

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 25-1720**

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SHAGHAYEGH MIRSHAHI, M.D.,

Plaintiff – Appellant,

v.

PATIENT FIRST RICHMOND MEDICAL GROUP, LLC; W. KENT SCHUELE,  
M.D.; JENNIFER CERICOLA, RN,

Defendants – Appellees.

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Appeal from the United States District Court for the Eastern District of Virginia, at  
Richmond. M. Hannah Lauck, Chief District Judge. (3:23-cv-00495-MHL)

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Submitted: April 6, 2026

Decided: May 27, 2026

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Before KING, AGEE, and HEYTENS, Circuit Judges.

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Affirmed by unpublished opinion. Judge Heytens wrote the opinion, which Judge King and  
Judge Agee joined.

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**ON BRIEF:** Ellen K. Renaud, LAW OFFICES OF ELLEN K. RENAUD, Alexandria,  
Virginia, for Appellant. David E. Constine, III, Andrew J. Henson, TROUTMAN PEPPER  
LOCKE LLP, Richmond, Virginia, for Appellees.

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Unpublished opinions are not binding precedent in this circuit.

TOBY HEYTENS, Circuit Judge:

Dr. Shaghayegh Mirshahi worked as a physician at one of Patient First Richmond Medical Group’s clinics. After she was fired, Mirshahi sued Patient First and two of its employees (her direct supervisor and a nurse), asserting her termination violated Virginia public policy, state whistleblower protections, and state and federal antidiscrimination laws. Mirshahi also alleged a state-law defamation claim. The district court ruled for the defendants on all claims. We affirm.

I.

The district court dismissed three of Mirshahi’s claims under Federal Rule of Civil Procedure 12(b)(6): unlawful termination in violation of Virginia public policy (Count 1); retaliatory discharge in violation of the Virginia Whistleblower Protection Act (Count 2); and defamation per se (Count 5). We review those decisions “de novo, applying the same standards as the district court.” *Pendleton v. Jividen*, 96 F.4th 652, 656 (4th Cir. 2024).

Counts 1, 2, and 5 stem from an incident on the morning of July 13, 2021. According to the complaint—whose factual allegations we accept as true in this posture—Mirshahi arrived at work feeling sick and “was reasonably concerned she might have COVID-19.” JA 13. Patient First contacted a replacement, but the defendant nurse told Mirshahi that her supervisor “said she needed to ‘Get up and go see patients until your replacement comes in!’” JA 14. Mirshahi “refused to see any patients” that day and eventually went home “because of sickness.” JA 14–15. “[A]lmost as soon as [Mirshahi] got home,” her direct supervisor (the other individual defendant) began texting Mirshahi “about her return to work and whether she could switch shifts to come in.” JA 15. After some texting back and

forth, Mirshahi called the supervisor “and told him that his words and actions were inappropriate given her sick condition, and she asked him not to contact her again for the day.” JA 16. Mirshahi returned to work on July 25 and worked several shifts over the next four days. On the fourth day, Mirshahi’s supervisor told her that “Patient First had decided to terminate her contract.” JA 17.

A.

Mirshahi fails to show the district court erred in dismissing her public policy claim (Count 1). Virginia law “recognize[s] an exception to the doctrine of employment-at-will based on an employer’s violation of public policy in the discharge of an employee,” which is commonly known as a *Bowman* claim. *Rowan v. Tractor Supply Co.*, 559 S.E.2d 709, 710 (Va. 2002); see *id.* (explaining this exception “stems from” *Bowman v. State Bank of Keysville*, 331 S.E.2d 797 (Va. 1985)). Before the district court, Mirshahi argued her termination violated public policies set out in two statutes: Virginia Code § 54.1-2915(A) (defining “acts of unprofessional conduct” for Virginia physicians) and Virginia Code § 18.2-57 (assault and battery). On appeal, however, Mirshahi asserts Patient First’s conduct violated a COVID-era emergency *regulation* for infectious disease prevention “promulgated by the Virginia Department of Health.” Mirshahi Br. 28.

These belated efforts to shift gears are unavailing. Mirshahi does not argue she can establish the sort of “exceptional circumstances” necessary to obtain relief on a forfeited claim. *Hicks v. Ferreyra*, 965 F.3d 302, 310 (4th Cir. 2020) (quotation marks removed). Instead, Mirshahi contends she preserved her current argument before the district court because the “[c]omplaint noted that ‘treating patients while symptomatic . . . would violate

the COVID-19 guidelines set forth by the Virginia Department of Health (“VDH”) and the CDC.’” Mirshahi Reply Br. 3 (quoting JA 15). We doubt this single, generalized allegation was enough to put the district court on notice that Mirshahi asserted that Patient First’s actions violated the public policy embodied in the specific emergency COVID regulation she now cites for the first time on appeal.

But even if she could get over that forfeiture hurdle, Count 1 would still fail as a matter of law because the emergency COVID regulation Mirshahi cites does not contain the type of “explicit[] express[ion]” of public policy that her *Bowman* claim requires. *Rowan*, 559 S.E.2d at 711. No doubt, that regulation—like “virtually every statute”—“expresses a public policy of some sort.” *Id.* But as Virginia’s highest court has explained, not every “termination of an employee” that arguably violates “the policy underlying” a statute (much less a regulation) “give[s] rise to a common law cause of action for wrongful discharge.” *Id.* (quotation marks removed). Instead, the *Bowman* doctrine is a “narrow exception” to the Commonwealth’s normal rules and plaintiffs bringing such a claim must identify a “Virginia *statute*” expressly “establishing a public policy” they claim was violated. *Lawrence Chrysler Plymouth Corp. v. Brooks*, 465 S.E.2d 806, 809 (Va. 1996) (emphasis added). We thus affirm the district court’s dismissal of Count 1.

## B.

We reach the same conclusion about the district court’s dismissal of Mirshahi’s Whistleblower Protection Act claim (Count 2). Although Mirshahi cited other provisions of the Act before the district court, her arguments on appeal challenge only the court’s dismissal of her claim under Virginia Code § 40.1-27.3(A)(1). As relevant here, that

provision forbids “discharg[ing] . . . an employee” who “in good faith reports a violation of any federal or state law or regulation to a supervisor or to any governmental body or law-enforcement official.”

The bulk of Mirshahi’s arguments on appeal are not responsive to the district court’s reasoning. Mirshahi insists she adequately alleged her supervisor’s orders to see patients while sick violated state and federal law, but that is not what the district court found lacking. Instead, the court concluded the complaint failed to adequately allege that Mirshahi made a “good faith *report*[.]” about any such violation “to a supervisor or to any government body or law-enforcement official.” Va. Code § 40.1-27.3(A)(1) (emphasis added).

Mirshahi cites only one paragraph in the complaint—paragraph 71—to challenge the district court’s rejection of her claim. That paragraph made two allegations: (1) that Mirshahi “called” her supervisor “and told him that his words and actions were inappropriate given her sick condition”; and (2) that Mirshahi “e-mailed Patient First’s corporate headquarters, as well as the physician manager for [another clinic], and informed them that [her supervisor] and [the nurse] had told her to see patients even after she had been tested for COVID-19.” JA 16.

We agree with the district court that those allegations were insufficient. As for the first, there is “[a] sizeable gap . . . between ‘inappropriate’ conduct and conduct that violates a law or regulation.” JA 70. And—even assuming the other people Mirshahi emailed were “supervisor[s]” within the meaning of Virginia Code § 40.1-27.3(A)(1)—we agree that Mirshahi’s second allegation cannot plausibly be read to support the conclusion

that “she functionally reported a violation of any of the cited laws or regulations.” JA 69; cf. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” (quotation marks removed)). We do not hold a plaintiff must cite “a specific statute [or regulation] when she makes her report.” Mirshahi Br. 34. But to state a claim under the Act, an employee must plausibly allege she complained about conduct that violates a “federal or state law or regulation” rather than the employer’s own policies or general best practices. Va. Code § 40.1-27.3(A)(1). The complaint’s allegations failed to clear that bar here.

### C.

We also affirm the dismissal of Mirshahi’s defamation per se claim (Count 5). On appeal, Mirshahi relies exclusively on a statement the defendant nurse allegedly made to unspecified “co-workers” while Mirshahi was “waiting for her COVID-19 test results”: “She is not sick. She is not sick . . . *she’s pretending*.” JA 14 (boldface removed).

That statement does not give rise to a defamation per se claim. Under Virginia law, “defamatory words . . . are actionable per se” if they “prejudice [the plaintiff] in his or her profession or trade.” *Fleming v. Moore*, 275 S.E.2d 632, 635 (Va. 1981) (quotation marks removed). That test is stricter than it might first appear. For the relevant type of “prejudice to arise, the statements *must* relate to ‘the skills or character required to carry out the particular occupation of the plaintiff.’” *Swengler v. ITT Corp. Electro-Optical Products Div.*, 993 F.2d 1063, 1070–71 (4th Cir. 1993) (emphasis added) (quoting *Fleming*, 275 S.E.2d at 636). Here again, we agree with the district court: The statement Mirshahi

relies on neither “relate[s] to the skills or character required to carry out the particular occupation of physician” nor casts doubt on her abilities as a doctor. JA 79–80 (quotation marks removed). Compare *Virginia Citizens Def. League v. Couric*, 910 F.3d 780, 785 (4th Cir. 2018) (rejecting a lawyer’s defamation per se claim against the creators of an edited interview because that interview “had nothing to do with [the attorney’s] legal practice or expertise”), with *Tronfeld v. Nationwide Mut. Ins. Co.*, 636 S.E.2d 447, 449–50 (Va. 2006) (Agee, J.) (holding statements that an attorney “just takes people’s money” and that his “clients . . . would receive more money for their claims if they had not hired [him]” “prejudice[d] [the attorney] in his profession” (alterations removed)).

## II.

The district court granted summary judgment to Patient First on Mirshahi’s two remaining claims: “color, sex, and national origin” discrimination in violation of both Title VII of the Civil Rights Act of 1964 (Count 3) and the Virginia Human Rights Act (Count 4). JA 22–23. The district court applied the same legal standards when analyzing both the federal and state antidiscrimination claims, and neither party challenges that approach. Once again, we review the district court’s decision “de novo, applying the same legal standards as the district court.” *Alexander v. Connor*, 105 F.4th 174, 177 (4th Cir. 2024) (quotation marks removed). And, once again, we see no reversible error.

Based on the record developed during discovery, the district court concluded that a single decisionmaker—Patient First’s vice president—made the call to terminate Mirshahi’s employment after seeing a series of text messages Mirshahi sent her supervisor. In those messages, Mirshahi announced she would “not be micromanaged” and had

“decided” to “resume giving [non-Patient-First-approved handouts] to patients” despite having previously been directed to stop doing so. JA 364. Mirshahi stated she was not “interested in [corporate’s] theoretical problems” with the handouts and declared: “This is not a request. I am not asking permission.” *Id.* In a declaration submitted in support of the defendants’ motion for summary judgment, the vice president stated that he “decided that [Mirshahi] needed to be terminated because of the Text and her stated willful disregard for Patient First, [its] policies, and [her Physician Employment] Agreement.” JA 430.

In contrast, Mirshahi argues Patient First *really* fired her because she is a “female of Iranian heritage with a brown complexion.” JA 22. Because Mirshahi offered no “direct evidence of discrimination,” the district court analyzed her claims under “the burden-shifting framework set out in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), and its progeny.” *Wannamaker-Amos v. Purem Novi, Inc.*, 126 F.4th 244, 255 (4th Cir. 2025). “To establish a *prima facie* case of discrimination” under that framework, Mirshahi needed to show at least one “adverse action” that “occurred under circumstances that raise a reasonable inference of unlawful discrimination.” *Id.* (quotation marks removed). This is not simply a pleading requirement. Rather, to avoid summary judgment, Mirshahi had to produce “specific facts showing there is a genuine issue for trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986) (quotation marks removed); accord *Robinson v. Priority Auto. Huntersville, Inc.*, 70 F.4th 776, 785 (4th Cir. 2023) (stating that “neutral facts, an adverse action, and speculation about discriminatory motives” are insufficient “to make it past” summary judgment).

We agree with the district court that Mirshahi failed to produce sufficient evidence

from which a jury could reasonably infer that Patient First fired her for unlawful reasons.

To start, Mirshahi points to two emails—one sent more than three months before she was fired; the other, three weeks before—in which the vice president referred to Mirshahi as “Shagi” and described her as “crazy,” respectively. JA 441, 644. Mirshahi reasonably objects to both statements. But we conclude that neither—at least without other evidence absent here—suffices to raise an inference of discrimination based on color, sex, or national origin. Cf. *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006) (citing a treatise for the proposition that “snubbing by supervisors and co-workers [is] not actionable” under Title VII (quotation marks removed)).

Mirshahi also makes an argument based on timing, noting the vice president had announced an intent to discuss Mirshahi at an upcoming meeting before receiving the text messages Patient First asserts formed the basis for her termination. But even though we must draw all reasonable inferences in Mirshahi’s favor, see *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986), we conclude this fact—again, absent other evidence—raises no inference of unlawful discrimination. For one thing, we agree with the district court that the record is best read as establishing “that Dr. Mirshahi’s *complaints* of dealing with ageism, sexism, and racism” in the workplace—“rather than her color or national origin itself—were to be discussed at the meeting.” JA 131 (quotation marks removed). And even assuming a reasonable jury could infer that the vice president already viewed Mirshahi as a problem employee before seeing the text messages, that alone would not support a further inference that she was fired based on her color, sex, or national origin (or any protected characteristic).

Finally, Mirshahi asserts Patient First did not terminate one of its White employees—a physician’s assistant—despite a verbal outburst. But proposed comparators must be “similarly-situated in all respects,” *Cosby v. South Carolina Prob., Parole & Pardon Servs.*, 93 F.4th 707, 714 (4th Cir. 2024) (emphasis and quotation marks removed), and here they are not. As Patient First explains, the physician’s assistant “and Mirshahi had different supervisors, held different positions, and did not engage in the same” alleged misconduct. Patient First Br. 28. What is more, there is no dispute that it was the vice president—not Mirshahi’s direct supervisor or that supervisor’s supervisor—who made the decision to fire her, and Mirshahi points to no evidence calling into question the vice president’s statement that he knew nothing about the physician’s assistant’s conduct.

In every employment discrimination case, “[t]he ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff.” *Texas Dep’t of Cmty. Affs. v. Burdine*, 450 U.S. 248, 253 (1981). Because Mirshahi did not produce sufficient evidence to demonstrate she could carry that burden at trial, the district court correctly granted summary judgment against her on Counts 3 and 4.

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We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before us and argument would not aid the decisional process. The judgment is

*AFFIRMED.*