anti-Retaliation Policy protects "any individual who raises a compliance concern" from suffering retaliatory behavior because of that concern. The Policy defines "individual" to include Mayo Clinic employees and defines "retaliatory behavior" as "[a]ny behavior intended to intimidate, threaten, coerce, discriminate against, or take other retaliatory action against individuals who in good faith and in a reasonable manner exercises their rights to report or otherwise disclose compliance concerns or other wrongdoing." The Policy provides multiple means of reporting a compliance concern or policy violation, including contacting the Mayo Clinic Integrity and Compliance Office or by "contact[ing] an immediate supervisor, administrator, division, or department chair, or appropriate physician leader." Therefore, by the Policy's plain language, in order to be protected under the Policy, a Mayo Clinic employee must, in good faith and a reasonable manner, report a compliance concern or other wrongdoing.

Plaintiff alleges he raised multiple compliance and wrongdoing concerns, in good faith and a reasonable manner, including through emails on June 19, 2020, August 19, 2020, and January 13, 2021, as well as through the retaliation complaint raised on April 16, 2021. Defendants argue that, as a matter of law, some of the issues raised by Plaintiff in those emails do not amount to reports or disclosures of compliance concerns or other wrongdoing such that Plaintiff would be protected

under the Policy. However, Defendants take a too narrow interpretation of the language within the Policy. Based on the evidence submitted, there are sufficient facts to allow a jury to determine that the content of Plaintiff's emails or the retaliation complaint were good faith disclosures of wrongdoing, and were done in a reasonable manner.

It is reasonable for a jury to conclude that the June 19, 2020 email, stating that it "would be a grave error" for protected health data and the analysis of the data to be "highjack[ed] . . . via some sort of back channel." (Pl.'s Ex. 11, Index 138). A fact-finder could reasonably determine that this email is a report of wrongdoing.[4] Similarly, it is reasonable for a fact-finder to determine that Plaintiff's August 19, 2020 emails raised compliance concerns and/or reported wrongdoing, in good faith and a reasonable manner. In an email to Dr. Scott Wright, Plaintiff expressed that "we can't be sharing data without IRB oversight/approval," (Defs.' Ex. 25, Index 100), while forwarding concerns from Dr. Rickey Carter about pressure his team members had received to release data. In an email later that same day, Plaintiff raised five issues, including that the CPP had "a contract with BARDA that has what we can communicate with whom rules in it.. ... [and] [t]here are people pressuring jr. stats people on Rickey's team for data. Totally inappropriate." (Defs.' Ex. 26, Index 100). Plaintiff additionally mentioned that the alleged lack of communication with Plaintiff

[4] While the June 19, 2020 email and other communications from Plaintiff do not meet the strict definition of a report under the Minnesota Whistleblower Act, as discussed in Section IV, the contract language provides a more inclusive definition of what is protected under the Policy. Therefore, the analysis and findings in Section IV are not controlling here.

on issues related to data requests could "put the program at compliance or other risk." (*Id.*). Based on the content of these emails, it is reasonable for a fact-finder to determine that the emails raised compliance concerns and/or served as reports of wrongdoing. Additionally, the fact that these emails instigated an IRB investigation further supports a finding that these emails reported compliance concerns or other wrongdoing.

Plaintiff raised similar concerns regarding unauthorized access to data in an email from January 13, 2021, sent to seven (7) individuals, including Dr. Scott Wright. In the email, Plaintiff refers to pressure received "to turn over confidential EAP infrastructure data" to Duke University. (Pl.'s Ex. 6, Index 177). Plaintiff mentions that such disclosure of data would violate agreements and create "compliance issues." (*Id.*) Based on the content of the email, it is reasonable for a fact-finder to determine that through this email Plaintiff made a report of a compliance concern such that Plaintiff would be protected under the Policy.

It is similarly reasonable for a fact-finder to determine that Plaintiff's allegations of retaliation brought forth during an April 16, 2021 interview with members of the Mayo Clinic Compliance Office served as a condition precedent for Plaintiff's right to demand performance by Defendant Mayo Clinic under the Policy. During this interview it was noted by members of the Mayo Clinic Compliance Office that that Plaintiff "has enunciated a retaliation concern (i.e. disciplined in response to raising good faith concerns)." (Defs.' Ex. 39, Index 100). As a result of this finding, Plaintiff's retaliation complaint was investigated by an external investigator as a

retaliation complaint in violation of the Minnesota Whistleblower Act. As the information conveyed by Plaintiff to members of the Mayo Clinic Compliance Office was understood to be a report of wrongdoing and retaliation, Plaintiff has presented facts to support a factual finding that on April 16, 2021 Plaintiff satisfied a condition precedent to demand rights under the Policy.

Viewing the evidence in the light most favorable to Plaintiff, it is reasonable for a fact-finder to determine that Plaintiff's emails and reports satisfied conditions precedent under the Policy, such that Plaintiff was able to claim protection under the Policy. However, these facts are disputed by Defendants. Viewing the evidence in the light most favorable to Defendants, a fact-finder could also reasonably determine that some or all of the emails and reports did not satisfy conditions precedent under the Policy. Given the presence of genuine issues of material fact as to whether Plaintiff satisfied a condition precedent to his right to demand performance by Defendant Mayo Clinic under the Policy, on this breach of contract element, parties' competing summary judgment motions are denied.

As the first two elements of Plaintiff's breach of contract claim either have been established as a matter of law, or involve disputed facts reserved for the jury's determination, to survive Defendants' Motion for Summary Judgment as to Count I, Plaintiff additionally must present genuine issues of material fact as to whether Defendant Mayo Clinic breached the Anti-Retaliation Policy and the Mayo Clinic Appeals Procedure. Each contract shall be addressed separately below.

A. As there are genuine issues of material fact as to whether Defendant Mayo Clinic breached the Anti-Retaliation Policy, parties' respective summary judgment motions are denied.

Based on the evidence presented, Plaintiff has demonstrated genuine issues of material fact as to whether Defendant Mayo Clinic breached the Anti-Retaliation Policy. Plaintiff has alleged that the 2020 investigation into his behavior, which resulted in the 2020 Final Written Warning, was instigated because of Plaintiff's June 19, 2020 email. The fact that the investigation against Plaintiff was instigated within twenty-four (24) hours of Plaintiff's email, the involvement of Dr. Farrugia in emails to and from Mr. Halamka and Dr. Rihal regarding Plaintiff, and the fact that Dr. Rihal was a member of the PC who decided to issue Plaintiff the 2020 Written Warning, all support Plaintiff's argument that the investigation and subsequent discipline imposed by the 2020 Final Written Warning were retaliatory acts for compliance concerns and reports of wrongdoing raised by Plaintiff in his June 19, 2020 email. Defendants claim that the investigation and discipline were instigated and imposed because of concerns about Plaintiff's behavior and his allegedly improper request for financial remuneration. The layers of complexity in the facts, which include credibility determinations to be made by a fact-finder, and competing evidence as to the impetus for the investigation and discipline demonstrate the presence of genuine issues of material fact as to whether Defendant Mayo Clinic breached the Policy. For this reason, parties' competing summary judgments as to a breach of the Policy as stated in Count I are denied.

Additionally, there are genuine issues of material fact as to whether the other

alleged compliance concerns and reports of wrongdoing made by Plaintiff resulted in others engaging in retaliatory behavior against Plaintiff.[5] Plaintiff claims that the 2020 Final Written Warning was retaliatory behavior taken as a result of Plaintiff making compliance concerns regarding unauthorized access to CPP data. Plaintiff further claims that the 2023 Final Written Warning and associated discipline was further retaliatory behavior, relying on a prior retaliatory action (the 2020 Final Written Warning), and again based on Plaintiff's continued reports of wrongdoing and compliance concerns. In support of these claims, Plaintiff offered the 2023 Final Written Warning, letter from the 2023 Appeals Committee, letter from Dr. Caviness, and the Addendum to the 2023 Final Written Warning. All of these documents mention and rely on the 2020 Final Written Warning as a basis for further discipline in 2023. Therefore, if a fact-finder were to determine that the 2020 Final Written Warning was a retaliatory action, Defendants are relying on a prior retaliatory action to support future discipline. While Defendants claim that the mention of and reliance

[5] As the Policy and the Minnesota Whistleblower Act contain different definitions and distinct scopes of retaliation, the analysis of retaliation under the Minnesota Whistleblower Act, contained in Section IV, is not controlling here. The Minnesota Whistleblower Act prohibits "adverse employment actions," which requires "a 'material change in the terms or conditions *of [one's] employment.'" Lee v. Regents of Univ. of Minnesota*, 672 N.W.2d 366, 374 (Minn. Ct. App. 2003) (quoting *Ledergerber v. Stangler,* 122 F.3d 1142, 1144 (8th Cir.1997)) (emphasis in original). The Act also specifically prohibits only an employer's act, stating "[a]n employer shall not discharge, discipline, penalize, interfere with, threaten, restrain, coerce, or otherwise retaliate or discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment." The Policy provides a broader scope of retaliation, defining retaliatory behavior as "*any behavior* intended to intimidate, threaten, coerce, discriminate against, or take other retaliatory action against individuals who in good faith and in a reasonable manner exercise their rights to report or otherwise disclose compliance concerns or other wrongdoing." (emphasis added). Given the more inclusive definition and scope of retaliation under the Policy, the retaliation analysis and findings in Section IV are not controlling here.

on the 2020 Final Written Warning is justified as both providing historical context for Plaintiff's 2023 discipline and demonstrating continued problematic behavior by Plaintiff, Plaintiff claims that these arguments are merely pretext for Defendant Mayo Clinic's 2023 retaliatory behavior. These are genuine issues of material fact to be determined by a fact-finder.

Plaintiff further cites to Defendant Mayo Clinic's shifting basis for Plaintiff's 2023 discipline as evidence of a retaliatory motive for the 2023 discipline. In the 2023 Appeals Committee Recommendation, it is stated that the 2023 Final Written Warning "identified Dr. Joyner's use of idiomatic language even though the primary concern was that his actions reflected a continuing lack of professionalism." (Pl.'s Ex. 59, Index 166). From that language, there appears to be a question of whether the justification and basis for Plaintiff's discipline changed. Defendants dispute Plaintiff's arguments, arguing that the additional discipline and information provided in the Addendum were supported by documentation that was received and reviewed by the impartial Appeals Committee. However, given the evidence provided to the Court, there are genuine issues of material fact as to whether the 2023 discipline was retaliatory behavior prohibited by the Policy. Given these disputed issues of material facts, and the necessity for a fact-finder to make credibility determinations, summary judgment is inappropriate as to Plaintiff's breach of contract claim related to Mayo Clinic's Anti-Retaliation Policy.

B. While there are no genuine issues of material fact demonstrating Defendants' breach of step 13, there are genuine issues of material fact as to whether Defendant Mayo Clinic breached step 12 and the Procedural Notes in the Appeals Procedure.

Plaintiff argues that Defendant Mayo Clinic breached steps 12 and 13 of the Procedure, as well as the Procedural Notes section of the Procedure, which prohibits "[r]etaliation against anyone who brings forward complaints or assists in investigating complaints." Plaintiff's argument as to each of those sections of the Procedure shall be addressed individually below.

1. There are genuine issues of material fact as to the breach of step 12 of the Procedure by Defendant Mayo Clinic.

Plaintiff first argues that Defendant Mayo Clinic breached step 12 of the Procedure, by prohibiting Plaintiff from communicating with the Appeal Committee following his appeal hearing on June 27, 2023. The Procedure contains nineteen (19) enumerated steps for an appeal heard by an Appeals Committee. When an employee's appeal is being heard by an Appeals Committee, step 12 of the Procedure allows the employee to "provide additional information to the Appeals Committee during the course of the appeal process." The steps in the Procedure appear to be listed chronologically, such that the last step would not occur until all the prior steps had been completed.

The undisputed facts show that on June 28, 2023, Plaintiff emailed the Appeals Committee regarding the fact that Plaintiff had not been given access to the 500 pages of materials the Committee would be reviewing, and Plaintiff had therefore been unable to address these materials at his hearing. In the email, Plaintiff also stated

his wish that the Committee focus solely on the 2023 Final Written Warning during their consideration of his appeal. Dr. John Caviness, Chair of the Mayo Clinic Personnel Committee, and designee for Plaintiff's appeal, replied to Plaintiff, informing him that Plaintiff's communications should be sent to Dr. Caviness, not to the Appeals Committee members as "[s]uch communication to panel members risks improperly influencing the appeals committee." (Pl.'s Ex. 47, Index 147). Dr. Caviness also stated, "I respectfully request that you cease from any further communications with the appeals panel. This is best for the process and for all concerned." (*Id.*). The evidence shows that Plaintiff had not previously been informed to refrain from communicating with Appeals Committee members and had communicated directly with the members as recently as the previous day. Furthermore, Dr. Caviness previously told Plaintiff that it would be inappropriate for Dr. Caviness to address Plaintiff's concerns about the appeals process and not receiving the materials the appeals panel would be reviewing, as those issues were "in the purview of the appeals committee, per policy." (Pl.'s Ex. 48, Index 143).

Plaintiff's June 28, 2023 email was additionally characterized by Mayo Clinic attorney Mr. Joe Copa as "an attempt by Dr. Joyner to evade normal processes and improperly influence the appeals committee." (Pl.'s Ex. 52, Index 147). Mr. Copa then counseled Plaintiff's attorney to "direct your client to avoid any effort to directly or indirectly influence appeals committee members or interfere in their review process." (*Id*).

While Plaintiff cites the above evidence to demonstrate Defendant Mayo

Clinic's breach of step 12 of the Procedure, Defendant Mayo Clinic argues there was no breach of the Procedure, given that Plaintiff was able to communicate with the Committee during the appeal process, prior to his hearing, and did, in fact, communicate with the Committee via his June 28 email. However, the e-mail from Dr. Caviness appears to expressly prohibit Plaintiff from further communicating with the Committee, despite the language in step 12 that would appear to allow Plaintiff to continue to communicate with the Committee until they have reached a decision. Given these disputed facts, the necessity for a fact-finder to make credibility determinations, and the contested issue of whether Plaintiff was prevented from providing the Appeals Committee with additional information during the course of the appeals process, as allowed by step 12, summary judgment is inappropriate as to Plaintiff's breach of contract claim related to step 12 of Mayo Clinic's Appeals Procedure.

2. As there are no genuine issues of material fact demonstrating that Defendant Mayo Clinic breached step 13 of the Procedure, Defendants' Motion for Summary Judgment is granted as to step 13.

Plaintiff additionally argues that Defendant Mayo Clinic breached step 13 of the Procedure by recommending additional discipline and considering new information in ruling on the appeal. Step 13 of the Procedure states that one task of the Appeals Committee is to "[r]ecommend that the remedy, requested by the staff member in the appeal, be granted, denied, or modified." Nowhere in step 13 or elsewhere in the Policy is the Appeal Committee limited in the content or scope of documents they may consider. Step 4 of the Policy allows the Appeal Committee to

"gather, via the facilitator, additional information as the committee collectively deems necessary." Plaintiff has not established that the information and documentation gathered was not deemed necessary by the Committee. The fact that the Appeals Committee may have considered different information and documents than the Personnel Committee is not a breach of the Policy.

Additionally, Plaintiff's argument about the Appeals Committee's imposition of improper additional discipline is without merit. Plaintiff's requested remedies were that the 2023 Final Written Warning "be withdrawn and the financial and other penalties reversed." In the July 6, 2023 Appeal Committee Recommendation, sent by Committee Chair Dr. Eric Moore, to Defendant Dr. Farrugia and Dr. John Caviness, Dr. Moore wrote that the Committee "believes the Final Written Warning should be removed from Dr. Joyner's personnel file as requested." (Pl.'s Ex. 59, Index 166). In making this determination, the Appeals Committee recommended that Plaintiff's first request be granted. Dr. Moore also stated that the Appeals Committee "does not believe Dr. Joyner should be reimbursed any lost pay." (*Id.*). This recommendation denies Plaintiff's second requested remedy. Lastly, the written recommendation stated that the Committee believes the Final Written Warning should be "replaced with a more precisely written corrective action document." (*Id.*). In making this recommendation, the Appeals Committee modified Plaintiff's requested remedy. These three recommendations were all expressly allowed by step 13 of the Procedure. There is no evidence that the Appeals Committee's recommendation involved anything other than the grant, denial, and modification of Plaintiff's requested

remedies, as step 13 allows. As there are no genuine issues of material fact that the Appeals Committee violated step 13 of the Procedure, Defendant's Motion for Summary Judgment as to Count I is granted as to Plaintiff's claims of an alleged breach of step 13.

3. There are genuine issues of material fact as to the breach of the Procedural Notes in the Procedure by Defendant Mayo Clinic.

Plaintiff additionally argues that Defendant Mayo Clinic breached the Procedural Notes of the Procedure, which state that "[r]etaliation against anyone who brings forward complaints or assists in investigating complaints is prohibited. Anyone participating in retaliatory actions will receive formal corrective action, including possible termination of employment." Plaintiff claims that as a result of Plaintiff bringing the appeal, and attempting to communicate with the Appeals Committee after his appeal hearing pursuant to step 12 of the Procedure, Plaintiff was retaliated against. Plaintiff offers the additional discipline imposed by the Addendum to the Final Written Warning, shifting justifications for the discipline, and alleged animosity shown by Dr. Caviness and Mr. Copa as evidence of retaliation for Plaintiff bringing the appeal and communicating with the Appeals Committee. As the Addendum included additional requirements for Plaintiff to fulfill, including completion of a Professionalism Consult, Plaintiff has substantiated this allegation with evidence in support of the allegation. Defendants claim that the Appeals Committee, Dr. Farrugia, and Dr. Caviness were impartial decision-makers who based their decision solely on the evidence and documentation gathered during the

appeal process. Given these disputed facts and the evidence offered by both parties in support of their arguments, there are genuine issues of material fact as to whether Defendants retaliated against Plaintiff for asserting his rights under the Appeal Procedure. As a result of these genuine issues of material fact, both parties' respective motions for summary judgment are denied.

Plaintiff has failed to produce evidence to demonstrate a violation of step 13 of the Mayo Clinic Appeals Procedure. As a result, Defendants' Motion for Summary Judgment on Count I as to a violation of step 13 of the Procedure is granted. However, Plaintiff has otherwise presented evidence which a reasonable fact-finder could determine demonstrates a breach of the Mayo Clinic Anti-Retaliation Policy and Mayo Clinic Appeals Procedure. Defendants have provided competing evidence demonstrating a lack of retaliatory motive and adherence to the procedural steps required during an employee's appeal. Based on these competing factual issues, and aside from step 13 addressed above, both parties' motions for summary judgment as to Count I are denied.

II. As there are genuine issues of material fact as to Plaintiff's Count II, parties' respective summary judgment motions are denied.

Plaintiff pleads his Count II promissory estoppel claims in the alternative to the Count I breach of contract claims. Promissory estoppel provides a claim by "imply[ing] a contract in law where none exists in fact." *Grouse v. Group Health Plan, Inc.*, 306 N.W.2d 114, 116 (Minn. 1981) (citation omitted). The elements of a promissory estoppel claim include "proof that 1) a clear and definite promise was made, 2) the promisor intended to induce reliance and the promisee in fact relied to

his or her detriment, and 3) the promise must be enforced to prevent injustice." *Martens v. Minnesota Min. & Mfg. Co.*, 616 N.W.2d 732, 746 (Minn. 2000) (citations omitted). The Court, as a matter of law, has previously determined that the Mayo Clinic Anti-Retaliation Policy and Appeals Procedure are clear and definite promises made by Defendant Mayo Clinic to Plaintiff. Under the "law of the case" doctrine, the Court will not be revisiting that determination. *See Matter of Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990).

Regarding the second element of a promissory estoppel claim, wherein the promisor intended to induce reliance and the promisee relied on the promise to their detriment, "the degree of the promisee's reliance on the promise must be reasonable." *Meriwether Minnesota Land & Timber, LLC v. State*, 818 N.W.2d 557, 567 (Minn. Ct. App. 2012) (citation omitted). Therefore, the promisee's reliance on the promise must be reasonable and detrimental. *Id.* "Ordinarily, the reasonableness of reliance is a fact question for the jury." *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995) (citation omitted).

In pleading promissory estoppel in the alternative to the breach of contract claim, Plaintiff argues that the promises contained in the Mayo Clinic Anti-Retaliation Policy and Appeals Procedure were intended to induce reliance by Plaintiff and in fact induced Plaintiff's reasonable reliance to Plaintiff's detriment. Plaintiff further argues that the promises contained in the Policy and Procedure must be enforced to prevent injustice.

The underlying evidence and arguments advanced by Plaintiff are similar to

the arguments and evidence presented to support the breach of contract claims. Specifically, Plaintiff has presented evidence which would allow a fact-finder to conclude that Defendant Mayo Clinic intended specified employees to rely on the Policy and Procedure, through posting the documents in the online Policy Library and referencing the documents in annual employee training. Plaintiff has also presented evidence that would allow a fact finder to determine Plaintiff relied on both the Policy and Procedure, through Plaintiff's emails reporting concerns about unauthorized access to CPP data, Plaintiff's 2021 retaliation complaint, and Plaintiff's 2023 appeal of the Final Written Warning. Defendants challenge these facts, arguing that Plaintiff's emails did not constitute reliance on the Policy and that Plaintiff was able to provide additional information to the Appeals Committee, as allowed by the Procedure. Based on these genuine issues of disputed fact, it is for a jury to determine whether Plaintiff relied on the promises contained in the Policy and Procedure.

While whether Plaintiff's reliance on the Policy and Procedure were reasonable is typically to be decided by a jury, *Nicollet Restoration,* 533 N.W.2d at 848 (citation omitted), Plaintiff has demonstrated facts to support a finding of reasonableness. With regard to the Procedure, Plaintiff has demonstrated that he had previously communicated directly with the Appeals Committee and was later admonished for doing so, without any alternate communication contact provided and with no prior indication that his June 28, 2023 email was improper or prohibited by the Procedure. With regard to the Policy, Plaintiff has introduced evidence that based on the protections afforded to those who make reports of wrongdoing or raise compliance

concerns, and after an annual training about the Policy, Plaintiff reasonably made reports of wrongdoing and raised compliance concerns. While a jury may weigh the evidence and ultimately determine that Plaintiff's reliance was not reasonable, Plaintiff has presented enough evidence for this issue to reach the jury.

While Defendants claim that Plaintiff suffered no detriment from any alleged reliance on the Policy and Procedure, as Defendants argue that any discipline imposed on Plaintiff was imposed as a result of Plaintiff's behavior in the workplace and difficulties in interpersonal relationships, Plaintiff has presented evidence which would allow a fact-finder to determine that Plaintiff relied on the Policy and Procedure to his detriment. Plaintiff presented evidence of adverse information about Plaintiff being gathered and shared with others within hours of Plaintiff sending an email in June 2020, which would allow a reasonable fact-finder to determine that Plaintiff reported compliance concerns and other wrongdoing, and was retaliated against because of these reports. The retaliation resulted in discipline, including financial penalties, imposed upon Plaintiff. Based on these facts, Plaintiff has presented evidence demonstrating detrimental reliance on the Policy.

Plaintiff also presented evidence demonstrating that by relying on the Procedure, filing an appeal, and relying on step 12 of the Procedure to communicate with the Appeals Committee, Plaintiff suffered increased adverse employment actions via the Addendum to the Final Written Warning. The evidence presented demonstrates that the Addendum added additional discipline and provided different explanations for the imposition of the discipline. Based on this evidence presented,

Plaintiff has presented information to support his claims of detrimental reliance on the Policy and Procedure.

However, as discussed above in Section I, subsection B(2), there are no genuine issues of material fact as to any detriment suffered by Plaintiff as a result of his reliance on step 13 of the Procedure. As previously discussed, Plaintiff has not presented any facts demonstrating that Defendants violated step 13 in issuing their decision. The Appeals Committee granted, denied, and modified the remedy requested by Plaintiff, as step 13 allows. As a result, Defendants' Motion for Summary Judgment as to Count II is granted as to the promise offered by step 13 of the Procedure.

The last element of promissory estoppel, whether a "promise must be enforced to prevent injustice," *Martens*, 616 N.W. 2d at 746, "is a legal question for the court, as it involves a policy decision." *Cohen v. Cowles Media Co.,* 479 N.W.2d 387, 391 (Minn. 1992) (citations omitted). In deciding this question, a court is to consider numerous factors including "the reasonableness of a promisee's reliance and a weighing of public policies in favor of both enforcing bargains and preventing unjust enrichment." *Faimon v. Winona State Univ.*, 540 N.W.2d 879, 883 (Minn. Ct. App. 1995). Other considerations include "'the formality with which the promise is made," *Id.* at n. 2 (quoting Restatement (Second) of Contracts § 90.1 cmt. b (1981)), "the importance of honoring promises . . . and the showing of any compelling need . . . to break that promise." *Cohen,* 479 N.W.2d at 392. Here, the Policy and Procedure were instituted with formality in that they were written documents accessible via an online

Policy Library. Defendants have demonstrated no need to break the promises provided in the Policy and Procedure. There is importance in honoring the promises contained Policy and Procedure by enforcing both the employer and the employee's rights, responsibilities, and duties contained in those documents. Without enforcing the specific promises contained in the Procedure, an employee would, in theory, have a right to appeal an adverse action, but would have no guarantees, protections, or directions in filing this appeal. An employee would not be protected from retaliation by filing their appeal and would be left to the whims of procedural steps that are unenforceable. It would be unjust to provide an employee an opportunity to appeal, but not follow the proscribed steps or to retaliate against an employee for doing so. It was reasonable for Plaintiff to rely on the steps provided in the Procedure, as the Procedure governed his appeal, and up until step 12, the other steps had been followed by all involved. As a result, the Procedure must be enforced to prevent injustice.

It would be equally unjust to not enforce the protections of the Anti-Retaliation Policy. It is reasonable for Defendant Mayo Clinic to encourage employees to report wrongdoing or compliance concerns, in order to ensure that there is no resulting legal or regulatory liability because of these issues. By punishing employees who report wrongdoing or compliance concerns, Defendant Mayo Clinic would be unjustly enriched, by receiving the benefit of correcting any wrongdoing or compliance concerns, while the reporting party could be subject to retaliation, including termination, for reporting these concerns. Given the interests of public policy in

reporting wrongdoing or compliance concerns that involve a healthcare facility, it would be unjust to not enforce the Anti-Retaliation Policy. Given his recent annual training on the Policy, Plaintiff reasonably relied on this Policy in reporting concerns about retaliation and unauthorized access to CPP data. As a result, the Mayo Clinic Anti-Retaliation Policy must be enforced to prevent injustice.

Aside from step 13 of the Procedure, parties have otherwise provided evidence to demonstrate there are genuine issues of material fact as to Plaintiff's Count II. As there are no disputed issues of material fact as to step 13 of the Procedure, Defendant's Motion for Summary Judgment as to this claim in Count II is granted. Due to the presence of genuine issues of material fact as to the other aspects of Plaintiff's Count II claim, parties' respective motions for summary judgment on Count II are otherwise denied.

III. As Plaintiff has not established the elements of a Minnesota Personnel Records Statute violation, Defendants' Motion for Summary Judgment as to Count III is granted.

Parties have filed competing summary judgment motions as to Count III: Violation of the Minnesota Personnel Record Statute ("Statute"). Plaintiff argues that while their claim for damages is a factual issue to be decided by the jury, summary judgment should be granted against Defendant Mayo Clinic for violations of the Statute. Defendants argue that summary judgment should be granted in their favor as Plaintiff has received all of the records required under the Statute and has demonstrated no actual damages for any alleged violation of the Statute.

The Statute provides that "[u]pon written request by an employee, the employer shall provide the employee with an opportunity to review the employee's personnel record." Minn. Stat. § 181.961, subd. 1. The Statute further provides that

> [i]nformation properly belonging in an employee's personnel record that was omitted from the personnel record provided by an employer to an employee for review pursuant to section 181.961 may not be used by the employer in an administrative, judicial, or quasi-judicial proceeding, unless the employer did not intentionally omit the information and the employee is given a reasonable opportunity to review the omitted information prior to its use.

Id. at § 181.963. The Statute defines a personnel record to include "to the extent maintained by an employer . . . : any application for employment; notices of commendation, warning, discipline, or termination; . . . and employment history with the employer, including salary and compensation history, job titles, dates of promotions, transfers, and other changes, attendance records, performance evaluations, and retirement record." *Id.* at § 181.960, subd. 4. Information excluded from the statutory definition of personnel record includes "written references respecting the employee, including letters of reference supplied to an employer by another person." *Id.* at (1). An employee is entitled to actual damages and costs incurred from an employer's violation of §§ 181.960-181.963. *Id.* at §181.965, subd. 1(1).

Previously, the Statute has been construed such that "[t]o avoid summary judgment on a § 181.961 claim, a plaintiff must produce some evidence of lack of compliance or actual damages." *Brown v. Diversified Distribution Sys., LLC*, 801 F.3d 901, 910 (8th Cir. 2015) (citations omitted). While the use of "or" typically "'require[s]

that only one of the possible factual situations be present'" if the word is used unambiguously, here the word "or" is not used unambiguously. *State v. Woolridge Carter*, 9 N.W.3d 839, 845-46 (Minn. 2024) (quoting *State v. Abdus-Salam*, 1 N.W.3d 871, 878 (Minn. 2024)). In *Brown,* the Court granted summary judgment, finding that "the 'record contains no proof beyond speculation' that Brown was actually damaged by [the employer's] § 181.961 violation." *Brown*, 801 F.3d at 910. In finding a potential violation, but no resulting damages, the Court indicated "that a mere Section 181.961 violation—without actual damages—is not enough to avoid summary judgment." *Dunn v. Associates in Psychiatry & Psychology, P.A.*, 22-CV-615 (NEB/DLM), 2024 WL 1698033 (D. Minn. Mar. 27, 2024), at *12 n. 11 (citations omitted). Therefore, despite the use of the word "or" in stating that "a plaintiff must produce some evidence of lack of compliance or actual damages," *Brown*, 801 F.3d at 910, the requirement to avoid summary judgment on a claim of a violation of the Minnesota Personnel Records Statute, a plaintiff must prove both lack of compliance and actual damages. As a result, if Plaintiff has not proven both lack of compliance and actual damages, he will be unable to avoid summary judgment in favor of Defendants as to Count III.

A. As none of the records at issue meet the statutory definition of personnel record, Plaintiff has not established Defendants' lack of compliance with the Statute.

It is undisputed that Plaintiff requested his personnel record from Defendant Mayo Clinic on March 12, 2023, and that Defendant Mayo Clinic provided Plaintiff with 400 pages of documents, constituting what Mayo Clinic determined was

Plaintiff's personnel record. Plaintiff argues that Defendant Mayo Clinic violated the Statute by withholding information from the personnel record, in violation of § 181.961, and that the information withheld from the personnel record was utilized during Plaintiff's appeal, in violation of § 181.963. Plaintiff specifically argues that his personnel file did not contain a 2021 letter from Dr. Chet Rihal to Plaintiff, information about Plaintiff's 2021 Team Science Award, and "other notices of commendation from colleagues," which Plaintiff argues are personnel records pursuant to the statutory definition. Plaintiff further states that whether these items meet the statutory definition of personnel record is a matter of law for the Court to decide. Each of these records will be addressed individually below.

On August 26, 2021, Dr. Chet Rihal, Chair of the Mayo Clinic Personnel Committee, sent a letter to Plaintiff regarding the results of an external investigation conducted pursuant to Plaintiff's allegations of retaliation committed by Dr. Farrugia. The letter was written "to memorialize the key findings [of the external investigation] and to bring closure of this matter." (Defs.' Ex. 43, Index 101). In the letter, Dr. Rihal summarized the procedure followed by external investigator in conducting the investigation as well as some key findings made by the investigator.

The last paragraph of the letter addressed "the unprofessional manner by which [Plaintiff] conducted [himself]" during a meeting with Dr. Rihal and Ms. Sherry Hubert, Mayo Legal Counsel, held on August 13, 2021, during which the results of the external investigation were shared with Plaintiff. Dr. Rihal stated in the letter that during that meeting, Plaintiff "repeatedly tried to take the discussion off on

tangents . . .[,] consistently interrupted [Dr. Rihal] . . . and became argumentative whenever a point was made that [Plaintiff] disagreed with." *Id.* Dr. Rihal wrote that because of Plaintiff's "unacceptable" behavior, Dr. Rihal ended that meeting as it was "no longer productive to speak with [Plaintiff]." *Id.* Dr. Rihal's letter concluded,

> It is clear you harbor a longstanding resentment towards Public Affairs and others which will require you to take affirmative steps to re-establish trust and professional working relationships. I can honestly say I am not optimistic that this can be accomplished based on how poorly you behaved and your unwillingness to accept responsibility for your actions. My hope is that the pattern of acrimonious communications you have exhibited ends.
>
> This represents the final communication by Mayo Clinic on this matter, which we now consider closed.

Id.

Plaintiff argues that Dr. Rihal's letter met the statutory definition of a personnel record as either a notice of warning or a performance record. The Statute does not define the word "warning," as part of the term "notice of warning," so it is appropriate to consider a dictionary definition of the term "to determine [the] word's common usage." *State v. Cummings*, 2 N.W.3d 528, 533 (Minn. 2024) (citation omitted). The common usage of "warning" is "the act or an instance of telling beforehand of danger or risk," such that a warning serves as a caution, sign, or alert. *Warning*, Merriam-Webster Dictionary.

Viewing the evidence in the light most favorable to Plaintiff, there is no language in Dr. Rihal's letter that serves as a warning, caution, or alert. Dr. Rihal expresses concern about Plaintiff's resentment towards other Mayo Clinic employees, but does not inform Plaintiff of any future risk or danger in Plaintiff's interaction

with these employees. Dr. Rihal advises Plaintiff that Plaintiff will need "to take affirmative steps to re-establish trust and professional working relationships" and expresses his hope "that the pattern of acrimonious communications [Plaintiff] ha[s] exhibited ends." (Defs.' Ex. 43, Index 101). However, Dr. Rihal offers no consequences, next steps, cautions, or warnings on what would happen if Plaintiff failed to take affirmative steps to re-establish trust and professional working relationships or if any future issues arise in Plaintiff's interactions with others. There is no mention of discipline within the letter and no reference to mandatory steps Plaintiff is required to take to maintain his employment or prevent future discipline. As Dr. Rihal's letter is not a notice of warning, it is not included in the statutory definition of personnel record.

Plaintiff further argues that Dr. Rihal's letter is a "performance record," which Plaintiff argues falls under the statutory definition of personnel record. However, the Statute does not include "performance record" in the definition of personnel record. The Statute includes a "performance evaluation" in the personnel record definition, but nowhere in the Statute does the term "performance record" appear. Therefore, even if Dr. Rihal's letter is a "performance record," a performance record is not a statutorily defined part of a personnel record. As a result, the letter, even if a "performance record," is not a statutorily required part of a personnel record. Consequently, as Dr. Rihal's letter is not a notice of warning and is otherwise not included within the definition of a personnel record under the Statute, the letter is not required to be part of Plaintiff's personnel record. Defendant Mayo Clinic's failure

to include the letter in Plaintiff's personnel record is thus not a violation of the Statute.

Plaintiff additionally argues that his personnel record did not contain the 2021 Mayo Clinic Team Science Award Plaintiff received. While this award may be a notice of commendation which is statutorily defined as part of a personnel record, Plaintiff provides no evidence that notice of this award is maintained by Mayo Clinic. The statutory definition of personnel record only includes information "to the extent maintained by an employer." Minn. Stat. § 181.960, subd. 4. The inclusion of this statement in the Statute conveys that employers need not provide all the information listed in the definition of personnel record, no matter who maintains that information, but rather need only provide the information which the employer maintains. Viewing the evidence in the light most favorable to Plaintiff, Plaintiff has failed to demonstrate that the Mayo Clinic Team Science Award information was information maintained by Mayo Clinic such that the information would meet the statutory definition of personnel record.

Plaintiff further argues that the personnel record he received from Defendant Mayo Clinic was devoid of "other notices of commendation from colleagues," in violation of the Statute. However, the Statute expressly excludes from the definition of personnel record "written references respecting the employee, including letters of reference supplied to an employer by another person." *Id.* at (1). "Notices of commendation from colleagues" are analogous to written references respecting the employee. Therefore, as such written references are explicitly excluded from the

statutory definition of personnel record, there was no violation of the Statute for Defendant Mayo Clinic's failure to include the notices in Plaintiff's personnel record. Plaintiff furthermore does not demonstrate that these notices of commendation from colleagues are maintained by Defendant Mayo Clinic such that the Statute would require that the notices be included in Plaintiff's personnel file.

Additionally, while it is unclear exactly which "notices of commendation from colleagues" were allegedly missing from Plaintiff's personnel file, Plaintiff submitted at least thirteen (13) notices of commendation and letters of support from colleagues to the Appeals Committee in support of his appeal of the 2023 Final Written Warning. (Pl.'s Ex. 51, Index 144). Therefore, to the extent that any letters were not contained in Plaintiff's personnel file, Plaintiff had the ability to submit those letters directly to the Appeals Committee. As the notices of commendation from colleagues were expressly excluded from the statutory definition of personnel file, and Plaintiff was not prohibited from submitting this information directly to the Appeals Committee, Plaintiff has not established that the notices of commendation were required elements of his personnel file such that Defendants' failure to include the notices in the file were a violation of the Statute.

As none of the disputed records qualify as personnel records pursuant to the statutory definition, these records were not required to be provided to Plaintiff when he requested his personnel record. Section 181.963 of the Statute does not prohibit the use of non-personnel records in administrative, judicial, or quasi-judicial hearings. Minn. Stat. § 181.963. Therefore, as the records in dispute are not personnel

records, Defendants did not violate the Statute when they utilized these records during Plaintiff's appeal proceeding.

B. Plaintiff has not demonstrated any actual damages such that there are genuine issues of material fact as to Plaintiff's damages.

Even if the records above are found to be included in the statutory definition of personnel record, the Statute only provides recovery by an aggrieved party to "compel compliance" and for actual damages, plus costs, if an employer violates §§ 181.960-181.963. *Id.* at §181.965, subd. 1(1). Plaintiff does not argue that there are personnel record documents he has not yet received such that there is a need to compel compliance to disclose personnel records. Rather, Plaintiff argues for recovery of actual damages he suffered from discipline imposed by the Final Written Warning, to which he was unable to properly defend on appeal, after not receiving the documents at issue.

Generally, "[t]he controlling principle governing actions for damages is that 'damages which are speculative, remote, or conjectural are not recoverable.'" *Leoni v. Bemis Co.*, 255 N.W.2d 824, 826 (Minn.1977) (quoting *Hornblower & Weeks-Hemphill Noyes v. Lazere*, 222 N.W.2d 799, 803 (Minn. 1974)). "The law does not require mathematical precision in proof of loss, but only proof to a 'reasonable, although not necessarily absolute, certainty.'" *Id.* (quoting *N. Petrochemical Co. v. Thorsen & Thorshov, Inc.*, 211 N.W.2d 159, 166 (Minn. 1973)). Additionally, "[o]nce the fact of loss has been shown, the difficulty of proving its amount will not preclude recovery so long as there is proof of a reasonable basis upon which to approximate the amount." *Id.* (citing *N. States Power Co. v. Lyon Food Products, Inc.,* 229 N.W.2d 521 (Minn.

1975)). Therefore, to establish actual damages to recover under the Statute, Plaintiff must establish proof, to a reasonable certainty, of damages that are not speculative or remote. *Id.* (citations omitted).

Plaintiff argues that the financial penalties imposed by the Final Written Warning, which were upheld after the appeals process, reduced his pay, causing actual financial losses. In making this argument, Plaintiff argues that the amount of damages is an issue for the jury to determine at trial. The undisputed facts establish that the financial penalties stated in the Final Written Warning letter were imposed on March 5, 2023, prior to Plaintiff's March 12, 2023 request for his personnel record. The undisputed facts therefore establish that as the initial financial losses imposed by the Final Written Warning letter occurred before Plaintiff's personnel record request, these initial financial losses are not actual damages suffered by Plaintiff as a result of Defendants' alleged violations of the Statute. Additionally, no new financial penalties were imposed by the Addendum to the Final Written Warning, which was issued after Plaintiff's appeal. Therefore, as the initial financial penalties imposed by the Final Written Warning were imposed before Plaintiff's request, and no new financial penalties were imposed in the Addendum, Plaintiff has not presented any evidence of financial damages suffered from Defendant Mayo Clinic's alleged violation of the Statute.

Plaintiff further argues that he was unable to address or present the omitted records during his appeal. However, Plaintiff had notice and possession of both the letter from Dr. Rihal and his Team Science award, as the letter had been sent to

Plaintiff and Plaintiff received the award. Therefore, Plaintiff had the ability to address and present that information at his hearing. It was not as though Plaintiff had no knowledge of Dr. Rihal's letter or his Team Science Award and was thus unable to consider these items in preparing his appeal. Having actual knowledge and possession of these items, Plaintiff had the ability to both provide these items to the Appeals Committee and use the information in support of his appeal. Plaintiff's knowledge of these items and ability to provide information about them to the Appeals Committee further demonstrates that Plaintiff suffered no actual damages from the lack of inclusion of these items in his personnel record.

Plaintiff speculates that the omission of the documents from his personnel record resulted in the Appeals Committee's decision to uphold the financial penalties of the Final Written Warning. Plaintiff argues that as he had been unable to address the omitted materials during his appeal, there is at least a "probabilistic assessment" the jury, as factfinder, would need to undertake to determine whether, and to what extent, Plaintiff suffered actual damages from the omission of the documents. This probabilistic assessment, and argument of damages, is not proof to a reasonable certainty of Plaintiff's damages. Plaintiff offers no evidence demonstrating to what extent the Appeals Committee relied on the omitted documents in making their decision, to what extent their decision would have changed had Plaintiff addressed the disputed materials during his appeal, or whether the resulting financial penalties would have been different if Plaintiff had addressed the materials. Even viewing the evidence in the light most favorable to Plaintiff, Plaintiff has not provided proof of a

reasonable basis upon which to approximate his amount of actual damages from Defendants' alleged violations of the Statute. Given the speculation involved in determining whether Plaintiff incurred any actual damages as a result of Defendants' alleged violations of the Statute, Plaintiff has established no proof of actual damages from Defendants' alleged violations of the Statute. As proof of damages is a requirement to avoid summary judgment, and there are no genuine issues of material fact as to whether Plaintiff incurred actual damages, Defendant's Motion for Summary Judgment as to Count III is granted.

Given the above analysis and the fact that Plaintiff has not demonstrated any genuine issues of material fact which support Defendant's liability for Count III, in viewing the evidence in the light most favorable to Defendants, Plaintiff is not entitled to judgment as a matter of law for Count III. Therefore, Plaintiff's Motion for Summary Judgment as to Count III is denied.

Viewing the evidence in the light most favorable to Plaintiff, Plaintiff has failed to establish that the records excluded from his personnel file meet the statutory definition of personnel records and that the failure to include these records in his personnel file caused Plaintiff actual damages for which he can recover under the Statute. As a result, there are no genuine issues of material fact as to Plaintiff's Count III, and Defendants are entitled to judgment as a matter of law as to Count III. Therefore, Defendants' Motion for Summary Judgment as to Count III is granted and Count III is dismissed.

IV. As there are no genuine issues of material fact indicating that Defendant Mayo Clinic violated the Minnesota Whistleblower Act, Defendants' Motion for Summary Judgment as to Count IV is granted.

Parties have filed competing motions as to a grant of summary judgment for Count IV, violations of the Minnesota Whistleblower Act ("MWA"). The MWA states that

> [a]n employer shall not discharge, discipline, penalize, interfere with, threaten, restrain, coerce, or otherwise retaliate or discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because (1) the employee . . . in good faith, reports a violation, suspected violation, or planned violation of any federal or state law or common law or rule adopted pursuant to law to an employer.

Minn. Stat. § 181.932, subd. 1(1). "Retaliation claims under the MWA may be proven by direct evidence or under the *McDonnell Douglas* burden-shifting framework." *Scarborough v. Federated Mut. Ins. Co.*, 379 F. Supp. 3d 772, 778 (D. Minn. 2019), *aff'd,* 996 F.3d 499 (8th Cir. 2021) (citation omitted). In "applying the *McDonnell Douglas* burden-shifting test[, f]irst, a plaintiff must establish a prima facie case of retaliatory action." *Grundtner v. Univ. of Minnesota*, 730 N.W.2d 323, 329 (Minn. Ct. App. 2007) (citing *Cokley v. City of* Otsego, 623 N.W.2d 624, 630 (Minn. Ct. App. 2001)). To establish a prima facie case alleging a violation of the MWA, a plaintiff must demonstrate "three elements: '[1] statutorily protected conduct by the employee, [2] an adverse employment action by the employer, and [3] a causal connection between the two.'" *Coursolle v. EMC Ins. Group, Inc.*, 794 N.W.2d 652, 657 (Minn. Ct. App. 2011) (quoting *Gee v. Minnesota State Colls. & Univs.*, 700 N.W.2d 548, 555 (Minn. Ct. App. 2005)) (other citations omitted). "If the employee fails to

meet any of these elements, summary judgment in the employer's favor is appropriate." *Moore v. City of New Brighton*, 932 N.W.2d 317, 323 (Minn. Ct. App. 2019) (citing *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn 1995)). If a plaintiff establishes a prima facie case under the MWA, the *McDonnell Douglas* burden-shifting test then shifts "the burden of production . . . to the employer to articulate a legitimate, non-retaliatory reason for its action. Finally, the employee may demonstrate that the employer's articulated reason is pretextual." *Grundtner*, 730 N.W.2d at 329 (citations omitted). The plaintiff retains the "ultimate burden . . . to show by a preponderance of the evidence that [defendant] took an adverse employment action for an unlawful reason." *Skare v. Extendicare Health Services, Inc.*, 515 F.3d 836m 840 (8th Cir. 2008) (citing *Freeman v. Ace Tel. Ass'n*, 404 F.Supp.2d 1127, 1139 (D. Minn. 2005)).

Plaintiff argues that they have established a prima facie case of Defendant Mayo Clinic's violation of the MWA, have met the *McDonnell Douglas* requirements, and have demonstrated that there are no genuine issues of material fact as to their claim in Count IV. Defendant argues that Plaintiff has failed to establish a prima facie case of an MWA violation and that Plaintiff has not met his burden under the *McDonnell Douglas* analysis. Plaintiff has identified six (6) alleged protected reports made pursuant to the MWA, about which they claim to have established a causal connection between the reports and resulting adverse actions by Defendant Mayo Clinic against Plaintiff.[6] The reports are addressed individually below.

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[6] As discussed in Section I, the MWA contains a less inclusive definition of what qualifies as

A. Plaintiff's June 19, 2020 email is not a report under the MWA.

Plaintiff's primary argument as to Count IV is that Defendant Mayo Clinic retaliated against Plaintiff as a result of an email Plaintiff sent on June 19, 2020. In the email, Plaintiff alerted Dr. Farrugia, Dr. John Halamka, and Dr. Scott Wright about attempts by a third-party, MITRE Corporation ("MITRE"), to allegedly unlawfully obtain protected health data. In order to avoid a grant of summary judgment in Defendants' favor, Plaintiff must first establish a prima facie case under the MWA, specifically that Plaintiff's June 19 email was protected conduct under the MWA and that Defendants took adverse employment action against Plaintiff because of Plaintiff's email. *Coursolle*, 794 N.W.2d at 657 (citations omitted).

The MWA protects an employee who "in good faith, reports a violation, suspected violation, or planned violation of any federal or state law or common law or rule adopted pursuant to law to an employer." Minn. Stat. § 181.932, subd. 1(1). Previously the Minnesota Supreme Court has "'caution[ed] . . . against construing section 181.932 too broadly.'" *Kratzer v. Welsh Companies, LLC*, 771 N.W.2d 14, 22 (Minn. 2009) (quoting *Anderson-Johanningmeier*, 637 N.W.2d 270, 275 (Minn. 2002)) (other citation omitted). The MWA defines a "report" as "a verbal, written, or electronic communication by an employee about an actual, suspected, or planned violation of a statute, regulation, or common law, whether committed by an employer or a third party." Minn. Stat. § 181.931, subd. 6. The MWA defines "good faith" as

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a report than the definition in the Mayo Clinic Anti-Retaliation Policy. Given these distinct standards, the analysis and findings in Section I are not controlling here.

"conduct that does not violate section 181.932, subd. 3," namely that reports are not made by an employee "knowing that they are false or that they are in reckless disregard of the truth." *Id.* at subd. 4; § 181.932, subd. 3. Whether an employee's conduct constitutes a report under the MWA is a matter of law and "[w]hether a report is made in good faith is a question of fact." *Scarborough v. Federated Mut. Ins. Co.*, 379 F. Supp. 3d 772, 779 (D. Minn. 2019), *aff'd*, 996 F.3d 499 (8th Cir. 2021) (citing *Freeman v. Ace Tel. Ass'n*, 404 F.Supp.2d 1127, 1139 (D. Minn. 2005), *aff'd*, 467 F.3d 695 (8th Cir. 2006)). Therefore, in determining whether Plaintiff has established a prima facie case under the MWA, the Court must first determine whether, as a matter of law, Plaintiff's June 2020 email was a report.

Plaintiff's June 19, 2020 email was titled "whatever is up at the FDA" [sic] and stated,

> [T]here is apparently something up at the FDA and MITRE and 'the Coalition' are involved. As part of whatever is up, it would be a grave error for MITRE, the Coalition or whoever to attempt to highjack access to the EAP data and the ongoing analysis via some sort of back channel with the FDA. All these attempts do is distract people. We are very close to an answer, meanwhile your pals in the EHR world have not generated a single analysis of any utility.

(Pl.'s Ex. 11, Index 138). Plaintiff sent this email to Dr. John Halamka and copied Defendant Dr. Farrugia and Dr. Scott Wright, the chair of the Mayo Clinic Institutional Review Board ("IRB"), on the email. Plaintiff argues that this email was a good faith report of illegal conduct by MITRE, and that Plaintiff is therefore protected under the MWA.

However, the content of this email does not meet the definition of a "report" under the MWA. Plaintiff states that "there is apparently something up at the FDA" without providing any further specifics as to what is occurring at the FDA. *Id.* Plaintiff mentions that "it would be a grave error for MITRE, the Coalition or whoever to attempt to highjack access to the EAP data and the ongoing analysis via some sort of back channel with the FDA." *Id.* From this statement, it is not clear to whom exactly Plaintiff is referring ("MITRE, the Coalition or whoever"). Additionally, while Plaintiff is asserting that it would be a "grave error" for a third-party to "hijack access to the EAP data", it is not clear that any data was being hijacked or was threatened to be hijacked. *Id.* Plaintiff also does not state that any such attempt to hijack would constitute an actual, suspected, or planned violation of a statute, regulation, or common law. Rather than asserting a statutory, regulatory, or common law violation, Plaintiff instead writes that "[a]ll these attempts do is distract people." *Id.* Therefore, from the language of the email, it appears that Plaintiff's main complaint is that the behavior of "MITRE, the Coalition or whoever" is distracting to Plaintiff, not that a violation is suspected or planned. Even viewing the evidence in the light most favorable to Plaintiff, the plain language and content of the email does not communicate "an actual, suspected, or planned violation of a statute, regulation, or common law" as required under the MWA. Minn. Stat. § Minn. Stat. § 181.931, subd. 6. As Plaintiff's June 2020 email is not a report, by sending this email, Plaintiff has not engaged in protected conduct under the MWA. Plaintiff has thus failed to establish a prima facie case of Defendants' MWA violation related to the June 2020

email. Therefore, in order to avoid summary judgment on Count IV, Plaintiff must establish a prima face case under the MWA related to a different set of circumstances.

B. Plaintiff has not established a prima facie case under the MWA related to his August 19, 2020 IRB report.

Plaintiff additionally claims that he has established a prima facie case under the MWA related to his August 2020 email report to the Chair of the Mayo Clinic IRB regarding alleged pressure exerted by MITRE to obtain protected health data from members of the CPP team. To establish a prima facie case under the MWA, Plaintiff must demonstrate "'[1] statutorily protected conduct by the employee, [2] an adverse employment action by the employer, and [3] a causal connection between the two.'" *Coursolle*, 794 N.W.2d at 657 (quoting *Gee*, 700 N.W.2d at 555) (other citations omitted). Parties do not dispute that on or about August 19, 2020, Plaintiff sent an email to Dr. Wright, in Dr. Wright's role as Mayo Clinic's Chair of the IRB, regarding alleged coercion and pressure from MITRE to obtain protected health data. In response to Plaintiff's report, Dr. Wright initiated an IRB investigation into the concerns reported by Plaintiff.

Plaintiff's August 2020 email is a report under the MWA. The MWA defines a "report" as "a verbal, written, or electronic communication by an employee about an actual, suspected, or planned violation of a statute, regulation, or common law, whether committed by an employer or a third party." Minn. Stat. § 181.931, subd. 6. On August 19, 2020, Plaintiff forwarded to Dr. Scott Wright, an email he received from Dr. Rickey Carter expressing concerns about Dr. Carter's staff's discomfort at receiving data requests from MITRE. Plaintiff also expressed that "we can't be

sharing data without IRB oversight/approval." (Defs.' Ex. 25, Index 100). Later that same day, Plaintiff sent an email to Dr. Halamka, copying Dr. Wright, Dr. Farrugia, and Dr. Carter on the email. In the email Plaintiff raised five issues, including that the CPP had "a contract with BARDA that has what we can communicate with whom rules in it.. ... [and] [t]here are people pressuring jr. stats people on Rickey's team for data. Totally inappropriate." (Defs.' Ex. 26, Index 100). Viewing the evidence in the light most favorable to Plaintiff, Plaintiff's August 19, 2020 emails are alerting the Mayo Clinic IRB chair to IRB compliance concerns regarding pressure and coercion exerted by MITRE onto Mayo Clinic personnel involved in the CPP. Pursuant to the Basic HHS Policy for Protection of Human Research Subjects ("HHS Policy"), institutions conducting research involving human subjects are mandated to follow numerous rules and regulations in conducting the research. The regulations include requirements about providing human subjects with informed consent as well as requirements regarding any private health data collected through the research. 45 C.F.R. § 46.116. Plaintiff's role as PI in the CPP resulted in Plaintiff overseeing all compliance concerns, including any concerns about violating the HHS Policy, as the CPP utilized human subjects. Plaintiff's August 19, 2020 emails were written communications, from a Mayo Clinic employee, alerting Dr. Wright to MITRE's suspected violations of the HHS Policy, which is a federal regulation. Therefore, pursuant to the definition of "report" as contained in the MWA, and viewing the evidence in the light most favorable to Plaintiff, Plaintiff's August 19, 2020 emails constituted a report under the MWA.

Parties do not dispute that Plaintiff's report was made in good faith, as neither party argues that Plaintiff made the report knowing it was false or in reckless disregard of the truth. Minn. Stat. § 181.932, subd. 3. As Plaintiff made a report in good faith, according to MWA definitions, Plaintiff has satisfied the first element of a prima facie case under the MWA, by demonstrating statutorily protected conduct. Plaintiff next needs to demonstrate that adverse action was taken by Defendant Mayo Clinic and that this adverse action was taken because of Plaintiff's report.

Parties do not dispute that the 2020 Final Written Warning issued to Plaintiff was a disciplinary action taken against Plaintiff. However, Plaintiff has failed to demonstrate that this discipline was imposed because of Plaintiff's August 2020 email report. "An employee may establish causation by presenting direct or circumstantial evidence." *Lissick v. Andersen Corp.*, 996 F.3d 876, 883 (8th Cir. 2021) (citing *Scarborough*, 379 F. Supp. 3d at 780-81). "Direct evidence is 'evidence showing a specific link between the alleged discriminatory animus and the challenged decision, sufficient to support a finding by a reasonable fact finder that an illegitimate criterion actually motivated the adverse employment action.'" *Scarborough*, 379 F. Supp. 3d at 780 (quoting *Wood v. SatCom Mktg., LLC*, 705 F.3d 823, 929 (8th Cir. 2013)). "A retaliatory motive may be inferred from circumstantial evidence pertaining to temporal proximity and an employer's knowledge of the employee's protected conduct. However, temporal proximity alone is generally insufficient to establish an inference of retaliatory motive." *Id.* at 781 (citations omitted). Furthermore, "speculation does not qualify as circumstantial evidence. Instead, '[a] fact is proved

by circumstantial evidence when its existence can reasonably be inferred from other facts proved in the case.'" *Lissick*, 996 F.3d at 883 (quoting *Cokley v. City of Otsego*, 623 N.W.2d 625, 633 (Minn. Ct. App. 2001)). "In addition, the presence of intervening events can undermine any inference raised by temporal proximity." *Scarborough*, 379 F. Supp. 3d at 781 (citation omitted).

Even viewing the evidence in the light most favorable to Plaintiff, Plaintiff has not provided direct nor circumstantial evidence of a retaliatory motive following Plaintiff's August 2020 email report. The undisputed facts demonstrate that the investigation into Plaintiff's behavior and interactions with colleagues commenced in June 2020. Based on these undisputed facts, Plaintiff is unable to claim that the disciplinary process, which began in June 2020, was instigated as a result of Plaintiff's August 2020 email report. Therefore, Plaintiff cannot show a retaliatory motive based on the commencement of the investigation against him.

Plaintiff is also unable to establish that the discipline imposed by the 2020 Final Written Warning was implemented with a retaliatory motive related to Plaintiff's August 2020 report. The undisputed facts demonstrate that Plaintiff submitted his email report on August 19, 2020. However, as of August 11, 2020, the investigation into Plaintiff's behavior was complete and the investigation report had been provided to the members of the Mayo Clinic PC Executive Committee. The investigation report stated that though "a final written warning and/or termination of employment could be warranted," as Plaintiff had no previous "solid informal or formal coaching" a written warning was recommended. (Exhibit A, Manning

Declaration.) The PC Executive Committee decided to issue Plaintiff a Final Written Warning, and on August 13, 2020, Ms. Amber Manning sent an email to Ms. Steffany Guidinger, and attached a draft of a Final Written Warning to the email. Therefore, the undisputed evidence demonstrates that the discipline recommended to and later adopted by the PC Executive Committee had already been determined prior to Plaintiff's August 19, 2020 report.

The evidence further indicates that the Final Written Warning continued to be edited after August 13, and was not issued to Plaintiff until August 24, 2020, which is after Plaintiff's email report. However, while there was overlap between the timeline of the editing of the Final Written Warning and the timeline of Plaintiff's report to Dr. Wright, there is no evidence in the record demonstrating that the Final Written Warning was edited to provide different or further discipline to Plaintiff after Plaintiff's August 2020 report. Given these undisputed facts and viewing the evidence in the light most favorable to Plaintiff, Plaintiff has failed to establish through direct or circumstantial evidence that the discipline imposed by the 2020 Final Written Warning was motivated by retaliation for Plaintiff's August 2020 report.

Additionally, any argument that later adverse actions, including restrictions placed on Plaintiff's contact with the media in 2022 and the 2023 Final Written Warning, were imposed because of Plaintiff's 2020 report fail as a matter of law. "A retaliatory motive may be inferred from circumstantial evidence pertaining to temporal proximity and an employer's knowledge of the employee's protected conduct. . . . In addition, the presence of intervening events can undermine any

inference raised by temporal proximity." *Scarborough*, 379 F. Supp. 3d at 781 (citations omitted). Previously, "a *two*-month timespan between the employee's protected activity and the employer's adverse action" was found to be "too remote" to support an inference of a retaliatory motive. *Lissick*, 996 F.3d at 883-84 (citing *Harnan v. Univ. of St. Thomas,* 776 F. Supp. 2d 938, 948 (D. Minn. 2011)) (emphasis in original). As a two-month timespan was found to be too remote to establish causation, a two to three year timespan would certainly be too remote to establish causation between the August 2020 protected report and any adverse actions taken in 2022 and 2023. Additionally, the evidence indicates that there were many intervening events between Plaintiff's August 2020 report and the 2022 and 2023 adverse actions, including Plaintiff's appeal of the 2020 Final Written Warning, his 2021 allegations that Duke University was attempting to access protected health data, and Plaintiff's numerous media interviews. Given the intervening events and the lack of temporal proximity to any adverse actions taken against him, Plaintiff cannot establish causation under the MWA related to his August 2020 report.

As Plaintiff has not demonstrated that any adverse action was taken as a result of Plaintiff's August 2020 report, Plaintiff has failed to demonstrate a prima facie case under the MWA as to his August 2020 report. As a result, in order to avoid summary judgment on Count IV, Plaintiff must establish a prima face case under the MWA related to a different set of circumstances.

C. As no adverse action was taken as a result of Plaintiff's January 2021 report, Plaintiff has not established a prima facie case under the MWA related to this report.

Plaintiff further claims that Defendant Mayo Clinic violated the MWA following a January 2021 email from Plaintiff that addressed his concerns with pressure allegedly exerted by individuals, including some Mayo employees, to obtain confidential CPP data.[7] To establish a prima facie case under the MWA, Plaintiff must demonstrate "'[1] statutorily protected conduct by the employee, [2] an adverse employment action by the employer, and [3] a causal connection between the two.'" *Coursolle*, 794 N.W.2d at 657 (quoting *Gee*, 700 N.W.2d at 555) (other citations omitted).

On January 13, 2021, Plaintiff sent an email to seven (7) Mayo Clinic employees, including Dr. Scott Wright, Mayo Clinic IRB chair, stating Plaintiff's concerns about having received "a lot of pressure to turn over confidential EAP infrastructure data and other relevant material" to Duke University. (Pl.'s Ex. 6, Index 177). In the email Plaintiff mentioned compliance and contractual concerns with turning over the data.

The MWA defines a "report" as "a verbal, written, or electronic communication by an employee about an actual, suspected, or planned violation of a statute, regulation, or common law, whether committed by an employer or a third party."

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[7] The Court notes that no facts were provided about Plaintiff's January 2021 email in Plaintiff's Amended Complaint. Plaintiff first addressed this email being a report under the MWA in Plaintiff's Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment (Index 173).

Minn. Stat. § 181.931, subd. 6. The concerns mentioned by Plaintiff in the January 2021 email are similar to the compliance and regulatory concerns Plaintiff reported to Dr. Wright in August 2020. Plaintiff is again raising concerns regarding pressure and coercion exerted by others to release confidential CPP data in violation of federal regulations. As previously discussed, the HHS Policy regulates institutions that conduct research using human subjects and includes a requirement that informed consent be obtained from participants and be obtained in a manner to "minimize the possibility of coercion or undue influence." 45 C.F.R. § 46.116(a)(2). Plaintiff's January 13, 2021 email is a written communication, from a Mayo Clinic employee, again alerting Dr. Wright, Mayo Clinic IRB Chair, about attempts to unlawfully obtain confidential health data, which is a suspected violation of a federal regulation. Therefore, pursuant to the definition of "report" contained in the MWA, and viewing the evidence in the light most favorable to Plaintiff, Plaintiff's January 13, 2021 email constituted a report under the MWA.

Parties do not dispute that Plaintiff's January 2021 report was made in good faith, as neither party argues that Plaintiff made the report knowing it was false or in reckless disregard of the truth. Minn. Stat. § 181.932, subd. 3. As Plaintiff made a report in good faith, according to the statutory definition, Plaintiff has satisfied the first element of a prima facie case under the MWA by demonstrating statutorily protected conduct. Plaintiff next needs to demonstrate that adverse action was taken by Defendant Mayo Clinic and that this adverse action was taken because of Plaintiff's report.

It is unclear what adverse action Plaintiff claims was taken following his January 2021 report. Plaintiff provided no information regarding any discipline, penalties, threats, or retaliation that Plaintiff endured in the immediate aftermath of his January 2021 email. The discipline imposed by the 2020 Final Written Warning was not an adverse action taken because of Plaintiff's 2021 email, as the 2020 Final Written Warning discipline occurred months before Plaintiff's 2021 email. Any subsequent discipline imposed on Plaintiff occurred no earlier than April 2022, when Plaintiff claims his media access was restricted by Defendant Mayo Clinic. While "[a] retaliatory motive may be inferred from circumstantial evidence pertaining to temporal proximity and an employer's knowledge of the employee's protected conduct," here there is no temporal proximity between the January 2021 report and any adverse action. *Scarborough*, 379 F. Supp. 3d at 781 (citation omitted). The timespan of more than one year between the January 2021 report and the alleged adverse action does not provide circumstantial evidence of a retaliatory motive.

As Plaintiff has not demonstrated that any adverse action was taken because of Plaintiff's January 2021 report, Plaintiff has failed to demonstrate a prima facie case under the MWA as to his January 2021 report. As a result, in order to avoid summary judgment on Count IV, Plaintiff must establish a prima face case under the MWA related to a different set of circumstances.

D. Plaintiff has failed to establish a prima facie case under the MWA as to his 2021 retaliation complaint.

Plaintiff further claims that Defendant Mayo Clinic violated the MWA following Plaintiff's 2021 retaliation complaint. For purposes of the MWA, protected

conduct is defined as a good faith report, made by an employee to an employer, of "a violation, suspected violation, or planned violation of any federal or state law or common law or rule adopted pursuant to law to an employer." Minn. Stat. § 181.932, subd. 1(1). The MWA defines a report as "a verbal, written, or electronic communication by an employee about an actual, suspected, or planned violation of a statute, regulation, or common law, whether committed by an employer or a third party." *Id.* § 181.931, subd. 6. Whether an employee's conduct constitutes a report as defined by the MWA is a matter of law to be determined by the court. *Scarborough*, 379 F. Supp. 3d at 779 (citation omitted).

During an interview on April 16, 2021 with Mayo Clinic's Chief Compliance Officer, Adam Briggs, and Mayo Clinic Compliance Officer Jason Wilke, Plaintiff alleged that Defendant Dr. Farrugia violated the MWA by directing that the Personnel Committee discipline Plaintiff as a means of retaliation for Plaintiff raising compliance concerns about MITRE. The MWA protects employees who report violations of state law from retaliation. As the MWA is a state law, and Plaintiff was alleging a violation of this state law, in making this retaliation allegation, Plaintiff made a verbal communication about a suspected violation of the MWA, which qualifies as a report under the MWA.

Additionally, Plaintiff's complaint was understood by both the interviewers and Judge Foster as being a retaliation complaint under the MWA. Following his April 16, 2021 interview, it was noted that Plaintiff "has enunciated a retaliation concern (i.e. disciplined in response to raising good faith concerns)." (Defs.' Ex. 39,

Index 100). As a result of this finding, Plaintiff's retaliation complaint was subject to an external investigation. In her investigation report, Judge Foster analyzed Plaintiff's retaliation complaint under the MWA. (Pl.'s Ex. 32, Index 147). The fact that others understood Plaintiff's retaliation complaint to be a complaint brought under the MWA supports the finding that his retaliation complaint was also a report under the MWA. As Plaintiff verbally communicated his retaliation complaint in April 2021, alleging retaliatory acts against him in violation of the MWA, Plaintiff's retaliation complaint is a report under the MWA.

Parties do not dispute that Plaintiff's report was made in good faith, as neither party argues that Plaintiff made the report knowing it was false or in reckless disregard of the truth. Minn. Stat. § 181.932, subd. 3. As Plaintiff made a report in good faith, according to MWA definitions, Plaintiff has satisfied this first element of a prima facie case under the MWA by demonstrating statutorily protected conduct. Plaintiff next needs to demonstrate that adverse action was taken by Defendant Mayo Clinic and that this adverse action was taken because of Plaintiff's report.

Plaintiff argues that as a result of his 2021 retaliation complaint, he received a "warning" from Dr. Chet Rihal in a letter dated August 26, 2021, which Plaintiff argues constitutes an adverse action under the MWA. Previous Minnesota case law has held that an adverse employment action requires "a 'material change in the terms or conditions *of [one's] employment.*'" *Lee v. Regents of Univ. of Minnesota*, 672 N.W.2d 366, 374 (Minn. Ct. App. 2003) (quoting *Ledergerber v. Stangler*, 122 F.3d 1142, 1144 (8th Cir.1997)) (emphasis in original). "Mere inconvenience without any decrease in

title, salary, or benefits, or only minor changes in working conditions does not meet this standard." *Leiendecker v. Asian Women United of Minnesota*, 731 N.W.2d 836, 842 (Minn. Ct. App. 2007) (citation omitted).

Most of Dr. Rihal's letter is a summary of the conclusions from Judge Foster's investigation of Plaintiff's retaliation complaint. In the last paragraph, Dr. Rihal discussed Plaintiff's behavior during a meeting, stating,

> It is clear you harbor a longstanding resentment towards Public Affairs and others which will require you to take affirmative steps to re-establish trust and professional working relationships. I can honestly say I am not optimistic that this can be accomplished based on how poorly you behaved and your unwillingness to accept responsibility for your actions. My hope is that the pattern of acrimonious communications you have exhibited ends.

(Defs.' Ex. 43, Index 101). These statements do not materially change the terms or conditions of Plaintiff's employment. Rather, Dr. Rihal shared his opinions on Plaintiff's professional working relationships, his thoughts on how these relationships could be improved, and his hopes for and views of the future of these relationships. Dr. Rihal's letter does not decrease Plaintiff's employment title, salary, or benefits. As Dr. Rihal's letter does not materially change Plaintiff's employment, the letter is not an adverse action.

Dr. Rihal's letter additionally does not qualify as an adverse action under the "penalize" definition added to the MWA in 2013. The definition of penalize is "conduct that might dissuade a reasonable employee from making or supporting a report, including post-termination conduct by an employer or conduct by an employer for the benefit of a third party." Minn. Stat. § 181.931, subd. 5. An employer is prohibited

from engaging in any such behavior following an employee's protected conduct under the MWA. *Id.* § 181.932. The penalize definition has been construed to "suggest an inclusive reach into a wide variety of unspecified employer behavior." *Moore v. City of New Brighton,* 932 N.W.2d 317, 325 (Minn. Ct. App. 2019). However, even with this "inclusive reach into a wide variety of unspecified employer behavior," *id.,* and viewing the evidence in the light most favorable to Plaintiff, Dr. Rihal's letter is not conduct that might dissuade a reasonable employee from making retaliation report. As previously discussed, the majority of Dr. Rihal's letter is a summary of Judge Foster's investigation. The last paragraph of the letter did not concern or otherwise address Plaintiff's retaliation complaint at all, but rather focused on Plaintiff's "unprofessional manner by which [he] conducted [himself]" in a meeting with Dr. Rihal. Dr. Rihal then commented on his perceptions of Plaintiff's "longstanding resentment towards Public Affairs" and how Dr. Rihal recommended that Plaintiff improve his professional working relationships. (Defs.' Ex. 43, Index 101).

As the language in the last paragraph demonstrates, Dr. Rihal addressed matters separate from Plaintiff's retaliation complaint. Nothing in this last paragraph, or anything else in the letter, could be construed as "conduct that might dissuade a reasonable employee from making or supporting a report" under the MWA. Minn. Stat. § 181.931, subd. 5. As Dr. Rihal's letter neither materially changed the terms or conditions of Plaintiff's employment nor is conduct that might dissuade a reasonable employee from making a protected report under the MWA, Dr. Rihal's letter is not an adverse action.

Aside from the letter from Dr. Rihal, Plaintiff does not argue that any other adverse action was taken as a result of Plaintiff's 2021 retaliation complaint. The prior disciplinary actions, such as the 2020 Final Written Warning, cannot serve as adverse actions for a retaliation report not yet made. Any discipline or adverse actions taken in the spring of 2022 or in 2023 are too remote in time to be considered adverse actions taken because of Plaintiff's 2021 retaliation complaint. *See Harnan v. Univ. of St. Thomas,* 776 F. Supp. 2d 938, 948 (D. Minn. 2011) (finding a two-month separation between a protected report and adverse action to be too remote to support a retaliatory motive). As Plaintiff has not demonstrated that any adverse action was taken because of his 2021 retaliation complaint, even when viewing the evidence in the light most favorable to Plaintiff, Plaintiff is unable to establish a prima facie case under the MWA related to his 2021 retaliation complaint. As a result, in order to avoid summary judgment on Count IV, Plaintiff must establish a prima face case under the MWA related to a different set of circumstances.

E. Neither Plaintiff's 2023 appeal nor Plaintiff's 2023 communication following the appeal hearing are protected activity under the MWA.

Plaintiff lastly argues that his 2023 appeal and communications Plaintiff made following that appeal are protected activity under the MWA. Plaintiff additionally argues that he suffered retaliation as a result of this protected activity in violation of the MWA. To establish a prima facie case under the MWA, Plaintiff must demonstrate "'[1] statutorily protected conduct by the employee, [2] an adverse employment action by the employer, and [3] a causal connection between the two.'"

Coursolle, 794 N.W.2d at 657 (quoting *Gee*, 700 N.W.2d at 555) (other citations omitted).

For purposes of the MWA, protected conduct is defined as a good faith report, made by an employee to an employer, of "a violation, suspected violation, or planned violation of any federal or state law or common law or rule adopted pursuant to law to an employer." Minn. Stat. 181.932, subd. 1(1). The MWA defines a report as "a verbal, written, or electronic communication by an employee about an actual, suspected, or planned violation of a statute, regulation, or common law, whether committed by an employer or a third party." *Id.* § 181.931, subd. 6. Whether an employee's conduct constitutes a report as defined by the MWA is a matter of law to be determined by the court. *Scarborough v. Federated Mut. Ins. Co.*, 379 F. Supp. 3d 772, 779 (D. Minn. 2019), *aff'd*, 996 F.3d 499 (8th Cir. 2021) (citing *Freeman v. Ace Tel. Ass'n*, 404 F.Supp.2d 1127, 1139 (D. Minn. 2005), *aff'd*, 467 F.3d 695 (8th Cir. 2006)).

Neither Plaintiff's 2023 appeal nor the communications Plaintiff made to the Appeal Committee following the appeal hearing are reports as defined by the MWA. Plaintiff's April 14, 2023 correspondence to Defendant Dr. Mantilla, which served as his appeal of the 2023 Final Written Warning, alleged various violations of internal Mayo Clinic policies, including the Mayo Clinic Media Policy and the Mayo Clinic Freedom of Expression and Academic Freedom Policy. However, violations of internal Mayo Clinic policies are not compliance, regulatory, or statutory violations. Nowhere in his appeal letter does Plaintiff allege any compliance, regulatory, or statutory

violation. Plaintiff's letter does not include allegations of retaliation, which could be governed under the MWA.[8] As Plaintiff's 2023 appeal letter contains no allegations of any actual, suspected, or planned violation of a statute, regulation, or common law, Plaintiff's appeal letter is not a report under the MWA. Plaintiff has not established any protected conduct under the MWA and is therefore unable to establish a prima facie case under the MWA related to his 2023 appeal letter.

Similarly, Plaintiff does not refer to, mention, allege, or complain about any actual, suspected, or planned violation of a statute, regulation, or common law in the June 28, 2023 email he sent to the Appeals Committee members. Plaintiff additionally does not mention any allegations of retaliation or violations of the MWA. Rather, in the email, Plaintiff shares his disappointment at not having received the 500 pages of documents the Appeals Committee would be reviewing, as he felt he was unable to adequately prepare for his appeal hearing. Plaintiff additionally reiterates his hope that the appeals process can be focused on his 2023 Final Written Warning, and not matters dating back to 2015. None of these concerns involve allegations of an actual suspected, or planned violation of a statute, regulation, or common law.

At one point in the email, Plaintiff mentions his concerns about transparency, fairness, and due process of the Mayo Clinic appeals process. (Pl.'s Ex. 52, Index 147). However, these concerns are related to a private employer's internal employee

[8] The only mention of "retaliation" in Plaintiff's appeal letter is a quote from the Mayo Clinic Freedom of Expression and Academic Freedom Policy, stating that the Policy protects employees from "fear of retribution or retaliation" if the employee's opinions or conclusions conflict with "those of the faculty or institution."

appeals procedures. There are no statutory, regulatory, or common law violations implicated by the Mayo Clinic employee appeals process or the way that process is conducted. Plaintiff, in appealing the 2023 Final Written Warning, is not entitled to due process under the Fourteenth Amendment as there is no state action involved in the Mayo Clinic employee appeals process. *See Blum v. Yaretsky*, 457 U.S. 991, 1002-03 (1982). Therefore, the transparency, fairness, and due process concerns raised by Plaintiff also do not involve allegations of a statutory, regulatory, or common law violation.

As Plaintiff's June 28, 2023 email does not contain information about any actual, suspected, or planned violation of a statute, regulation, or common law, the email is not a report under the MWA. Plaintiff has not established any protected conduct under the MWA and is therefore unable to establish a prima facie case under the MWA related to his June 28, 2023 email.

Even viewing all of the evidence in the light most favorable to Plaintiff, Plaintiff has failed to establish a prima facie case under the MWA. Much of the conduct Plaintiff alleges is protected conduct under the MWA is not protected conduct as a matter of law. When Plaintiff has demonstrated protected conduct under the MWA, he has failed to demonstrate a subsequent adverse action or that any adverse action taken was a result of Plaintiff's protected conduct. As Plaintiff has failed to establish a prima facie case of a violation of the MWA, there is no genuine dispute as to Plaintiff's Count IV. Accordingly, Plaintiff's Motion for Summary Judgment as to

Count IV is denied. Defendants' Motion for Summary Judgment on Count IV is granted and Count IV is dismissed.

V. As Plaintiff has presented evidence of malice as to Dr. Mantilla, but not Dr. Farrugia, Defendant's Motion for Summary Judgment as to Count V is granted as to Dr. Farrugia, and denied as to Dr. Mantilla.

Plaintiff alleges a claim of tortious interference with contract against Defendants Dr. Farrugia and Dr. Carlos Mantilla. Plaintiff alleges that Defendants Dr. Farrugia and Dr. Mantilla intentionally and willfully interfered with Plaintiff's employment contract by making false statements, retaliating against Plaintiff, and arranging for Plaintiff to be disciplined by others. Plaintiff further alleges that this interference with his contract was done in bad faith and with malice. Defendants moved for summary judgment as to Count V, claiming that Plaintiff has not presented evidence of malicious acts perpetrated by either Defendant Dr. Farrugia or Dr. Mantilla.

The elements of a claim of tortious interference with a contract include: "(1) the existence of a contract; (2) the alleged wrongdoer's knowledge of the contract; (3) [the alleged wrongdoer's] procurement of its breach; (4) without justification; and (5) damages resulting therefrom." *Bouten v. Richard Miller Homes, Inc.*, 321 N.W.2d 895, 900 (Minn. 1982) (citing *Royal Realty Co. v. Levin*, 69 N.W.2d 667, 671 (Minn. 1955)). Generally, "a party cannot interfere with its own contract." *Nordling v. Northern States Power Co.*, 478 N.W.2d 498, 505 (Minn. 1991) (citing *Bouten*, 321 N.W.2d at 900-01). Therefore, if a plaintiff's claims are against a "corporation's officer or agent acting pursuant to [their] company duties," the claim should be brought against the

company or corporation, not against the officer or agent. *Id.* However, "[a] corporate officer or agent may be liable for tortious contract interference if he or she acts outside the scope of his or her duties." *Id.* at 506 (citing *Bouten*, 321 N.W.2d at 900-01). Any privilege a corporate officer, agent, or employee may have in breaching another's employment contract while acting within the scope of their duties "may be lost . . . if the defendant's actions are predominantly motivated by malice and bad faith, that is by personal ill-will, spite, hostility, or a deliberate intent to harm the plaintiff employee." *Id.* at 507 (citation omitted). It is the plaintiff's burden to prove a defendant acted with actual malice for a claim of tortious interference with contract. *Id.*

The first two elements of Plaintiff's tortious interference with contract claim are not in dispute. Parties agree and acknowledge that Plaintiff had an employment contract with Defendant Mayo Clinic and that Defendants Dr. Farrugia and Dr. Mantilla knew of this employment contract. Parties dispute whether Defendants Dr. Farrugia and Dr. Mantilla intentionally procured a breach of the contract and whether they did so without justification and primarily motivated by malice.[9] The

[9] Plaintiff argues that the Court had previously "identified facts that—if a jury found them to be true and drew inferences in favor of [Plaintiff] would support findings of malice by [Defendants Dr.] Farrugia and Mantilla." Pl. Mem. Opp'n to Defs.' Mot. Summ. J. 31. The Court made those findings in response to Defendant's Motion to Dismiss under Minn. R. Civ. P. 12.02(e), treating the allegations in Plaintiff's Amended Complaint as true and disregarding whether Plaintiff could actually prove the allegations. *See Wiegand v. Walser Auto. Groups, Inc.*, 683 N.W.2d 807, 811 (Minn. 2004) (citing *Northern States Power Co. v. Franklin*, 122 N.W.2d 26, 29 (Minn. 1963)). When analyzing a motion for summary judgment, while the court is to view the evidence in the "in the light most favorable to the nonmoving party." *Stringer v. Minnesota Vikings Football Club, LLC*, 705 N.W.2d 746, 753 (Minn. 2005) (citations omitted), a non-moving party must establish a genuine issue of material fact by substantial evidence, *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997) (citation omitted),

allegations are addressed as to each defendant individually below.

A. Plaintiff has not provided any evidence that Defendant Dr. Farrugia intentionally and maliciously interfered with Plaintiff's contract.

As to Defendant Dr. Farrugia, Plaintiff alleges that Dr. Farrugia spread false accusations that Plaintiff threatened to quit the CPP if Plaintiff did not receive a seven-figure payment, that Dr. Farrugia retaliated against Plaintiff for Plaintiff's reports about MITRE, and that Dr. Farrugia directed or arranged for Plaintiff to be disciplined. Despite these allegations, Plaintiff has not demonstrated any genuine issues of material fact regarding these allegations and additionally has not established that Dr. Farrugia acted maliciously. For these reasons, Defendant's Motion to Dismiss Count V is granted as to Defendant Dr. Farrugia.

Plaintiff first argues that Defendant Dr. Farrugia spread a false allegation that Plaintiff threatened to quit the CPP if Plaintiff did not receive a seven-figure payment. In text exchanges with Andy Danielson and Manu Nair, Plaintiff stated that he "need[ed] the outlines of a plan in 48 hrs [sic]. I will have other opportunities and unless Mayo is willing to step up will be forced to redirect my efforts." (Pl. Ex. 17, Index 146). Plaintiff additionally stated, "I am out on Sat [sic] if there is not a fair solution in the works . . . ." (*Id.*). These text messages were sent to Dr. Farrugia from Dr. Halamka on June 19, 2020 at 11:14 a.m. Dr. Farrugia forwarded the information

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and "must do more than rest on averments or denials of the adverse party's pleading." *Stringer*, 705 N.W.2d at 753 (citations omitted). Given the distinct burdens and requirements for the two motions, the Court's analysis of the facts at the Motion to Dismiss stage are not controlling here.

to Dr. Rihal at 3:25 p.m. on June 19, 2020, with no other message or information contained in the email. Mr. Jim Rogers forwarded to Dr. Farrugia notes from Andy Danielson and Manu Nair regarding their conversation with Plaintiff, in which Mr. Danielson stated that Plaintiff "said he needed the money upfront and in the next 48 hours or he was going to walk away from the program." (*Id.*). Dr. Farrugia forwarded these notes to Dr. Rihal, again with no other statement or message in the email. Therefore, the undisputed evidence demonstrates that Dr. Farrugia did not make any statements about Plaintiff's compensation request. Rather, Dr. Farrugia received information that Plaintiff would quit or walk away if he did not receive additional payment and forwarded this information directly to Dr. Rihal. Dr. Farrugia made no other statements, commentary, or remarks when forwarding this information to Dr. Rihal. Dr. Farrugia acted as a messenger in conveying this information, but did not make any accusations or false statements about Plaintiff's request. Therefore, Plaintiff did not demonstrate that Dr. Farrugia made any false statements or accusations about Plaintiff's request for additional compensation.

Plaintiff has additionally not provided any evidence to demonstrate that Defendant Dr. Farrugia retaliated against Plaintiff or directed others to retaliate against Plaintiff. Plaintiff has offered no evidence that once the matters were referred to the Personnel Committee in 2020 and 2023, Dr. Farrugia participated in the Committee's investigation or decision, aside from taking action as prescribed by Mayo Clinic procedures and policies. Dr. Farrugia sought advice, forwarded information, and delegated the investigation and decision-making to the Personnel Committee and

Appeals Committee. Dr. Farrugia enlisted Dr. Rihal, chair of the Personnel Committee, to oversee the disciplinary process in 2020, but otherwise did not counsel, persuade, or direct Dr. Rihal to act on the complaints against Plaintiff or discipline Plaintiff.

Plaintiff offers one email, from January 13, 2023, following Plaintiff's CNN interview, in which Dr. Farrugia says, "PC will need to act on this," as proof that Dr. Farrugia directed the PC to discipline Plaintiff. (Pl.'s Ex. 44, Index 142). However, even viewing the evidence in the light most favorable to Plaintiff, Dr. Farrugia did not direct the Personnel Committee in how to act or discipline Plaintiff. Plaintiff did not present evidence that Dr. Farrugia interfered with or otherwise participated in the Personnel Committee investigation into Plaintiff. Plaintiff has offered no evidence demonstrating Dr. Farrugia's direct or indirect influence on any disciplinary decisions reached by the Personnel Committee or the Appeals Committee. As a result, Plaintiff has not demonstrated that Defendant Dr. Farrugia interfered with Plaintiff's contract.

In addition to failing to demonstrate Dr. Farrugia's interference with Plaintiff's contract, Plaintiff has further failed to demonstrate that Defendant Dr. Farrugia acted with bad faith or malice. Dr. Farrugia's message that the PC would need to act on Plaintiff's CNN interview does not establish that Dr. Farrugia acted with malice or in bad faith. Given the lack of evidence offered by Plaintiff to support his claim of tortious interference with contract against Defendant Dr. Farrugia, Defendants'

Motion for Summary Judgment as to Count V against Dr. Farrugia is granted and Dr. Farrugia is dismissed from this case.

B. Plaintiff has provided genuine issues of material fact regarding Defendant Dr. Mantilla's alleged intentional and malicious interference with Plaintiff's contract.

Plaintiff alleges that Dr. Mantilla intentionally and maliciously interfered with Plaintiff's contract, by praising Plaintiff's CNN interview and highly rating Plaintiff's interpersonal and communication skills and then simultaneously disciplining Plaintiff for Plaintiff's interpersonal interactions, language use, and communications with Public Affairs. Plaintiff presented evidence demonstrating that in Plaintiff's annual employee reviews, Dr. Mantilla continuously rated Plaintiff as "meets or exceeds expectations" in Plaintiff's interpersonal/communication skills and Plaintiff's professionalism in the workplace. Plaintiff further presented evidence demonstrating that four days after Dr. Mantilla's 2023 Final Written Warning, in which Dr. Mantilla highlights Plaintiff's problematic "use of idiomatic language" and "disrespectful communications with colleagues," (Def.'s Ex. 58, Index 101), Dr. Mantilla rated Plaintiff's interpersonal and communication skills at the highest level, stating that Plaintiff's "emotional endurance in the face of immense personal and professional stress is remarkable." (Pl.'s Ex. 45, Index 142). Dr. Mantilla further commented that Plaintiff "is a most respected and influential clinician and scientist. . . . I trust his partnership and look forward to supporting him in next steps." *(Id.*). Nowhere in Dr. Mantilla's 2023 review, which was completed four days *after* the Final Written Warning, does Dr. Mantilla raise any of the concerns addressed in the Final

Written Warning.

Plaintiff further provided evidence that following Plaintiff's CNN interview, Plaintiff sent a link of the interview to Dr. Mantilla, thanking Dr. Mantilla for his support. Dr. Mantilla replied to Plaintiff's email, stating, "Amazing impact, Mike. Thank you!!!" (Pl.'s Ex. 43, Index 142). The next day, after being sent information from Dr. Halena Gazelka, Dr. Mantilla and Ms. Amber Manning set up a meeting with Plaintiff, during which Plaintiff's CNN interview was discussed. Following this meeting, an investigation into Plaintiff's CNN interview was commenced, with Ms. Manning and Dr. Mantilla drafting a SBAR (Situation, Background, Assessment, Recommendations) document, recommending that Plaintiff receive another Final Written Warning.

Based on the evidence above, Plaintiff has demonstrated that a reasonable fact-finder could find that Defendant Dr. Mantilla acted in bad faith or with malice in disciplining Plaintiff in the 2023 Final Written Warning. Defendant Dr. Mantilla has provided explanations for the inconsistency between his annual review and the Final Written Warning, stating that the review focused solely on Plaintiff's departmental work and did not include a review of Plaintiff's behavior outside the department. Dr. Mantilla additionally states that as he advocated for Plaintiff's continued employment at Mayo Clinic he did not act maliciously or in bad faith. However, these arguments challenge the factual issues presented by Plaintiff. It is for a fact-finder to resolve these genuine issues of material fact and assess credibility. From the evidence presented by Plaintiff, there are genuine issues of material fact as

to whether Defendant Dr. Mantilla interfered with Plaintiff's contract and whether Dr. Mantilla did so maliciously or in bad faith. Given these genuine issues of material fact, Defendants' Motion for Summary Judgment for Count V as to Defendant Dr. Mantilla is denied.

VI. As Plaintiff's Count IV against Defendant Mayo Clinic and Count V against Dr. Farrugia are dismissed, Plaintiff's Motion to Amend the Complaint to Claim Punitive Damages is denied.

Plaintiff seeks to amend the complaint to add punitive damages to Count IV against Defendant Mayo Clinic and Count V against Defendant Dr. Farrugia, pursuant to pursuant to Minn. Stat. §§ 549.191 and 549.20. As discussed above in Sections IV and V, the Court has granted Defendants' Motion for Summary Judgment and dismissed the entirety of Count IV and Count V as to Defendant Dr. Farrugia. As those claims are hereby dismissed, Plaintiff's request to add punitive damages to those claims is moot, and Plaintiff's Motion to Amend the Complaint to Claim Punitive Damages is denied.

CONCLUSION

While there are no genuine issues of material fact regarding any breach of step 13 of the Appeals Procedure, there are genuine issues of material fact as to Plaintiff's Count I and Count II regarding the Anti-Retaliation Policy and step 12 and the Procedural Notes section of the Appeals Procedure. For these reasons, Plaintiff's Motion for Partial Summary Judgment as to Count I and Count II is denied and Defendants' Motion for Summary Judgment as to Count I and II is granted in part and denied in part. Defendants' Motion for Summary Judgment as to Count I and

Count II is granted only as to step 13 of the Appeals Procedure, and is otherwise denied. As Plaintiff has not provided evidence to support a prima facie case of a violation of the Minnesota Whistleblower Act or the Minnesota Personnel Record Statute, Plaintiff's Motion for Partial Summary Judgment as to Count III and Count IV is denied and Defendants' Motion for Summary Judgment as to Count III and Count IV is granted and those counts are dismissed with prejudice. While Plaintiff has provided evidence of genuine issues of material fact as to Count V regarding Defendant Dr. Mantilla, Plaintiff has failed to establish a prima facie case of tortious interference of contract against Defendant Dr. Farrugia. Therefore, Defendants' Motion for Summary Judgment as to Count V is granted in part and denied in part. Defendants' Motion for Summary Judgment as to Count V is granted as to Defendant Dr. Farrugia, Count V as to Defendant Dr. Farrugia is dismissed with prejudice, and Defendant Dr. Farrugia is dismissed from this case. Defendants' Motion for Summary Judgment as to Count V is denied as to Defendant Dr. Mantilla. As the counts for which Plaintiff sought punitive damages were dismissed, Plaintiff's Motion to Amend the Complaint to Add Punitive Damages is denied.

K.M.W.