

# When Performance Management Meets Age Bias Claims: Lessons From *Chreký v. University of Pittsburgh Physicians*

Barbara E. Hoey

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Health care executives often struggle to address declining performance in their long tenured or late career physicians. There is the delicate issue of physician pride and ego. In addition, physicians may not be traditional employees, may have academic tenure, and are entitled to due process as members of the medical staff. All of these facts make it challenging to ‘remove’ or terminate a physician.

However, a recent federal court decision—*Chreký v. University of Pittsburgh Physicians*, No. 2:23-cv-00856 (W.D. Pa. filed May 22, 2023)—highlights how quickly legitimate concerns can become entangled with age discrimination risk when processes are rushed, documentation is inconsistent, or internal emails create an appearance of bias.

On February 23, 2026, a federal judge refused to dismiss a 71 year old emergency physician’s age discrimination claim against University of Pittsburgh Physicians (UPP). The physician alleged that his non renewal resulted not from patient care concerns but from a predetermined “plan” to replace him with a significantly younger physician.

While UPP asserted that there were legitimate performance based reasons for the non renewal, the court concluded that a jury could find those reasons to be pretextual. In declining to dismiss the claim, the court noted that:

- Many of the alleged performance issues involving professionalism and clinical judgment were heavily clustered in late 2020, just before plaintiff was given notice.
- There were leadership emails that referenced “dead wood,” “never changing,” and stated “he is gone in June”—language a jury could view as age related.
- A younger physician toured the emergency department shortly before these events and was offered a contract dated to begin the day after the plaintiff’s contract ended.
- Some of the cited performance incidents occurred after leadership had already internally decided not to renew the physician’s contract.

The University has not lost, and still maintains that the physician was terminated for legitimate reasons. However, it now faces a jury trial.

## The Message to Hospital Executives: Back to the Basics

This decision should remind all executives, HR professionals, and counsel to go back to the basics: If you become aware of genuine clinical or behavioral concerns about the performance of a senior physician, prompt action matters. Even when uncomfortable, ignoring the problem just exacerbates the issue. Thus, hospital administration, physician leadership, and human resources must be diligent in documenting those errors, giving timely notice to the physician that these issues exist, and a meaningful opportunity to fix the problem.

Fairness matters here: courts and juries do not expect that a senior employee will be terminated on 30 days' notice. If a real performance issue arises, consider a formal performance improvement plan, with a reasonable timeline of some months to improve.

Also, be sure to keep all internal communications about performance, and not the person. Emails and text messages which reference age or make negative personal comments will be potent evidence of discriminatory animus. In other words – keep all communications professional.

This can all boil down to some simple steps:

- Corrective actions must be timely, consistent, and thoroughly documented.
- A physician improvement program (or Professional Assistance Program (PAP), Professional Improvement Program (PIP), peer review remediation) must be applied uniformly, regardless of age.
- Leadership must keep communications professional: avoid remarks, written or verbal, that could be interpreted as referencing age, retirement, or generational stereotypes.
- Be cautious as you seek a replacement.
  - Hiring a younger physician before senior staff is terminated increases visibility and risk.

## A Practical Tip for Hospitals

Again, this decision really should remind all hospital managers to go back to the basics: when managing performance concerns for older physicians, and any employee, you must ensure that documentation precedes, not follows, the decision-making. Courts look closely at whether issues were longstanding and consistently addressed or whether they clustered suspiciously around a termination decision. And be sure to keep all communications professional.

For any questions about physician performance protocols or managing a challenging provider situation, please contact the Labor and Employment team at Kelley Drye.