****

The "officially released" date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the "officially released" date appearing in the opinion.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the advance release version of an opinion and the latest version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest version is to be considered authoritative.

The syllabus and procedural history accompanying the opinion as it appears in the Connecticut Law Journal and bound volumes of official reports are copyrighted by the Secretary of the State, State of Connecticut, and may not be reproduced and distributed without the express written permission of the Commission on Official Legal Publications, Judicial Branch, State of Connecticut.

****

APPENDIX

GERARDO TREJO *v.* YALE NEW HAVEN HOSPITAL, INC.*

Superior Court, Judicial District of Hartford
File No. CV-19-6112326-S

Memorandum filed December 14, 2021

Proceedings

Memorandum of decision on defendant's motion for summary judgment. *Motion granted.*

Zachary T. Gain, for the plaintiff.

Sarah R. Skubas and *Jessica L. Murphy*, for the defendant.

Opinion

ROSEN, J.

INTRODUCTION

In this action, the plaintiff, a gay man, alleges that he was wrongfully terminated from the defendant's vascular surgery residency program based on his sexual orientation and gender, and retaliation, in violation of the Connecticut Fair Employment Practices Act (CFEPA), General Statutes § 46a-51 et seq. On April 30, 2021, the defendant moved for summary judgment, asserting that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. For the reasons set forth below, the defendant's motion is granted.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On May 30, 2019, the plaintiff, Gerardo Trejo, filed a three count complaint under CFEPA (complaint) against the defendant, Yale New Haven Hospital, Inc. In the first count of his complaint, the plaintiff alleges gender discrimination in violation of CFEPA based on sex stereotyping. In the second count, he alleges sexual orientation discrimination in violation of General Statutes § 46a-81[a]. The third count alleges retaliation in violation of General Statutes § 46a-60 (a) (4). On February 20, 2019, the plaintiff received a release of jurisdiction on his complaint against the defendant with the Connecticut Commission on Human Rights and Opportunities.

On April 30, 2021, the defendant filed a motion for summary judgment and accompanying memorandum on the grounds that, based on the plaintiff's own deposition testimony, affidavits and exhibits, there is no genuine issue of material fact and that the defendant is entitled to judgment as a matter of law.

In his memorandum in opposition filed on August 16, 2021,[1] the plaintiff argues that issues of intent cannot properly be decided on summary judgment. In support of his motion the plaintiff submits additional evidence from the parties' depositions and email records. The defendant filed a reply on September 3, 2021, and the court heard oral argument by remote hearing on October 25, 2021.

The record reveals the following facts, which are undisputed unless otherwise indicated. The plaintiff began his vascular surgery residency program with the defendant on or about July 1, 2013. Complaint ¶ 6; Answer ¶ 6. As a resident, the plaintiff was both a trainee and the defendant's employee. See Trejo Deposition 98. The defendant's vascular residency program was then a six year program. Trejo Deposition 72. Each year of the residency, residents receive a one year agreement of appointment letter with no guarantee for con-

tinued employment beyond the end of that postgraduate year. Trejo Deposition 73–74, 80; see Defendant's Motion for Summary Judgment, Ex. 15.

A number of the defendant's employees were responsible for evaluating the plaintiff's performance during his residency, including, among others, Dr. Jack Contessa (Graduate Medical Education Specialist), Dr. Timur Sarac (Program Director), Dr. Jonathan Cardella (Assistant Program Director), Dr. Rosemarie Fisher (Designated Institutional [Official] [DIO] until 2016), Dr. Stephen Huot (DIO as of 2016), Dr. Bauer Sumpio, Dr. Kristine Orion, Dr. Cassius Chaar, Dr. Walter Longo, and Dr. Bart Muhs. Cardella Affidavit ¶ 8; Trejo Deposition 103, 106. A Clinical Competency Committee (CCC) consisting of three faculty members and a coordinator also reviews residents' performance twice per year. Cardella Affidavit, Ex. A.

In his deposition, the plaintiff details two early incidents in which Dr. Sarac criticized him for failing to complete required notes or to log hours within the required time frame. Trejo Deposition 133–34, 139; see also Plaintiff's Memorandum in Opposition, p. 7; Defendant's Motion for Summary Judgment, Ex. 7. In one example from February, 2015, the plaintiff acknowledges that he had been late to record notes but felt that the defendant's expectations were unreasonable. Trejo Deposition 134–35. In another instance in November, 2015, the plaintiff received an email from Anne Manzione, the defendant's program coordinator, stating that he was five months behind on logging his hours, followed by an email from Dr. Sarac telling him they would have a meeting to discuss. The plaintiff asserts that he was actually five weeks behind on notes, and other residents had told him they were "a little bit" behind and did not receive emails from Dr. Sarac. Trejo Deposition 143. The plaintiff felt that Dr. Sarac was looking for an opportunity to chastise him. Id. The plaintiff also testified generally that Dr. Sarac would call his patient presentations "weak" and called him a "weak resident" but does not specify when these comments were made. Trejo Deposition 365.[2]

The plaintiff alleges that in November, 2015, he emailed Dr. Fisher to complain about how he was being treated during his residency. Complaint ¶ 16; Answer ¶ 16. The plaintiff sent an email in December, 2015, to Dr. Fisher, asking to meet to discuss his interactions with Dr. Sarac and mentioning other residents' concerns about the direction of the vascular surgery residency program. Plaintiff's Memorandum in Opposition, Ex. 4.

The plaintiff further alleges that, at some point in February, 2016,[3] Dr. Sarac asked the plaintiff during surgery if he had played tee ball as a kid, then laughed and said, "of course you wouldn't." Complaint ¶ 37. Dr. Sarac made this comment while describing to the

plaintiff how to choke up on a needle. Huot Affidavit ¶ 14; Trejo Deposition 245–46.

On February 15, 2016, four doctors involved in evaluating the plaintiff held a meeting to discuss the plaintiff's clinical competency scores on the Accreditation Council for Graduate Medical Education (ACGME) milestone criteria.[4] Cardella Affidavit ¶ 9, Ex. B. According to the meeting notes, this was not the first time that concerns were raised about the plaintiff's ability to meet the program requirements. Cardella Affidavit, Ex. B. In the plaintiff's first two residency years, his milestone evaluation scores were appropriate for his year level; Trejo Deposition 127; but in his third year, his scores were "suboptimal." Cardella Affidavit, Ex. B. His standardized exam scores were also below expectations for his residency level. Cardella Affidavit ¶ 10. All vascular surgery residents are required to take the American Board of Surgery Vascular Surgery In-Training Examination (VSITE), a national, standardized exam used to assess resident knowledge and assess preparedness for board exams. Fisher Affidavit ¶ 6; Trejo Deposition 120. On the plaintiff's first VSITE in 2014, he scored a 37% compared to the average score of 72%. Fisher Affidavit ¶ 6, Ex. A. All four years of the plaintiff's VSITE scores were below all other vascular residents at the hospital with the exception of 2017, when the plaintiff's score was the second lowest by two points. Cardella Affidavit ¶ 10, Ex. C. The plaintiff's scores were also low compared to residents outside the hospital; for example, in 2015, the plaintiff's score was three standard deviations below the mean for all vascular surgery residents nationwide. See Defendant's Motion for Summary Judgment, Ex. 9.

On the evening of April 8, 2016, the plaintiff was taking "chief call," meaning he was responsible for overseeing patient care in the service. Cardella Affidavit ¶¶ 7, 12. An intern at the hospital called the plaintiff to report that a patient's condition had worsened. The plaintiff spoke with a nurse on the phone but failed to go to the hospital to assist and check on the patient or to notify the attending physician on call. Cardella Affidavit ¶ 12; Trejo Deposition 172–73. The patient eventually went into cardiac arrest and later died, an outcome that may not have been avoidable. Cardella Affidavit ¶ 12, Ex. D; Trejo Deposition 172–73. The plaintiff disagrees that his actions were "inappropriate" but acknowledges that he should have come to the hospital to check on the patient. Trejo Deposition 172. As a result of this and other "lapse[s] in judgment," the plaintiff received a low milestone "integrity" score, which he disputed. Cardella Affidavit ¶ 12, Ex. D.

Concerned about the plaintiff's progress, in the spring of 2016, the plaintiff was placed on a remediation plan. Cardella Affidavit ¶ 13. This decision was made by Drs. Fisher, Longo, Contessa, Cardella, and Sarac. Id.; Trejo

Deposition 175. The plan was written by Drs. Cardella, Sarac, and Contessa with input from all of the team present. Cardella Affidavit ¶ 13; Fisher Affidavit ¶ 8. As part of the plan, Dr. Sumpio was appointed as the plaintiff's mentor. Cardella Affidavit ¶ 13. The plan was reviewed with the plaintiff at a meeting on June 22, 2016. Cardella Affidavit, Ex F. The plaintiff was warned that if he did not show improvement during remediation, he could be terminated. Trejo Deposition 174–75. The plan included how written and oral mock exams would be conducted to measure his progress. Defendant's Motion for Summary Judgment, Ex. 12.

In August, 2016, the plaintiff met with Dr. Huot, the DIO at that time, to discuss the remediation program. Huot Affidavit ¶ 9. In that meeting, the plaintiff relayed to Dr. Huot Dr. Sarac's comments about whether the plaintiff had played tee ball as a child. Huot Affidavit ¶ 13; Trejo Deposition 245–46. Dr. Huot shared with the plaintiff that he is also gay and asked him if he had concerns about his identity in the program; the plaintiff responded that he did not. Huot Deposition 20. Dr. Huot specifically asked the plaintiff if he thought he was being mistreated because he was gay, which the plaintiff denied. Huot Affidavit ¶¶ 13, 14; Trejo Deposition 245.

The plaintiff testified that in the fall of 2016, Dr. Sarac once stated during a surgery that only "real men" or "real surgeons" could operate on the patient when the plaintiff was in the operating room as a backup, and Dr. Sarac would not permit the plaintiff to participate in the surgery. Trejo Deposition 365–66.[5] The plaintiff claims that Drs. Cardella and Sarac favored heterosexual residents in the operating room. Following this incident, the plaintiff testified that Dr. Sarac gave a male heterosexual medical student tasks to complete, which the plaintiff believes was intended to make him feel emasculated. Trejo Deposition 366. In describing a similar incident involving Dr. Cardella, the plaintiff testified that the doctor spoke to the medical students about sports during the procedure. Trejo Deposition 358–60.

The plaintiff also alleges that Dr. Cardella made homophobic comments during surgery and called the plaintiff a number of derogatory names. Complaint ¶¶ 35, 48. The plaintiff testified to only one specific, allegedly homophobic comment involving the word "cocksucker." Trejo Deposition 353–54. The plaintiff knew that "[Dr. Cardella] routinely used the word 'cocksucker' aimed at patients, aimed at devices that fractured or devices that didn't work. I mean, it was essentially part of his routine vocabulary." Id., 354. In one incident that he believes occurred around November, 2016, Dr. Cardella muttered the word under his breath at a volume only the plaintiff could hear. When asked at his deposition if the comment was directed at him, the plaintiff replied, "yes," and then elaborated: "To be honest, I think he was angry with the way that

the case was going. I, you know, I don't remember if I made a mistake or if I didn't hold one of the sutures the way that he wanted me to hold it. And I think he—he reacted, and he took his anger out on me by muttering it." Id.

During a January 10, 2017 meeting of the CCC the possibility of the plaintiff's contract not being renewed was raised for the first time. Cardella Affidavit ¶ 17, Ex. J. The plaintiff's scores on all three written mock exams were not to the level expected given his years of experience. Cardella Affidavit, Exs. I, L. The plaintiff felt the exams were unfair and too long to complete. Trejo Deposition 199; Cardella Affidavit ¶ 18, Ex. K. The plaintiff felt that "the remediation program was really aimed at trying to get [him] to fail. And that none of the metrics at which [he] was being graded were in any way actually shaped to help [him]." Trejo Deposition 199.

The remediation period concluded at the end of January, 2017, and on February 14, 2017, the CCC, along with Drs. Contessa and Sumpio, met to discuss the plaintiff's suboptimal progress and performance. Cardella Affidavit, Ex. L. The group considered making the nonrenewal determination at that time but decided to wait until the plaintiff's March, 2017 VSITE scores could be reviewed. Id.; Huot Affidavit ¶ 11. The VSITE scores represent an objective measure of academic skill and are graded by a third party. Fisher Affidavit ¶ 6. Drs. Sarac and Cardella met with the plaintiff to discuss this decision and the potential consequences and to provide him with advice on areas to review. Cardella Affidavit, Ex. M.

The plaintiff, then a fourth year resident, scored a 364 on the March, 2017 VSITE, while the average third year resident scored a 494. Defendant's Motion for Summary Judgment, Ex. 13; Trejo Deposition 215–17. The CCC met on April 4, 2017, to evaluate the plaintiff in light of his VSITE scores. Cardella Affidavit ¶ 21. Based on the plaintiff's "persistent deficiencies," the CCC and program director recommended nonrenewal, ending the plaintiff's residency effective June 30, 2017. Cardella Affidavit, Ex. N. In reaching their decision, the group reviewed "evaluations before and after the remediation plan, participation and progress in completing the remediation plan, [VSITE] exam scores, [and] milestone progression" and identified "persistent deficiencies in academic performance, administrative responsibilities and clinical performance." Cardella Affidavit, Ex. N. The CCC reached a unanimous decision to recommend dismissal. Cardella Affidavit ¶ 21, Ex. N. The plaintiff was given the option to resign, which would have eliminated the record of nonrenewal of contract or dismissal, which he rejected. Huot Affidavit ¶ 16. Dr. Huot reviewed the group's decision and agreed with the outcome. Huot Affidavit ¶ 11.

Upon receiving the nonrenewal notice, the plaintiff

expressed concerns about discrimination during his residency to Drs. Fisher and Huot. Huot Affidavit, Ex. B. Dr. Huot asked the plaintiff if he could share any examples of discrimination that he experienced in interactions with Dr. Sarac and others, and the plaintiff again mentioned the tee ball story. Huot Affidavit, Ex. B. The plaintiff also "ha[d] other concerns related to his remediation program and fe[lt] that he ha[d] not been treated fairly in that process, for other reasons." Id. In an in-person meeting around the same time with Drs. Fisher and Huot, the plaintiff told Dr. Huot for the first time about Dr. Cardella's use of the word "cocksucker," but does not recall whether the plaintiff stated it was directed at him. Huot Deposition 29–32.

The plaintiff filed a formal grievance of his dismissal. The grievance committee upheld his dismissal. Defendant's Motion for Summary Judgment, Ex. 16. Following an appeal of the grievance committee's decision, the defendant's Chief Medical Officer also upheld the decision. Id.

The following additional facts relate to the plaintiff's retaliation claim. As part of the accreditation process, the ACGME conducts yearly anonymous surveys of residents and physicians for program feedback. Huot Affidavit ¶ 7. At some point before the plaintiff was placed on remediation, he provided comments to the ACGME during one of the ACGME's hospital site visits. Trejo Deposition 235. The plaintiff commented to the ACGME about duty hours, not having enough time to study due to those hours, that he had not received evaluations, and that vascular rotations were being taken away from the vascular residents and given to the general surgery residents. Trejo Deposition 240–41. In April, 2016,[6] the plaintiff met with Dr. Fisher and stated that he was concerned that he was being mistreated or retaliated against "because of the ACGME site visit." Id.; Fisher Affidavit ¶ 9. The plaintiff did not feel it was discrimination at that time[7] and was instead concerned that his anonymous comments had been traced back to him and that he was being targeted as a result. See Trejo Deposition 235, 239–40. Similarly, in or about August, 2016, the plaintiff told Dr. Huot that he felt he was being treated harshly because of his comments to the ACGME site visitor. Huot Affidavit ¶ 9. At no time during Drs. Fisher's and Huot's conversations with the plaintiff did he state that he was being discriminated against due to his sexual orientation or gender. Fisher Affidavit ¶ 10; Huot Affidavit ¶ 13 ("[w]hen I asked him in August of 2016, the plaintiff explicitly denied feeling discriminated against").

DISCUSSION

I

Standard of Review

"Practice Book § 17-49 provides that summary judg-

ment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party." (Internal quotation marks omitted.) *Graham* v. *Commissioner of Transportation*, 330 Conn. 400, 414–15, 195 A.3d 664 (2018). "The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. . . . A material fact . . . [is] a fact which will make a difference in the result of the case." (Internal quotation marks omitted.) *Doe* v. *West Hartford*, 328 Conn. 172, 191–92, 177 A.3d 1128 (2018).

"Once the moving party has met its burden, however, the opposing party must present evidence that demonstrates the existence of some disputed factual issue." (Internal quotation marks omitted.) *Ferri* v. *Powell-Ferri*, 317 Conn. 223, 228, 116 A.3d 297 (2015). "It is axiomatic that in order to successfully oppose a motion for summary judgment by raising a genuine issue of material fact, the opposing party cannot rely solely on allegations that contradict those offered by the moving party, whether raised at oral argument or in written pleadings; such allegations must be supported by counteraffidavits or other documentary submissions that controvert the evidence offered in support of summary judgment." *GMAC Mortgage, LLC* v. *Ford*, 144 Conn. App. 165, 178, 73 A.3d 742 (2013). "[F]actual assertions based on inadmissible hearsay are insufficient for purposes of opposing a motion for summary judgment . . . ." *Jaiguay* v. *Vasquez*, 287 Conn. 323, 363, 948 A.2d 955 (2008).

"Although the court must view the inferences to be drawn from the facts in the light most favorable to the party opposing the motion . . . a party may not rely on mere speculation or conjecture as to the true nature of the facts to overcome a motion for summary judgment. . . . A party opposing a motion for summary judgment must substantiate its adverse claim by showing that there is a genuine issue of material fact together with the evidence disclosing the existence of such an issue." (Internal quotation marks omitted.) *Perez* v. *Metropolitan District Commission*, 186 Conn. App. 466, 476, 200 A.3d 202 (2018). "[E]ven with respect to questions of motive, intent and good faith, the party opposing summary judgment must present a factual predicate for his argument in order to raise a genuine issue of fact." (Internal quotation marks omitted.) *Voris* v. *Middlesex Mutual Assurance Co.*, 297 Conn. 589, 603, 999

A.2d 741 (2010).

II

Disparate Treatment

Connecticut prohibits discrimination in employment based on, inter alia, an individual's sexual orientation; General Statutes § 46a-81c; and on an individual's sex. General Statutes § 46a-60 (b). " '[D]isparate treatment' simply refers to those cases where certain individuals are treated differently than others." *Levy* v. *Commission on Human Rights & Opportunities*, 236 Conn. 96, 104, 671 A.2d 349 (1996). "The framework this court employs in assessing disparate treatment discrimination claims under Connecticut law was adapted from the United States Supreme Court's decision in *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792, 802, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973), and its progeny. . . . We look to federal law for guidance on interpreting state employment discrimination law, and the analysis is the same under both. . . . Under this analysis, the employee must first make a prima facie case of discrimination. . . . In order for the employee to first make a prima facie case of discrimination, the plaintiff must show: (1) the plaintiff is a member of a protected class; (2) the plaintiff was qualified for the position; (3) the plaintiff suffered an adverse employment action; and (4) the adverse employment action occurred under circumstances that give rise to an inference of discrimination. . . . The employer may then rebut the prima facie case by stating a legitimate, nondiscriminatory justification for the employment decision in question. . . . This burden is one of production, not persuasion; it can involve no credibility assessment. . . . The employee then must demonstrate that the reason proffered by the employer is merely a pretext and that the decision actually was motivated by illegal discriminatory bias." (Citations omitted; internal quotation marks omitted.) *Feliciano* v. *Autozone, Inc.*, 316 Conn. 65, 73–74, 111 A.3d 453 (2015).

"The burden of proof that must be met to permit an employment-discrimination plaintiff to survive a summary judgment motion at the prima facie stage is de minim[i]s. . . . Since the court, in deciding a motion for summary judgment, is not to resolve issues of fact, its determination of whether the circumstances giv[e] rise to an inference of discrimination must be a determination of whether the proffered admissible evidence shows circumstances that would be sufficient to permit a rational finder of fact to infer a discriminatory motive." (Citation omitted; internal quotation marks omitted.) *Chambers* v. *TRM Copy Centers Corp.*, 43 F.3d 29, 37–38 (2d Cir. 1994). "Though caution must be exercised in granting summary judgment where intent is genuinely in issue . . . summary judgment remains available to reject discrimination claims in cases lacking genuine issues of material fact." (Citation omitted.) Id.,

40. Courts "must . . . carefully distinguish between evidence that allows for a reasonable inference of discrimination and evidence that gives rise to mere speculation and conjecture. . . . [A]n inference is not a suspicion or a guess." (Internal quotation marks omitted.) *Bickerstaff* v. *Vassar College*, 196 F.3d 435, 448 (2d Cir. 1999), cert. denied, 530 U.S. 1242, 120 S. Ct. 2688, 147 L. Ed. 2d 960 (2000). "Judicial circumspection is particularly warranted in the context of academic decisions concerning medical competency. Put simply, courts are not supposed to be learned in medicine and are not qualified to pass opinion as to the attainments of a student in medicine." (Internal quotation marks omitted.) *Gupta* v. *New Britain General Hospital*, 239 Conn. 574, 595, 687 A.2d 111 (1996).

In its motion for summary judgment, the defendant argues that the plaintiff has failed to prove that he was discriminated against on the basis of his sexual orientation or gender. It asserts that there are no genuine issues of material fact in light of the plaintiff's deposition testimony and that it is entitled to judgment as a matter of law. The defendant challenges specifically the fourth element of the prima facie case: whether the plaintiff's termination occurred in context giving rise to an inference of discrimination. Additionally, it argues that the plaintiff has failed to show that the defendant's legitimate, nondiscriminatory reason for terminating the plaintiff—repeated, documented performance deficiencies—is pretext.[8]

In his opposition to the motion for summary judgment, the plaintiff argues that, in light of comments from two key decision makers and alleged unfair treatment, he has submitted sufficient evidence of discrimination to survive summary judgment. The plaintiff argues that a material question of intent remains, which cannot properly be decided on summary judgment.[9]

As the defendant has argued only that the plaintiff has failed to establish an inference of discrimination, the court will assume for purposes of the summary judgment motion that the first three factors of the plaintiff's prima facie case have been met.[10] In light of the overlap between the evidence and analysis applicable to the plaintiff's first and second counts of disparate treatment, the court will discuss them together.

Viewing the evidence in the light most favorable to the plaintiff, the court finds that the plaintiff has failed to meet his burden to establish a prima facie case of employment discrimination on the basis of his gender or sexual orientation. The essence of the plaintiff's discrimination claim centers on alleged homophobic remarks from two doctors involved in the defendant's residency and his allegations that he was treated unfairly in the program. In his deposition, the plaintiff explicitly stated that he is only alleging that two of his supervising doctors, Drs. Cardella and Sarac, discrimi-

nated against him. Trejo Deposition 345–46.

A

Plaintiff's Prima Facie Case

1

Discriminatory Comments

"[S]tray remarks, even if made by a decision maker, do not constitute sufficient evidence [to support] a case of employment discrimination. . . . Verbal comments constitute evidence of discriminatory motivation when [an employee] demonstrates that a nexus exists between the allegedly discriminatory statements and [an employer's] decision to discharge [the employee]." (Citation omitted; internal quotation marks omitted.) *Hartford* v. *Commission on Human Rights & Opportunities*, 208 Conn. App. 755, 773, 267 A.3d 883 (2021). "[T]he task is . . . to assess the remarks' tendency to show that the [decision maker] was motivated by assumptions or attitudes relating to the protected class. . . . Courts have found the following factors relevant to such a determination: (1) who made the remark, i.e., a [decision maker], a supervisor, or a low-level coworker; (2) when the remark was made in relation to the employment decision at issue; (3) the content of the remark, i.e., whether [the finder of fact] could view the remark as discriminatory; and (4) the context in which the remark was made, i.e., whether it was related to the [decision-making] process." (Internal quotation marks omitted.) Id., 774.

Even if taken as true, the alleged discriminatory comments fail to satisfy the plaintiff's burden to show that his termination occurred in circumstances giving rise to an inference of discrimination. "In the absence of a clearly demonstrated nexus to an adverse employment action, stray workplace remarks are insufficient to defeat a summary judgment motion." (Internal quotation marks omitted.) *Hasemann* v. *United Parcel Service of America, Inc.*, United States District Court, Docket No. 3:11-cv-554 (VLB) (D. Conn. February 26, 2013). The alleged remarks in this case were made by two of fourteen decision makers, whose decision was informed by years of evaluations from doctors and nurses from around the hospital. See *Hartford* v. *Commission on Human Rights & Opportunities*, supra, 208 Conn. App. 777 (to succeed on claim that one employee's discriminatory animus influenced others to mistreat or unfairly evaluate employee, plaintiff must establish causal connection between their remarks and decision to terminate).

The plaintiff's testimony establishes that the earliest comment occurred months before the plaintiff was placed on a remediation plan and over a year before he was terminated. Even the later comments were not made in close temporal proximity to the plaintiff's April, 2017 termination notice. Although there is no bright-

line time frame, "the more remote and oblique the remarks are in relation to the employer's adverse action, the less they prove that the action was motivated by discrimination." *Tomassi* v. *Insignia Financial Group, Inc.*, 478 F.3d 111, 115 (2d Cir. 2007), abrogated on other grounds by *Gross* v. *FBL Financial Services, Inc.*, 557 U.S. 167, 129 S. Ct. 2343, 174 L. Ed. 2d 119 (2009).

The circumstances in which the comments were made also bear on whether they were motivated by discrimination. The plaintiff testified that the word "cocksucker" was part of Dr. Cardella's routine vocabulary, was only potentially directed at the plaintiff on one occasion, and that Dr. Cardella would also direct the word at patients and inanimate objects out of frustration. Trejo Deposition 354. Though the word itself could be considered homophobic in origin by a fact finder, the plaintiff adduced no evidence that it was used in a discriminatory manner toward the plaintiff. See *Asante-Addae* v. *Sodexo, Inc.*, United States District Court, Docket No. 3:13-CV-00489 (VLB) (D. Conn. March 31, 2015) (comments did not support inference of discrimination in adverse employment action where "without any additional facts or context, it would require a series of logical leaps to construe [the] statements in the manner [the plaintiff] apparently has"), aff'd, 631 Fed. Appx. 68 (2d Cir. 2016).

Additionally, as to the context in which the remark was made, it was uttered in a "setting of being frustrated or upset in an operative environment." Huot Deposition 29. The plaintiff stated, "[t]here are plenty of surgeons who use derogatory terms in the operating room." Trejo Deposition 354. Though Dr. Cardella's word choice was unprofessional and inappropriate, the evidence does not support an inference that his comment was connected to the nonrenewal decision. Nor does the plaintiff connect the "real men" or "real surgeons" comments to the group decision-making process. See *Hasemann* v. *United Parcel Service of America, Inc.*, supra, United States District Court, Docket No. 3:11-cv-554 (VLB) (though comments could be viewed as discriminatory by reasonable juror, no inference of discrimination where comments were not made in relation to employment decision or decision-making process). "The relevance of discrimination-related remarks does not depend on their offensiveness, but rather on their tendency to show that the decision-maker was motivated by assumptions or attitudes relating to the protected class." *Tomassi* v. *Insignia Financial Group, Inc.*, supra, 478 F.3d 116.

As to the tee ball comment, the evidence shows that when the plaintiff relayed his concerns to Dr. Huot, Dr. Huot specifically asked the plaintiff whether he felt he was being discriminated against because of his sexual orientation. The plaintiff said no. Fisher Affidavit ¶ 10; Huot Affidavit ¶ 14; Huot Deposition 20; Trejo Deposi-

tion 245–46.[11] It was during that meeting that Dr. Huot shared with the plaintiff that he is also homosexual, to identify himself as an ally. Huot Affidavit ¶ 13. In this meeting, the plaintiff specifically disavowed any feeling that he was being discriminated against on the basis of his sexual orientation. In addition, there is no evidence of a temporal or logical connection between the comments and the adverse employment decision. According to the plaintiff, the tee ball incident occurred in February, 2016, over a year before the nonrenewal decision.

Viewing the evidence in the light most favorable to the plaintiff and assuming the allegations regarding these comments are true, a reasonable jury would find that they are insufficient to meet the plaintiff's burden to show an inference of discrimination in his termination.

2

Unfair Treatment

"Allegations of unfair treatment directed at a member of a protected class do not create a fact issue for trial absent a basis to conclude that that unfair treatment arose *because of* the victim's membership in that class." (Emphasis in original.) *Hoag* v. *Fallsburg Central School District*, 279 F. Supp. 3d 465, 483 (S.D.N.Y. 2017).

The plaintiff alleges that he was deprived of opportunities and recognition given to other similarly situated employees because of his gender and sexual orientation. Complaint, Count One, ¶ 54 (b); Count Two, ¶ 57 (b). He also alleges that the defendant treated him adversely compared to similarly situated employees on the basis of his sexual orientation. Complaint, Count Two, ¶ 57 (g). The plaintiff alleges that he was treated unfairly during his residency program by, among other things, being given unrealistic assignments, being punished for behavior other residents engaged in but for which they were not punished, being taken off critical rotations, and not receiving key feedback. See Plaintiff's Memorandum in Opposition, p. 12.

These allegations do not contribute to an inference of discriminatory intent on the part of the defendant or its employees because the plaintiff did not show how his treatment or the expectations imposed on him differed from any of the other vascular residents. Ordinarily, "a litigant may present circumstantial evidence from which an inference may be drawn that similarly situated individuals were treated more favorably than [he] was. . . . To be similarly situated, the individuals with whom [the plaintiff] attempts to compare [himself] must be similarly situated in all material respects." (Citation omitted; internal quotation marks omitted.) *Luth* v. *OEM Controls, Inc.*, 203 Conn. App. 673, 681, 252 A.3d 406 (2021). The plaintiff provides no specific comparator nor anything other than vague hearsay statements of others to show that other residents made the same recordkeeping errors and were not punished.

See *Alvarez* v. *Middletown*, 192 Conn. App. 606, 618, 218 A.3d 124 (no material issue of fact raised where plaintiff did not dispute performance deficiencies but claimed others had same deficiencies and were not discharged, yet failed to provide evidence to substantiate assertion), cert. denied, 333 Conn. 936, 218 A.3d 594 (2019); *Harris* v. *Dept. of Correction*, 154 Conn. App. 425, 432–33, 107 A.3d 454 (2014) (no material issue of fact as to inference of discrimination where plaintiff failed to offer evidence to demonstrate other employee was punished less for same offense or that had similar disciplinary record), cert. denied, 315 Conn. 925, 109 A.3d 921 (2015). There is no factual basis from which a jury could conclude that the plaintiff was being singled out in a discriminatory manner on the basis of his gender or sexual orientation.

Similarly, the plaintiff's claims that he was taken off key rotations and was not provided enough opportunities to rotate in vascular surgery in the 2015-16 program year—which he speculates Dr. Sarac had "something to do with"—are hollow absent a basis of comparison. This is particularly true because the plaintiff acknowledges that there was a neutral reason why Dr. Sarac may have wanted changes to the schedule—to enable general surgery residents to rotate in the vascular surgery program. See Trejo Deposition 148. General complaints about the fairness of the residency program are insufficient to raise an inference of discrimination without a connection to the plaintiff's protected class status. See *McGuire-Welch* v. *House of the Good Shepherd*, 720 Fed. Appx. 58, 61 (2d Cir. 2018) (plaintiff's complaint of unfair treatment and antagonistic behavior by supervisor did not satisfy burden to show discrimination).

The defendant produced evidence of concerns raised by multiple surgeons regarding the plaintiff's ability to complete surgical procedures. See Cardella Affidavit ¶¶ 8, 9, 12; Cardella Deposition 31–32; Fisher Affidavit ¶ 6. The plaintiff has not provided evidence from which a reasonable jury could determine that the plaintiff was not chosen to participate in surgery—for example, on the occasion following the "real surgeons" comment—for reasons other than the deficiencies in his performance. See *Andrade* v. *Lego Systems, Inc.*, Superior Court, judicial district of Hartford, Docket No. CV-14-6053523-S (January 26, 2018) (reprinted at 188 Conn. App. 655, 666–68, 205 A.3d 810) (plaintiff's claim that denial of opportunities harmed his performance does not give rise to inference of discrimination where plaintiff provided no evidence that similarly situated employees were on performance plans or had same documented performance issues), aff'd, 188 Conn. App. 652, 205 A.3d 807 (2019), cert. denied, 331 Conn. 921, 205 A.3d 567 (2019). Because the plaintiff failed to provide any evidence concerning other residents he claims were favored, there is no factual basis on which a jury could

determine that he was treated differently because of his sexual orientation or gender.

The plaintiff's subjective belief that the remediation plan was designed for him to fail also cannot create a genuine issue of material fact to preclude summary judgment. The evidence shows that the defendant created and altered the remediation process in order to help the plaintiff succeed. When the plaintiff felt he was being evaluated too harshly by Dr. Cardella in his remediation exams; Huot Affidavit ¶ 10; the defendant agreed to have Dr. Contessa attend the remaining two thirds of the plaintiff's oral exams. Cardella Affidavit ¶ 15; Trejo Deposition 192. Additionally, in response to this concern, Dr. Huot reviewed the process as well as feedback from other doctors to ensure the ACGME process was being followed. Huot Affidavit ¶ 10. While the plaintiff speculates that Dr. Cardella added questions to each exam in an effort to prevent him from finishing; Trejo Deposition 199; he offers no evidence to substantiate this assumption. By contrast, the defendant shows that Dr. Cardella included repeat questions in an effort to provide the plaintiff with an opportunity to improve his score. Cardella Affidavit ¶ 15, Ex. N. Moreover, he was not penalized for leaving questions unanswered yet still scored below target. Cardella Affidavit, Ex. L; see *Agosto* v. *Premier Maintenance, Inc.*, 185 Conn. App. 559, 584, 197 A.3d 938 (2018) (finding that plaintiff's failure to adduce evidence showing he was treated less favorably than other employees, and where employer actually gave plaintiff preferential treatment, weighed against inference of discrimination). The plaintiff's conjecture cannot create a genuine issue of material fact in light of the defendant's evidence.

Finally, the plaintiff's claims of being treated unfairly are undercut by his testimony that other residents outside his protected class also felt they were treated unfairly by Drs. Cardella and Sarac. See Trejo Deposition 255 ("it's my understanding that there were plenty of residents who had issues with Dr. Sarac, and now Dr. Cardella after I left"). The plaintiff testifies that "Lindsey," a female, heterosexual resident in his program, also "felt specifically targeted by Dr. Sarac"; id.; and the complaint alleges that certain female residents complained to the defendant about Dr. Sarac. Complaint ¶ 19. To the plaintiff's knowledge, none of the other residents who felt that they were treated unfairly were homosexual. Trejo Deposition 256. Two other residents made complaints to Dr. Huot that they were unhappy with Dr. Sarac shouting in the workplace. Huot Deposition 26, 28. "Conduct that is offensive but that is directed at and impacts members of protected classes equally is not actionable . . . . Put bluntly, the equal opportunity harasser escapes the purview of . . . liability." (Internal quotation marks omitted.) *Sherman* v. *Fivesky, LLC*, United States District Court, Docket No.

19-cv-8015 (LJL) (S.D.N.Y. May 5, 2020).

The plaintiff cannot create a genuine issue of material fact based on mere speculation, unsubstantiated by evidence. "Although the court must view the inferences to be drawn from the facts in the light most favorable to the party opposing the motion . . . a party may not rely on mere speculation or conjecture as to the true nature of the facts to overcome a motion for summary judgment. . . . A party opposing a motion for summary judgment must substantiate its adverse claim by showing that there is a genuine issue of material fact together with the evidence disclosing the existence of such an issue." (Internal quotation marks omitted.) *Perez* v. *Metropolitan District Commission*, supra, 186 Conn. App. 476. Even viewing all of the facts in the light most favorable to the plaintiff, a reasonable jury could not find an inference of discrimination in the circumstances of his nonrenewal based upon the evidence provided. Accordingly, the defendant has shown that there is no genuine issue of material fact and that the plaintiff has failed to establish his prima facie case as a matter of law. Further, even if the plaintiff satisfied his burden to establish his prima facie case, the defendant has presented a legitimate, nondiscriminatory reason for his discharge.

B

Employer's Reason for Nonrenewal

"The employer may . . . rebut the prima facie case by stating a legitimate, nondiscriminatory justification for the employment decision in question." (Internal quotation marks omitted.) *Feliciano* v. *Autozone, Inc.*, supra, 316 Conn. 74. "Where an employment relationship is primarily educational, courts from the Supreme Court, various Courts of Appeal, state courts and trial courts have recognized that judges and juries are singularly unequipped to review judgments about professional qualification." *Abdel-Raouf* v. *Yale University*, United States District Court, Docket No. 3:12CV776 (HBF) (D. Conn. February 18, 2015); see *Gupta* v. *New Britain General Hospital*, supra, 239 Conn. 594 ("we approach with caution, and with deference to academic decisionmaking, the plaintiff's challenge to the motivation of the hospital in terminating his residency").

Even if the plaintiff has made his prima facie case, the defendant has provided a legitimate, nondiscriminatory reason for the plaintiff's discharge, supported by extensive, uncontroverted evidence. The defendant's evidence shows that the plaintiff was placed on a remediation program to attempt to help him improve clinical and performance deficiencies in order to eventually pass the boards and become a safe and competent vascular surgeon. The plaintiff's performance issues persisted throughout the remediation process, evidenced by the evaluations of multiple doctors as well as his

scores on standardized exams.

The record contains substantial evidence proffered by the defendant sufficient to support a legitimate, nondiscriminatory reason for the CCC's decision—that the plaintiff's performance difficulties persisted and that his scores on standardized exams were below expectations. The evidence also shows documented performance deficiencies before any of the alleged discriminatory acts. In light of the special deference afforded to employers who train medical professionals, even if the plaintiff had established a prima facie case, the defendant met its burden to rebut any inference of discrimination. The plaintiff provided no contradictory evidence beyond his own opinion or speculation.

C

No Showing of Pretext

"To prove pretext, the plaintiff may show . . . that [the defendant's] reason is not worthy of belief or that more likely than not it is not a true reason or the only true reason for [the defendant's] decision to [terminate the plaintiff's employment] . . . . Of course, to defeat summary judgment . . . the plaintiff is not required to show that the employer's proffered reasons were false or played no role in the employment decision, but only that they were not the only reasons and that the prohibited factor was at least one of the motivating factors. . . . A plaintiff may show pretext by demonstrating such weaknesses, implausibilities, inconsistencies, incoherences, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable [fact finder] could rationally find them unworthy of credence and hence infer that the employer did not act for the asserted non-discriminatory reasons." (Citation omitted; internal quotation marks omitted.) *Stubbs* v. *ICare Management, LLC*, 198 Conn. App. 511, 522–23, 233 A.3d 1170 (2020). "When a party opposing a motion for summary judgment has failed to provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact concerning intent, summary judgment is appropriate." *Tuccio Development, Inc.* v. *Neumann*, 114 Conn. App. 123, 130, 968 A.2d 956 (2009).

In his complaint, the plaintiff alleges that "[a]ny and all excuses to be offered by the defendant to explain the termination decision would be a pretext to mask unlawful discrimination and/or retaliation." Complaint ¶ 51. In response, the defendant argues that there is no evidence that its reason for his dismissal was a pretext for discrimination.

The plaintiff has not met his burden to show that the defendant's nondiscriminatory reason for his dismissal is pretext to hide illegal motivations. The plaintiff has only alleged discriminatory animus on the part of only two doctors, Sarac and Cardella. As discussed above, the decision to terminate the plaintiff was made or

approved by the multiple members of the CCC, the institution's DIO, and the plaintiff's mentor, and in the end was ratified by fourteen individuals. The plaintiff has provided no evidence to show that the decision was infected by discriminatory animus or that these two doctors had control over the outcome of the CCC's review of the plaintiff's performance. In fact, Dr. Cardella, along with other CCC members, felt strongly that the plaintiff should be dismissed as of the January 10, 2017 CCC meeting but was persuaded by others to withhold the decision pending the VSITE scores. Cardella Affidavit ¶ 19; Huot Affidavit ¶ 11. Courts decline to find an inference of discrimination in an adverse employment decision where the decision was made by multiple actors and the plaintiff cannot show that the group was influenced by a member's alleged discriminatory animus. See *Cerutti* v. *BASF Corp.*, 349 F.3d 1055, 1066 (7th Cir. 2003) (in multiple decision maker cases, plaintiff must "present evidence from which a reasonable jury could infer that [the allegedly discriminatory decision makers'] prejudicial views influenced their fellow panel members to such a degree that it resulted in their being terminated"), overruled in part on other grounds by *Ortiz* v. *Werner Enterprises*, *Inc.*, 834 F.3d 760 (7th Cir. 2016); *Hussain* v. *Federal Express Corp.*, 657 Fed. Appx. 591, 595 (7th Cir. 2016) ("[w]hen a hiring decision is made by a committee that is untainted by the bias of one of its members, the causal link between that prejudice and the adverse employment action is severed" (internal quotation marks omitted)); *Champion* v. *New York State Office of Parks*, *Recreation & Historic Preservation*, 500 F. Supp. 3d 26, 47 (S.D.N.Y. 2020) (gender discrimination claim undermined by employer's process involving multiple decision makers); *Abdel-Raouf* v. *Yale University*, supra, United States District Court, Docket No. 3:12-CV-776 (HBF) (no inference of discrimination in part because decision to terminate was made by committee and based upon summaries of all attendings' evaluations); *Anaya* v. *Donahoe*, United States District Court, Docket No. 08 CV 3842 (ALC) (E.D.N.Y. August 26, 2011) (no inference of discrimination where plaintiff only believed one member of committee had discriminatory animus against him); *Jalal* v. *Columbia University*, 4 F. Supp. 2d 224, 239 (S.D.N.Y. 1998) (no inference that group was influenced by committee member's alleged discrimination where each member already "had grave reservations about the quality of [plaintiff's] work").

Further, the decision was made based upon negative evaluations of the plaintiff over the course of his residency, which included feedback from doctors the plaintiff worked with across the hospital. See *Beards* v. *Bronx-Care Health System*, United States District Court, Docket No. 18 Civ. 12216 (PAE) (S.D.N.Y. February 23, 2021) ("[w]here multiple evaluators express dissatisfaction with an employee's performance, that undercuts the

inference that the ultimate decision-maker acted out of discrimination"); *Sotomayor* v. *New York*, 862 F. Supp. 2d 226, 259 (E.D.N.Y. 2012) ("[a] discriminatory inference can be rebutted when multiple evaluators all express dissatisfaction with the plaintiff's performance"), aff'd, 713 F.3d 163 (2d Cir. 2013).

The plaintiff has provided no evidence to respond to the defendant's extensive documentation of his performance issues. Additionally, concerns about the plaintiff's clinical competencies and academic knowledge existed before any of the allegedly discriminatory events occurred. These academic deficiencies are in part evidenced by his scores on standardized exams scored by third parties outside of the hospital. Further refuting any finding of irregularity or inconsistency in their actions, the defendant's evidence shows that its actions were not unusual. The hospital has placed others on remediation plans, some of whom did not successfully complete their remedial period, and at least nineteen residents have resigned in lieu of contract nonrenewal due to performance issues since 2015. Cardella Deposition 42; Huot Affidavit ¶ 16. This included at least one other man in the plaintiff's same program, and none of these residents lodged discrimination claims. Huot Affidavit ¶ 16.

There is insufficient evidence from which a jury could determine that the circumstances surrounding the plaintiff's nonrenewal could give rise to an inference of discrimination. The defendant offered extensive evidence that belies any such inference. The plaintiff has produced no evidence in response that raises a genuine issue of material fact. Accordingly, summary judgment is granted on the disparate treatment claims.

III

Retaliation

"A prima facie case of retaliation requires a plaintiff to show (1) that he or she participated in a protected activity that is known to the defendant, (2) an employment action that disadvantaged the plaintiff and (3) a causal relation between the protected activity and the disadvantageous employment action. . . . The term protected activity refers to action taken to protest or oppose statutorily prohibited discrimination. . . . The law protects employees in the filing of formal charges of discrimination as well as in the making of informal protests of discrimination, including making complaints to management, writing critical letters to customers, protesting against discrimination by industry or society in general, and expressing support of [coworkers] who have filed formal charges." (Citations omitted; internal quotation marks omitted.) *Agosto* v. *Premier Maintenance, Inc.*, supra, 185 Conn. App. 587.

"Once a prima facie case of retaliation is established, the burden of production shifts to the employer to dem-

onstrate that a legitimate, [nondiscriminatory] reason existed for its action. . . . If the employer demonstrates a legitimate, nondiscriminatory reason, then [t]he burden shifts . . . back to the plaintiff to establish, through either direct or circumstantial evidence, that the employer's action was, in fact, motivated by discriminatory retaliation." (Internal quotation marks omitted.) *Luth* v. *OEM Controls, Inc.*, supra, 203 Conn. App. 690.

In the third count of the plaintiff's complaint, he alleges retaliation in violation of § 46a-60 (a) (4), claiming that he was terminated "as a result of the plaintiff's complaints opposing sexual orientation and gender discrimination in the workplace." Complaint, Count Three, ¶ 60 (a).

In its motion for summary judgment, the defendant argues that none of the plaintiff's pre-dismissal concerns constitute protected activity under CFEPA, there is no causal connection, and the [defendant] has articulated a legitimate, nondiscriminatory reason for his dismissal. In response, the plaintiff argues that he engaged in a protected activity by bringing complaints about his treatment to individuals within the defendant's organization.

The plaintiff fails to meet his burden to establish a case of retaliation because he offered no evidence that he engaged in a protected activity.[12] The plaintiff's comments to the ACGME do not amount to a protected activity because they were not an "action taken to protest or oppose statutorily prohibited discrimination." (Internal quotation marks omitted.) *Agosto* v. *Premier Maintenance, Inc.*, supra, 185 Conn. App. 587. The plaintiff testified that he was concerned with duty hours, not having enough time to study due to those hours, that he had not received evaluations, and that vascular rotations were being taken away from the vascular residents and given to the general surgery residents "because of the politics of the department." Trejo Deposition 240–41. The plaintiff did not tell the ACGME that he felt he was being treated differently because of his sexual orientation or gender or any other statutorily prohibited reason. Trejo Deposition 241. None of these comments constitute a protected activity under the law. "We have repeatedly held that generalized grievances about an unpleasant or even harsh work environment, without more, do not reasonably alert an employer of *discriminatory* conduct and therefore fail to rise to the level of protected activity." (Emphasis in original.) *Green* v. *Mount Sinai Health System, Inc.*, 826 Fed. Appx. 124, 125 (2d Cir. 2020); see also *Rojas* v. *Roman Catholic Diocese of Rochester*, 660 F.3d 98, 108 (2d Cir. 2011) (any complaints made by plaintiff were generalized and therefore could not be protected activity for retaliation claim), cert. denied, 565 U.S. 1260, 132 S. Ct. 1744, 182 L. Ed. 2d 530 (2012).

There is no evidence that the plaintiff complained about sexual orientation or gender discrimination before he received his nonrenewal notice.[13] Both Dr. Fisher and Dr. Huot were surprised to hear the plaintiff's concerns of discrimination following the notice, particularly in light of the plaintiff's prior disavowals of any discrimination. Fisher Affidavit ¶ 10; Huot Affidavit ¶ 14.

Even if the plaintiff's allegations regarding his complaints prior to his nonrenewal were not directly contradicted by his own testimony, the plaintiff nonetheless has failed to meet his burden for a claim of retaliation because the employer has given a legitimate, nondiscriminatory reason for his dismissal that the plaintiff cannot show is pretext. Accordingly, the defendant's motion for summary judgment is granted as to the retaliation claim.

CONCLUSION

For all of the foregoing reasons, the defendant's motion for summary judgment is granted in its entirety.

* Affirmed. *Trejo* v. *Yale New Haven Hospital, Inc.*, 218 Conn. App. , A.3d (2023).

[1] The defendant objected to the plaintiff's opposition papers to the motion for summary judgment as untimely. The court overrules the defendant's objection and has considered all of the parties' submissions on summary judgment.

[2] The plaintiff's complaint also alleges that Dr. Cardella referred to the plaintiff as girly and weak; Complaint ¶ 48; and alleges additional comments were made by "defendant." The plaintiff was uncertain if, when, or by whom these comments allegedly were made. See Trejo Deposition 419. For the purposes of a hearsay determination; see Defendant's Motion for Summary Judgment, pp. 19, 23; it is unclear whether these comments were made to the plaintiff or heard by third parties and communicated to the plaintiff. See Huot Deposition 33.

[3] The complaint does not specify when this event occurred; the plaintiff testified to the February, 2016, date at his deposition. See Trejo Deposition 245–46.

[4] The ACGME is an oversight body that accredits most, if not all, resident and fellowship training positions for physicians. Huot Deposition 8. The ACGME "establishes nationalized educational standards . . . as well as various qualifications, evaluative standards and processes, including the formation of a Clinical Competency Committee." Huot Affidavit ¶ 6. The defendant's CCC is made up of Drs. Cardella, Chaar, and Orion. Defendant's Motion for Summary Judgment, p. 10. "Milestones are knowledge, skills, attitudes, and other attributes for each of the ACGME competencies organized in a developmental framework from less to more advanced." Cardella Affidavit, Ex. A.

[5] Earlier in his deposition the plaintiff testified that it was Dr. Cardella who made the "real surgeons" comment. Trejo Deposition 356.

[6] In his deposition, the plaintiff testified that he believes the meeting occurred in "maybe June or July" of 2016. Trejo Deposition 235.

[7] The plaintiff testified: "I want to say I even said, I don't think I'm being discriminated against, but something—I'm definitely being mistreated here." Trejo Deposition 240.

[8] In its reply, the defendant argues that the plaintiff's gender discrimination claim also fails because the plaintiff testified at his deposition that he does not believe he was discriminated against because of his gender. Defendant's Reply, p. 8. The plaintiff testified that he does not think Dr. Sarac discriminated against him for being male and does not know if Dr. Cardella did. Trejo Deposition 350–51. He further testified that the comments that Dr. Sarac made were specific to his mannerisms or behavior, which were unlike how other males might be expected to behave. Id. The totality of the plaintiff's deposition supports his belief that he was discriminated against because

of sex stereotyping. "Sex stereotyping [by an employer] based on a person's gender non-conforming behavior is impermissible discrimination. . . . That is, individual employees who face adverse employment actions as a result of their employer's animus toward their *exhibition of behavior considered to be stereotypically inappropriate for their gender may have a claim* . . . ." (Emphasis added; internal quotation marks omitted.) *Commission on Human Rights & Opportunities* v. *Hartford*, 138 Conn. App. 141, 163, 50 A.3d 917, cert. denied, 307 Conn. 929, 55 A.3d 570 (2012).

[9] The plaintiff also argues that "McDonnell Douglas and Price Waterhouse are analytical tools and nothing more," and instead articulates a legal standard citing to the Seventh Circuit in a case under 42 U.S.C. § 1981 and Illinois state law. Plaintiff's Memorandum in Opposition, p. 11. Given the extensive Connecticut appellate precedent employing the *McDonnell-Douglas* framework, the court will utilize that approach.

[10] The defendant does not concede that the plaintiff has satisfied the other elements of his prima facie case, particularly that he was qualified for the position. Defendant's Motion for Summary Judgment, p. 17 n.12.

[11] The complaint alleges that the plaintiff "was not sure but there had been many explicit comments made that were very homophobic and pejorative in nature"; Complaint ¶ 34; but the plaintiff did not adduce admissible evidence supporting those allegations. See *GMAC Mortgage, LLC* v. *Ford*, supra, 144 Conn. App. 178 (party opposing summary judgment motion cannot rely solely on allegations in pleadings that contradict those offered by moving party).

[12] The complaint alleges that "[d]uring each meeting, the plaintiff stated that he believed that he was being treated discriminatorily and that Dr. Sarac had a preference toward the heterosexual male residents in the operating room." Complaint ¶ 29. Paragraph 39 alleges that the plaintiff and two other residents met with Dr. Huot to discuss "what the plaintiff believed were discriminatory actions taken against him." The plaintiff's deposition testimony, however, undercuts this allegation. As noted above, the plaintiff did not meet the defendant's evidence with admissible evidence supporting these allegations.

[13] Complaints made after the nonrenewal notice cannot form the basis of a claim for retaliation because the dismissal decision had already been made. Though "[t]here is no bright line to define the outer limits beyond which a temporal relationship is too attenuated to establish a causal relationship between [protected activity] and an allegedly retaliatory action"; (internal quotation marks omitted) *Ayantola* v. *Board of Trustees of Technical Colleges*, 116 Conn. App. 531, 539, 976 A.2d 784 (2009); as a point of logic, the protected activity should come first in order to be the cause of the retaliatory action. See *Krahm* v. *Fairfield*, Superior Court, judicial district of Fairfield, Docket No. CV-04-4000006-S (October 1, 2009) ("[t]o be actionable retaliation, the adverse employment action must occur *after* the plaintiff engages in a protected activity" (emphasis in original)).