

Law Office of Rick Barton

A Professional Corporation

September 15, 2026

VIA EMAIL [GJARA@CPPPH.ORG]

Gail Jara, Executive Director
California Public Protection and
Physician Health, Inc.
One Capital Mall, Suite 800
Sacramento, California 95814

Re: Summary of Oral Argument in EEOC v. Yale-New-Haven Hospital
August 27, 2026

Dear Gail:

In March 2023, CPPPH was kind enough to sign on the attached Amicus Brief filed by my office in the matter of Equal Employment Opportunity Commission (EEOC), Plaintiff v. Yale-New Haven Hospital (YNHH), Defendant, in US District Court, New Haven, Connecticut. The lawsuit alleges that the YNHH Medical Staff Late Career Practitioner Policy (LCPP) screening medical staff applicants for appointment/reappointment at or over the age of 70 violates the federal Age Discrimination in Employment Act (ADEA) and Americans with Disabilities Act (ADA).

I am writing because after an extraordinary delay, there is finally something of substance to report on the case. Specifically, on August 27, 2026, I attended oral argument at the US District Court in Bridgeport, Connecticut on Motions to Dismiss filed by both the EEOC and YNHH. The motions were heard by US District Judge Kari Dooley. Following the 2+ hours of arguments, Judge Dooley did not issue a ruling from the bench. She advised that she was taking the motions under submission and would issue a written ruling at an unspecified time. I will obviously advise when we have Judge Dooley's written ruling.

As you know, the case was originally filed by the EEOC in 2020. The motions were filed in March 2023, meaning that oral arguments took place over three years after the filing of the written motions. The delay is explained in part by COVID. More accurately, the delay is explained by difficulty keeping the case in one of the Connecticut US District

Court's departments. For different reasons including retirement of one judge, the case was transferred along with other cases on the docket to three different judges in the past six years before finally being assigned to Judge Dooley who sits in Bridgeport. With each transfer, the newest judge was required to become familiar with the complex issues in the case and the additional cases on the department's docket.

My office was engaged early in the litigation to consult with the YNHH attorneys and to enlist interested healthcare systems, organizations and individuals to sign on to the Brief in support of the YNHH policy. As counsel for the Amici, I did not argue the case. It was argued very ably on behalf of YNHH by Mary Gambardella, Esq., of the Wiggin and Dana LLP firm in the New Haven, Connecticut office; and Christopher DeGross, Esq. of the Seyfarth Shaw LLP firm in Chicago.

While we do not yet have a formal written ruling, the oral arguments gave us an opportunity to (finally) hear the judge's reactions to the allegations by the EEOC and the arguments of the attorneys. A very positive aspect of the argument was Judge Dooley's very thoughtful approach and her clear knowledge of the nuances of the arguments of both sides.

BACKGROUND OF THE AMICUS BRIEF

The EEOC lawsuit challenged the YNHH LCPP implemented in 2016. The EEOC accepted the case after approximately 15 Yale physicians complained to the EEOC about being forced to undergo screening based on the age. The policy required a screening exam including neuropsychological, vision and physical examinations for applicants 70 years or older for appointment/reappointment to the YNHH Medical Staff.

The EEOC taking and prosecuting the case on behalf of the Yale physicians has created a very difficult dynamic for health systems and hospitals that have or were considering LCPP's. The EEOC as a government agency has the power to pursue cases against health systems with LCPP's throughout the country and in fact has done so. We are aware of systems and hospitals that received the same Notice of Unlawful Employment Practices that YNHH received to initiate the litigation. Some of those that received the Notice agreed to withhold implementation of their screening programs to avoid an EEOC lawsuit while awaiting guidance from the court in Connecticut.

All of the above rendered the effort to get signatories for the Amicus frustratingly difficult. Many declined to add their names to the Brief out of concern that the EEOC

would use their participation in support of YNHH as a means of identifying potential targets for litigation.

We are so grateful to you and the organizations that signed on to the Brief. It allowed additional voices committed to the effort to address the impact of the aging physician workforce to get before the court. I also hold the greatest respect for YNHH for its courageous decision to spend the resources and take on the risk of challenging the EEOC.

BACKGROUND OF THE MOTIONS HEARD BY THE COURT

The following sets forth what the motions sought and briefly summarizes the arguments made at the hearing. Once we receive Judge Dooley's written ruling, we will be in a position to more fully discuss what she ruled and the implications going forward.

EEOC Motion and Arguments

In its motion, the EEOC sought an order from the Court finding as a matter of law that YNHH's LCPP violated the federal Age Discrimination in Employment Act (ADEA) and the Americans with Disabilities Act (ADA). The EEOC argument at its essence was that notwithstanding the motivation to protect patients, the LCPP was discriminatory and that YNHH had not established that the LCPP was based on a "business necessity" that overrode the discriminatory nature of the program. The latter is an essential element in the defense to age and disability discrimination claims.

The EEOC argued that YNHH has very well-functioning quality-improvement, peer review and physician health programs that can identify and address age-related decline sufficiently to allow for intervention to assist practitioners and protect patients. Its experts challenged the validity of the studies showing age-related decline and poorer patient outcomes, claiming among other arguments the studies were not properly stratified. It argued that the YNHH screening program itself lacked accuracy and was therefore an unnecessary and discriminatory burden to impose on older practitioners. Finally, it argued that the hospital has other mechanisms to enhance its current quality oversight system, including training practitioners and staff to recognize signs of impairment.

YNHH Motion and Arguments

YNHH's motion sought an order of dismissal of the EEOC Complaint arguing that the evidence produced in discovery established that YNHH met the required elements of the legal defense to the age and disability discrimination claims. These include that the screening policy is justified by the documented science of age-related decline and its

impact on physician performance and patient safety; that the use of age is “reasonably necessary to the normal operation of its particular business” in that YNHH provides the same vital public-safety function that has been held to justify age-based physical examination requirements and indeed mandatory age-based retirement in federal, state and local legislation, regulations and industry policies; many of the mandated age-based screening and retirement statutes and regulations have been upheld in court cases involving other industries responsible for public safety, e.g. aviation, other forms of public transportation, law enforcement, etc.; that quality improvement and peer review systems that rely upon reporting by other practitioners and staff have been shown to be hampered by fears of reporting colleagues or those in positions of power; and that peer review systems are inherently retrospective in nature and that public safety requires that YNHH utilize screening as opposed to waiting for patients to be injured before being able to engage the physician health and corrective action processes.

Of note was that Judge Dooley stated at the commencement of the argument that she would most likely deny the motions from the bench because motions for dismissal must meet a high threshold of proof. Denial of the motions means only that there are conflicts in the evidence that require the matter be decided by a jury, not the court as a matter of law. Notwithstanding that opening comment, after listening to the arguments, Judge Dooley advised that she was taking the matter under submission and made no ruling from the bench granting or denying the relief sought by either the EEOC or YNHH.

I am glad we can finally report progress and thank you for signing on to this important Brief. As soon as we receive the court’s written ruling, we will advise.

Very truly yours,

A handwritten signature in blue ink that reads "Richard O. Barton". The signature is written in a cursive, flowing style.

Rick Barton, Esq.
President
Law Office of Rick Barton, APC

RDB:ab