August 6, 2026

United States District Court for the District of Rhode Island
One Exchange Terrace
Federal Building and Courthouse
Providence, RI 02903

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Subject: *In Re: Administrative Subpoena 25-1431-032 to Rhode Island Hospital* – Disciplinary Referral

Dear Honorable Members of the Court:

This letter is respectfully submitted on behalf of Lawyers Defending American Democracy in order to provide members of the U.S. District Court for the District of Rhode Island ("the Court") with additional information that we believe may be helpful in considering the disciplinary referral made under Rhode Island District Court Rule 210(b) by Judge Mary S. McElroy on June 5, 2026 in the matter *In Re: Administrative Subpoena 25-1431-032 to Rhode Island Hospital,* No. 26-mc-0007. Judge McElroy's order referred the United States Department of Justice (DOJ) attorneys involved in this case for disciplinary proceedings "because of representations made to the Court by the respondents' attorneys, as well as the findings of the Court in its order of May 14, 2026."

Lawyers Defending American Democracy (LDAD) is a non-profit, nonpartisan organization devoted to encouraging the legal profession to enforce and uphold principles of democracy and law, consistent with our obligations as lawyers; demanding accountability from lawyers and public officials; and identifying attacks on legal norms and prescribing redress for them. LDAD members include academics and lawyers with decades of experience in the courts. Its work includes ethics complaints and amicus briefs that are often joined by over 100 former federal and state court judges, as well as legal ethics experts and legal scholars.

We believe that the DOJ lawyers involved in the Rhode Island Hospital (RIH) case have violated at least three provisions of the Rules of Professional Conduct set forth in Article V of the Rhode Island Supreme Court Rules (the Rules): Rule 3.1 (Meritorious claims and contentions), Rule 3.3, (Candor toward the tribunal), and Rule 5.1 (Responsibility of partners, managers, and supervisor lawyers). We explain the basis for that belief below. We also believe it is important for the Court to understand that the violations we detail are not technical in nature. They involve breaches of two of the most fundamental ethical duties all lawyers share: the duty to utilize the legal process and our courts in good faith, and the duty of candor to the tribunal. If there is no accountability for these violations, the foundation of our justice system will be compromised and

public trust in the justice system will be seriously undermined. This danger is at its greatest when attorneys breaching these fundamental duties are representing the federal government in the courtroom. For this reason, we commend Judge McElroy for taking the initiative to call out the serious ethical transgressions of these Department of Justice attorneys and order this disciplinary referral.[1]

I. Applicability of the Rules of Professional Conduct to DOJ Attorneys

As a threshold matter, in light of the DOJ's recent efforts to shield its attorneys from state disciplinary authority,[2] we believe it is important to state at the outset why Judge McElroy's disciplinary referral of DOJ attorneys under Local Rule 210(b), and the Court's authority to act upon that referral, are entirely appropriate under both Rhode Island District Court Rules and federal law.

Local Rule 201(b)(1) provides: "An attorney who is a member in good standing of the bar of another federal district court and each jurisdiction in which that attorney has been admitted to practice may appear and practice in this Court as an attorney for the United States or for any agency of the United States or for an officer of the United States in his or her official capacity."

Local Rule 208 clarifies that anyone practicing before this Court will be subject to the Rhode Island rules:

> The Standards of Professional Conduct for attorneys appearing and/or practicing before this Court shall be the Rules of Professional Conduct as adopted by the Rhode Island Supreme Court, as the same may from time to time be amended, and any standards of conduct set forth in these Rules. Attorneys who are admitted or permitted to practice before this Court or who participate in any way in any cases pending in this Court shall comply with the Standards of Professional Conduct.

Likewise, federal law, articulated in the so-called McDade Amendment, provides that DOJ attorneys are subject to the ethics rules of the states in which they are licensed to practice law and in which they are litigating cases. The statute states: "An attorney for the Government shall be subject to State laws and rules, and local Federal court rules, governing attorneys in each State where such attorney engages in that attorney's duties, to the same extent and in the same manner as other attorneys in that State."[3] Congress passed this provision in 1998 in response to DOJ's

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[1] We are aware that another judge in this district, Judge Melissa R. Dubose, recently referred an Assistant U.S. Attorney to the Court for disciplinary consideration (*In re Kevin Bolan*, No. 26-ad-00003). Such referrals are unusual, however, for reasons described in Leslie C. Levin, *The Use of State Discipline to Sanction Attorneys General and Other High-Ranking Legal Officers*, 39 Geo. J. Legal Ethics 197, 221-222, 236-237 (2026). Judge McElroy's action is therefore all the more commendable.

[2] *See Review of State Bar Complaints and Allegations Against Department of Justice Attorneys*, 91 Fed. Reg. 10780 (March 5, 2026). https://www.federalregister.gov/documents/2026/03/05/2026-04390/review-of-state-bar-complaints-and-allegations-against-department-of-justice-attorneys.

[3] 28 U.S.C. § 530B

claim that federal government lawyers were not bound by state ethics rules.[4] The McDade Amendment is implemented by DOJ's own rules, which clearly state in relevant part: "A government attorney shall, in all cases, comply with the rules of ethical conduct of the court before which a particular case is pending."[5]

II. Background

In considering what actions to take under Local Rule 210(b), we think it is important for the Court to understand the background of the case giving rise to Judge McElroy's disciplinary referral.

A. The Transgender Care Investigations

Beginning on the first day of the second Trump administration, President Trump and then-Attorney General Bondi aggressively sought to challenge the provision of gender-related treatment to transgender minors. In Executive Order 14168, issued on January 20, 2025, *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, President Trump declared it "the policy of the United States to recognize two sexes, male and female," stated these sexes are "not interchangeable," and characterized "gender ideology" and "gender identity" as a false claim.[6] The following week, he issued Executive Order 14187, *Protecting Children from Chemical and Surgical Mutilation*.[7] This order characterized gender-related medical care as "the maiming and sterilizing of a growing number of impressionable young children" and declared it "a stain on our Nation's history" that "must end." The order directed DOJ to "prioritize investigations and take appropriate action to end deception of consumers, fraud, and violations of the Food, Drug and Cosmetic Act."[8]

Among other steps taken to implement this directive, beginning in the summer of 2025, the DOJ issued administrative subpoenas to more than 20 providers of gender-affirming care, seeking the confidential medical records of transgender minor patients. In the press release announcing the subpoenas, Bondi stated that "Medical professionals and organizations that mutilated children in the service of a warped ideology will be held accountable by this Department of Justice." *See*

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[4] The Rhode Island Bar Association filed comments opposing DOJ's recent proposal to usurp the role of state disciplinary systems, arguing that it would "undermine the independence of [state disciplinary] systems and the authority of state supreme courts to regulate the attorneys they license." Letter to Department of Justice re "*Review of State Bar Complaints and Allegations Against Department of Justice Attorneys*" (April 3, 2026). https://ribar.com/?pg=latestnews&blAction=showEntry&blogEntry=143546. LDAD comprehensively criticized DOJ's proposal in light of the McDade Amendment. Letter to Todd Blanche re "*Review of State Bar Complaints and Allegations Against Department of Justice Attorneys*" (April 6, 2026). https://www.democracydefendersfund.org/wp-content/uploads/2026/06/2026-06-16-democracy-defenders-fund-todd-blanche-must-not-be-allowed-2.pdf.

[5] 28 C.F.R. § 77.4(a).

[6] 90 Fed. Reg. 8615.

[7] 90 Fed. Reg. 8771.

[8] *Id.*

DOJ Press Release, *Department of Justice Subpoenas Doctors and Clinics Involved in Performing Transgender Medical Procedures on Children* (July 9, 2025).[9] The DOJ has claimed it is acting on behalf of patients and families as it investigates whether health providers and drug companies have illegally promoted off-label use of medications or used fraudulent billing practices to secure insurance coverage for gender-related treatment for minors. Transgender young people and their parents respond that the Justice Department is acting in bad faith to intimidate hospitals and other providers into suspending gender-related services for adolescents and that its requests for the personal medical details of vulnerable transgender minors are a drastic overreach of its investigative authority.

When these subpoenas have been challenged in federal court by healthcare providers or patients who became aware of the subpoenas, at least seven times by the date of Judge McElroy's decision, they have been consistently quashed after courts found they were issued for improper or unauthorized purposes and demanded the production of personal medical information protected by constitutional privacy rights. A group of impacted patients and their families are also pursuing a class-action order quashing the patient-specific requests in all of the administrative subpoenas.[10]

B. Lisa Hsiao and the DOJ Attorneys' Role in the Transgender Care Investigations

Lisa Hsiao is an attorney admitted to the District of Columbia and New York bars. She is currently serving as the Acting Director of the Enforcement and Affirmative Litigation (EAL) branch of the DOJ's Civil Division. EAL was formed in 2025 in response to a directive by President Trump and then-Attorney General Bondi for the Civil Division to affirmatively use its enforcement authority to pursue the Administration's policy objectives. EAL is tasked with bringing investigations and enforcement actions that advance the Administration's priorities, which include "preventing the provision of gender affirming care, especially to minors."[11]

Ms. Hsiao supervises the following Department of Justice attorneys, all of whom entered appearances in the case before Judge McElroy:

- Jordan Campbell, DOJ Enforcement & Affirmative Litigation Branch
- Ross Goldstein, DOJ Enforcement & Affirmative Litigation Branch
- Brantley Mayers, DOJ Enforcement & Affirmative Litigation Branch
- Patrick Runkle, DOJ Enforcement & Affirmative Litigation Branch

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[9] https://www.justice.gov/opa/pr/department-justice-subpoenas-doctors-and-clinics-involved-performing-transgender-medical.

[10] *In re: Administrative Subpoenas to Children's Hospitals*, No. 1:26-cv-1834 (D. Md. filed May 8, 2026).

[11] *Memorandum to All Civil Division Employees from Brett A. Shumate, Assistant Attorney General, Civil Division Enforcement Priorities* (June 11, 2025). https://www.justice.gov/civil/media/1404046/dl?inline.

They were assisted by Kevin Bolan of the U.S Attorney's Office for the District of Rhode Island, who also appeared in the case.

Acting Director Hsiao and her team referenced above at EAL have been leading the Administration's nationwide enforcement actions related to the provision of gender affirming care and representing the U.S. in challenges to the DOJ's administrative subpoenas seeking the private medical records of young transgender patients. In particular, Mr. Goldstein entered appearances in at least six of the other subpoena litigations and Mr. Runkle appeared in at least three of those cases.[12]

C. The Rhode Island Hospital Subpoena & Judge McElroy's May 2026 Opinion

The specific conduct leading to and supporting Judge McElroy's disciplinary referral can be found in her May 14, 2026 opinion in *In Re: Administrative Subpoena 25-1431-032 to Rhode Island Hospital*, No. 26-mc-0007, 2026 WL 1392565 *("RIH opinion")*.[13] The opinion addressed a July 2025 "broad and sweeping administrative subpoena" issued by the DOJ to Rhode Island Hospital (RIH) "seeking over half a decade of sensitive medical information of *every* minor patient that had received gender affirming care at the hospital…including their (1) names; (2) Social Security numbers; (3) addresses; (4) diagnoses; (5) clinical histories; and (6) familial information."[14] The opinion, which grants Rhode Island Hospital's motion to quash the subpoena and enjoins the DOJ from seeking or receiving any documents related to the invalid subpoena, begins with the following scathing statement by Judge McElroy:

> The United States Department of Justice ("DOJ") possesses immense prosecutorial authority and discretion. As citizens, we trust that federal prosecutors, when wielding this awesome power against a state, a company, or certainly against vulnerable children, will play fair and be honest with its counterparts and the judiciary.
>
> DOJ has proven unworthy of this trust at every point in this case. It has misrepresented and withheld information to both this Court and the United States District Court for the Northern District of Texas (the "Texas court"). It did so in an obvious effort to shield its recent investigative tactics—previously rejected by every other court to review them—from this Court's review, in favor of a distant forum that DOJ deems friendly to its political positions. Its representatives have, under oath, misrepresented salient facts. It has misled the parties with whom it was negotiating in Rhode Island, who have now been placed in an untenable and unprecedented procedural position. And when its attorneys

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[12] *In re Admin. Subpoena No. 25- 1431- 019*, 800 F. Supp. 3d 229 (D. Mass. 2025); *QueerDoc, PLLC v. U.S. Dep't of Just*., 807 F. Supp. 3d 1295 (W.D. Wash. 2025); *In re Dep't of Just. Admin. Subpoena No. 25- 1431- 030*, No. 25-mc-63, 2026 WL 33398 (D. Colo. Jan. 5, 2026); *In re Children's Nat'l Hosp.*, No. 1:25-cv-03780-JRR, 2026 WL 160792 (D. Md. Jan. 21, 2026); *In re 2025 UPMC Subpoena No. 2:25-mc-01069-CB*, 2025 WL 3724705 (W.D. Pa. Dec. 24, 2025); *In re 2025 UPMC Subpoena No. 2:25-MC-01069-CB*, 2026 WL 570419 (W.D. Pa. Mar. 2, 2026).

[13] The May 14 opinion is a slightly amended version of an opinion issued the previous day.

[14] RIH opinion at *2-3.

> came to this Court to explain their conduct, the senior attorney—who was present at many of the events that took place in this case—sat silently by as his counterpart, a junior attorney who has been practicing law for approximately six months and had no relevant information, was forced to answer questions about DOJ's blatant disregard for the proper course of negotiations.[15]

Three weeks later, on June 5, 2026, Judge McElroy issued an order referring the DOJ attorneys involved in this case for disciplinary proceedings under Rhode Island District Court Rule 210(b).

III. Violations of the Rules of Professional Conduct

We believe the conduct of the DOJ attorneys subject to Judge McElroy's disciplinary referral, including their supervisor, Lisa Hsiao, violated at least three provisions of the Rules of Professional Conduct set forth in Article V of the Rhode Island Supreme Court Rules in their conduct before the Court which clearly warrant further investigation under Local Rule 210(b).[16]

A. Rule 3.1 – Meritorious Claims and Contentions

Rule 3.1 provides in relevant part that "[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law." The Rule's comments further explain that lawyers have a "duty not to abuse legal procedure"[17] and that lawyers have a duty to "inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions."[18] Moreover, the commentary notes that actions will be considered frivolous under Rule 3.1 if lawyers are "unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law."[19]

In her May 14th opinion, Judge McElroy concludes that one of the reasons the DOJ's subpoena should be quashed is "because it was issued for an improper purpose in bad faith" and notes that examples of improper purpose include putting pressure on or harassing a recipient. In support,

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[15] *Id.* at *1-2.
[16] Our letter focuses on violations of Rules 3.1, 3.3 and 5.1 by the DOJ attorneys involved in this case. We believe it would be appropriate for the Court to also consider whether Rule 8.4 dealing with misconduct has been breached. Rule 8.4 provides, in relevant part, that attorneys are prohibited from engaging in conduct that involves dishonesty, deceit or misrepresentation as well as conduct that is prejudicial to the administration of justice, including harmful or discriminatory conduct based on gender or sexual orientation. *See* Rule 8.4 (c) and (d).
[17] Rule 3.1 Comment [1].
[18] Rule 3.1 Comment [2].
[19] *Id.*

she points to the DOJ's own public record and "the decisions of the seven other federal courts that have considered identical subpoenas."[20]

With regard to the public record, she states that "the Administration has publicly characterized gender-affirming care for minors as abuse, directed the DOJ to bring its practice to an end, and celebrated when hospitals curtailed such programs as a result of this subpoena campaign. (ECF No. 20-1 at 22, 23 n.8.)"[21] She then rejects the DOJ's contention that the subpoena should be enforced, even if motivated in part by such an improper policy purpose, because it was also issued in support of a legitimate investigation of potential violations of the Federal Food, Drug & Cosmetics Act. She summarily dismisses this argument, concluding that the DOJ had offered no evidence of a "genuine legitimate investigative purpose."[22] Instead, she found what Department lawyers had presented in court was "merely a legal theory" that was "not legally cognizable as applied to a prescribing hospital" and that "[t]o hold otherwise would allow the DOJ to immunize any coercive investigation from the improper purpose doctrine simply by appending an untenable legal theory to it."[23]

Judge McElroy then cites the seven other federal courts that have quashed nearly identical subpoenas after also concluding they were issued for an improper purpose in bad faith, and finds that the reasoning of these courts was persuasive and applicable in this case.[24] We believe it will be useful for the Court to have additional insight into the reasoning in these cases cited by Judge McElroy as the Court considers potential violations of Rule 3.1 here.[25]

1. *QueerDoc, PLLC v. U.S. Dept. of J.*, 807 F. Supp. 3d 1295, 1303 n.2 (W.D. Wa. Oct. 27, 2025). Quashing the subpoena after finding that it was not supported by a good faith argument:

[20] RIH opinion at *18-19.
[21] *Id*. at *18.
[22] *Id*. at *19.
[23] *Id.*
[24] "Seven other federal courts have found these subpoenas to have been issued for an improper purpose, and this Court finds their reasoning persuasive and applies it here. *See QueerDoc, PLLC v. U.S. Dep't of Just*., 807 F. Supp. 3d 1295, 1303–04 (W.D. Wash. 2025); *In re Admin. Subpoena No. 25- 1431- 019*, 800 F. Supp. 3d 229, 239 (D. Mass. 2025); *In re Subpoena Duces Tecum No. 25- 1431- 016*, No. 25-mc-41, 2025 WL 3562151, at *12–13 (W.D. Wash. Sept. 3, 2025); *In re Dep't of Just. Admin. Subpoena No. 25- 1431- 030*, No. 25-mc-63, 2026 WL 33398, at *11 (D. Colo. Jan. 5, 2026); *In re Children's Nat'l Hosp., No. 1:25-cv-03780-JRR*, 2026 WL 160792, at *8 (D. Md. Jan. 21, 2026); *In re Subpoena No. 25- 1431- 014*, 810 F. Supp. 3d 555, 580 (E.D. Pa. 2025); *In re 2025 UPMC Subpoena No. 2:25-MC-01069-CB*, 2026 WL 570419 (W.D. Pa. Mar. 2, 2026)." *Id.* at 19.
[25] Judge McElroy did not note, and may not have been aware, that there was also an eighth case conducted entirely under seal in which the subpoena was quashed. *See In re Subpoena No. 25-1431-014*, 810 F. Supp. 3d 555, 577 n.109 (E.D. Pa. Nov. 21, 2025) (referring to case).

> The Court thus turns to the evidence, which demonstrates that DOJ has abandoned good faith investigation in favor of policy enforcement through prosecutorial coercion. [807 F. Supp. 3d at 1302].
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> The mismatch between DOJ's stated investigation and QueerDoc's actual operations further reveals the subpoena's pretextual nature. The Attorney General directed investigations of "manufacturers and distributors engaged in misbranding" and providers submitting false insurance claims. QueerDoc is neither. It prescribes medications but does not manufacture or distribute them. It provides patients with superbills but does not submit insurance claims. Dkt. No. 13 at 3–4.
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> This mismatch is not just a technicality. It suggests that DOJ issued the subpoena first and searched for a justification second. No legitimate investigation would demand thousands of patient records from an entity that cannot, by definition, commit the violations being investigated. DOJ's inability to articulate why it is investigating QueerDoc specifically—beyond noting it is a "prominent" provider—confirms that QueerDoc was targeted for what it does (provide gender-affirming care) rather than how it does it (through any unlawful means). [Id. at 1303 (footnote omitted)]

2. *In re Admin. Subpoena No. 25-1431-019*, 800 F. Supp. 3d 229, 239 (D. Mass. Sept. 9, 2025). Quashing the subpoena after finding there was no good faith argument for the DOJ's requests:

> The requests seek an astonishingly broad array of documents and information that are virtually unlimited in scope . . . while not offering an iota of suspicion that BCH is actually engaging in fraudulent billing practices or off-label promotion in the first instance. [800 F. Supp. 3d at 238.]
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> The Administration has been explicit about its disapproval of the transgender community and its aim to end GAC [Gender-Affirming Care]. The subpoena reflects those goals, comprising overbroad requests for documents and information seemingly unrelated to investigating fraud or unlawful off-label promotion. It is abundantly clear that the true purpose of issuing the subpoena is to interfere with the Commonwealth of Massachusetts' right to protect GAC within its borders, to harass and intimidate BCH to stop providing such care, and to dissuade patients from seeking such care. For the above reasons, I find that the Government has failed to show proper purpose and, even if it had, that BCH has demonstrated that the subpoena was issued for an improper purpose, motivated only by bad faith. [Id. at 239.]

3. *In re Subpoena Duces Tecum No. 25-1431-016*, No. 25-mc-41, 2025 WL 3562151, at *12–13 (W.D. Wash. Sept. 3, 2025). Finding that the only support offered by DOJ to substantiate its subpoena was issued for a lawful purpose was an affidavit submitted by Ms. Hsiao, then acting director of the Civil Division's Consumer Protection Branch (*4-

*5), which the court concluded did "not establish that [DOJ] has a realistic expectation of discovering something relevant to the investigation of a federal healthcare offense." (*8) By contrast, the hospital "present[ed] significant evidence that the DOJ issued the subpoena to pressure hospitals into ending gender-related care for minors." (*11)

4. *In re Dep't of Just. Admin. Subpoena No. 25-1431-030,* No. 25-mc-63, 2026 WL 33398, at *11 (D. Colo. Jan. 5, 2026). Finding the subpoena unenforceable because it abuses the Court's enforcement process:

> Taken together, then, the evidence "carries more than a whiff of ill-intent." *UPMC*, 2025 WL 3724705, at *2. It paints a compelling picture illustrating that the government's aim is not actually to investigate FDCA violations, but to use the FDCA as a smokescreen for its true objective of pressuring pediatric hospitals into ending gender-affirming care through commencing vague, suspicionless "investigations." Every court to consider the issue agrees. *QueerDoc*, 2025 WL 3013568, at *4–7; *Boston Children's*, 2025 WL 2607784, at *5–7; *Seattle Children's*, 2025 WL 3562151, at *9–13. To countenance such a tactic would be an abuse of the Court's process. [*7]

5. *In re Children's Nat'l Hosp*., No. 1:25-cv-03780-JRR, 2026 WL 160792, at *8 (D. Md. Jan. 21, 2026). Quashing the subpoena after concluding it was issued for an improper purpose:

> The Government has made improper use of a § 3486 administrative subpoena to out Movants for receiving, and their Hospital for providing, healthcare the Executive characterizes as a "stain on our Nation's history." The Subpoena bears no credible connection to an investigation of any statutory violation by the Hospital. Rather, the Subpoena appears to have no purpose other than to intimidate and harass the Hospital and Movants, and those similarly situated. The Government seeks to fulfill its policy agenda through compliance born of fear. Moreover, in the view of the court, the Subpoena is the classic impermissible fishing expedition. [*9]

In reaching this conclusion, the Court also criticized the DOJ for failing to offer any "affidavit (or complaint or whistleblower statement) attesting to grounds for an investigation of the Hospital for FDCA or False Claims Act violation." (*7) Like Judge McElroy, the Maryland Court expressed frustration that the only support DOJ had offered were abstract legal theories untethered to any factual support for the subpoena, here in a Declaration submitted by Ms. Hsiao that also exceeded the page limit set forth in the Court's Local Rules:

> Instead of information based on her personal knowledge pertaining to a proper investigation of the Hospital for FDCA violations, Hsiao's Declaration consumes 15 pages of her assertions of what the law is—including assertions of the "overriding

purpose of the FDCA," the proper scope of § 3486 affidavits, recitation of how the FDCA is applied, legal definitions of statutory terms, and citation to statutes and case law in support of her description of drug mislabeling and misbranding, and associated harms. [*Id*.]

6. *In re Subpoena No. 25-1431-014*, 810 F. Supp. 3d 555, 580 (E.D. Pa. Nov. 21, 2025). Quashing the subpoena after criticizing another Declaration submitted by Ms. Hsiao (an admonition that was noted by Judge McElroy in footnote 5 of her opinion):

> We do not rest our reasoning on the shifting sworn statements but remind counsel sworn declarations filed in federal court must reflect verified facts, not speculation recast as fact. The integrity of the process tolerates nothing less than full candor from officers of the Court regardless of their zeal to end a perceived warped ideology in medical care for children.

7. *In re 2025 UPMC Subpoena*, No. 2:25-MC-01069-CB, 2026 WL 570419 (W.D. Pa. Mar. 2, 2026). Reaffirming a prior order to quash the subpoena after concluding:

> The DOJ's actions in this area are unprecedented, to say the least. Reliance on historical norms, standards and, frankly, decency, cannot be seen as given.
>
> More importantly, any inclination to balance the patients' privacy interests against the government's needs over-legitimizes the latter. Left to its devices, the DOJ would trample states-rights to amass deeply personal information - regarding *minor children* - in service of its crusade to eliminate medical care that, until recently, was in its own eyes legal. It remains so in the Commonwealth of Pennsylvania. Righteousness and rhetoric, regardless of how fervent, is no substitute for political- and legislative-process.
>
> The time for muscle-memory genuflection, or benefit of the doubt, is over. The subpoena exceeds the DOJ's statutory authority. The DOJ would usurp the States' regulation of the medical profession. Its rhetoric regarding gender-affirming care reflects callous indifference, if not abject cruelty. There is more than a "whiff" of ill-intent. Doc. 52 at 3. Arguably, it is closer to a stench. [*2]

As noted earlier, Comment [2] to Rule 3.1 notes that actions will be considered frivolous under Rule 3.1 if lawyers are "unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law." In this case, as explained above, Judge McElroy could not have been clearer in her view that the subpoena itself and the arguments advanced by the DOJ attorneys to defend the subpoena in her courtroom lacked any grounding whatsoever in good faith. We also believe it is both relevant and instructive for the Court to consider that Judge McElroy's conclusions about the DOJ's attorneys' conduct in this case were entirely consistent with those of every single federal district judge who has considered nearly identical subpoenas to date. Ms.

Hsiao and her colleagues drafted and issued all of these subpoenas. They have defended them in each of these cases. As later courts have become aware of their losses in earlier cases, they have resorted to, "under oath, misrepresent[ing] and withh[o]ld[ing] information" in their attempt to avert further defeats.[26] This historical context certainly supports the conclusion that Ms. Hsiao and her colleagues violated Rule 3.1 in the Rhode Island litigation.

B. Rule 3.3. Candor Toward the Tribunal

Rule 3.3 provides that "[a] lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer. The Rule's comments provide more specific guidance. Comment [2] notes that "[t]his Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process" and that lawyers "must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false**.**" The fundamental importance of the duty of candor protected by this Rule cannot be overestimated. Judges rely on lawyers because they cannot independently verify everything that comes before them. When candor erodes and advocacy becomes performance, the courtroom becomes less efficient and less fair and the foundation of our justice system is irrevocably compromised. This has been specifically recognized and elaborated upon by the Rhode Island Supreme Court, which has characterized the duty of candor as "the foundation of a lawyer's profession."[27]

In her May 14 opinion, Judge McElroy excoriated the DOJ attorneys for their lack of candor, finding them to have misrepresented facts under oath and withheld information from her court and a federal court in the Northern District of Texas. As an example, she pointed to a sworn declaration from Acting Director Hsiao submitted to the Texas District Court, which she found included statements that were "clearly misleading, if not utterly false."[28] She specifically found that Hsiao's declaration that RIH had "failed to comply in any meaningful way with the

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[26] RIH opinion at *1-2

[27] *In re McKenna*, 110 A.3d 1126, 1148 (2015):

> An attorney's position as an officer of the court is a sacred trust. "Courts have long recognized an inherent authority to suspend or disbar lawyers. * * * This inherent power derives from the lawyer's role as an officer of the court which granted admission.' *In re Snyder, 472 U.S. at 643*. An officer of the court is a person "who is charged with upholding the law and administering the judicial system. Typically * * * a judge, clerk, bailiff, sheriff, or the like, but the term also applies to a lawyer, who is obliged to obey court rules and who owes a duty of candor to the court." Black's Law Dictionary, 1259 (10th ed. 2014). "'[T]he courts not only demand [lawyers'] loyalty, confidence and respect but also require them to function in a manner which will foster public confidence in the profession and, consequently, the judicial system.'" *In re Griffiths, 413 U.S. 717, 723-24, 93 S. Ct. 2851, 37 L. Ed. 2d 910 (1973)*….
>
> The duty of candor, then, is the foundation of a lawyer's profession. That duty is not limited by the dictates of Rule 3.3 of the Rules of Professional Conduct; rather, courts have held that there is a general duty of candor to the court that is broader than the rule. See *United States v. Shaffer Equipment Co., 11 F.3d 450, 457 (4th Cir. 1993)* ("[W]e are confident that a general duty of candor to the court exists in connection with an attorney's role as an officer of the court."). The basis of this general duty of candor is "the principle that lawyers, who serve as officers of the court, have the first line task of assuring the integrity of the process." Id.

[28] RI opinion at *5.

subpoena" was "patently untrue" because it omitted mention of communications from RIH to her DOJ team indicating that they were still actively seeking to negotiate the subpoena's terms.[29] Judge McElroy concluded that "[t]his reckless disregard for the duty of candor owed to a federal court is appalling."[30]

As another example, Judge McElroy then pointed to misleading statements made by Ms. Hsiao regarding the justification for demanding sensitive personal medical information from patients:

> Ms. Hsiao also represented that requests regarding "patient-level clinical practices and drug safety" (Requests 11-15) were necessary because "without this information, DOJ cannot fully determine the scope of the violations, identify patterns of misbranding or fraudulent billing, or assess whether the conduct was undertaken with intent to defraud or mislead, as required for felony liability under 21 U.S.C. § 333(a)(2)." But Ms. Hsiao neglected to inform the Texas court that DOJ had agreed to anonymized data in several other jurisdictions. Her assertion that DOJ needed this information was therefore, at best, deceptive, if not intentionally and knowingly false.[31]

In a footnote to this discussion, Judge McElroy observed that this lack of candor by Hsiao and her subordinates was not new and may demonstrate a troubling indifference to the ethical standards of the legal profession:

> This is not the first time Ms. Hsiao and her subordinates have, in their crusade to obtain transgender children's medical records, acted in ways that appear to deviate from the norms of professional conduct expected of attorneys representing the United States. *See, e.g., In re Subp. No. 25- 1431- 014*, 810 F. Supp. 3d 555, 582 (E.D. Pa. 2025) (taking note of an "inconsistency" in Ms. Hsiao's sworn declaration there and reminding counsel "sworn declarations filed in federal court must reflect verified facts, not speculation recast as fact"); *QueerDoc, PLLC v. U.S. Dept. of J.*, 807 F. Supp. 3d 1295, 1303 n.2 (W.D. Wash. 2025) (describing a filing reflecting "a fundamental misunderstanding—or deliberate misuse—of court procedure").[32]

It is also worth noting, as Judge McElroy did, that the lack of candor and subterfuge demonstrated by the DOJ attorneys in this matter was directed not only at the courts, but at opposing counsel for RIH. She found that the DOJ had "misled the parties with whom it was negotiating in Rhode Island, who have now been placed in an untenable and unprecedented

[29] *Id.*
[30] *Id.* at *6.
[31] *Id.*
[32] *Id.* n.5.

procedural position."[33] Specifically, she pointed to the fact that DOJ misled RIH's counsel in communications about its willingness to continue negotiating search terms for compliance with the subpoena while secretly filing "an unannounced Petition for Enforcement for this *same* administrative subpoena in the Northern District of Texas, Fort Worth Division."[34] As she states in footnote 4:

> It is well established that counsel are responsible for working in a cooperative rather than an adversarial manner, and to confer in good faith when negotiating the parameters of a subpoena. *In re Risner,* 338 F.R. D. 380, 383 (S.D. Ohio 2021). The parties had done so up until the DOJ's about face on April 30, when it repaired to the Texas court and presented RIH with a *fait accompli* motion to enforce (after it had submitted it), followed a few hours later by an order granting that motion. The Child Advocate learned of the subpoena and motion that targeted its children' private information by a DOJ press release the next day."[35]

Again, the lack of candor exhibited by Ms. Hsiao in the RIH subpoena litigation takes on greater salience when viewed against the context of the other subpoena cases.

C. Rule 5.1: Responsibilities of Partners, Managers and Supervisory Lawyers

In addition to the specific problematic conduct discussed above that is directly attributable to Ms. Hsiao, she also has responsibility under Rule 5.1 of the Rules of Professional Conduct as a supervisory lawyer to ensure that her DOJ team members in these matters conform to the Rules. Rule 5.1 also provides that:

> A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if: (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

As Judge McElroy makes plain in her opinion, and in her subsequent disciplinary referral under Rhode Island District Court Rule 210(b), her concerns about ethical violations extended to the entire team of DOJ attorneys supervised by Hsiao who were involved in the case. It is implausible to suggest that the recurring misleading, evasive, and bad faith tactics of Ms. Hsiao's subordinates discussed by Judge McElroy (and in the previous district court decisions cited by Judge McElroy) were beyond her reasonable supervisory control. Thus, the conduct of Ms.

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[33] *Id.* at *2.
[34] *Id*. at *4.
[35] *Id.* n.4.

Hsiao's team in this matter should be attributed to her as the Court considers Judge McElroy's referral and its investigation of potential Rules of Professional Conduct violations.

IV. Importance of this Investigation

The ethics violations we have described here are straightforward and profoundly disturbing. Lawyers representing our federal government, led by Ms. Hsiao, have abused legal procedure, acted in bad faith and breached the fundamental duties of candor owed to the tribunal in their desperate campaign to advance the Administration's goal of preventing gender-affirming care for minors. The conclusion of Judge McElroy's opinion starkly lays out the consequences of these violations:

> Ultimately, the Court's decision is based solely on its application of the law to the administrative subpoena at issue here. But the discrepancy between the honorable conduct expected of federal prosecutors and DOJ's tactics in this case is unsettling. The Court cannot help but share the sentiment that "[t]he presumption of regularity that has previously been extended to [DOJ] that it could be taken at its word—with little doubt about its intentions and stated purposes—no longer holds." *United States v. Oregon*, No. 6:25-CV-01666-MTK, 2026 WL 318402, at *11 (D. Or. Feb. 5, 2026). It is regrettable that this is now the case.[36]

For the foregoing reasons, we urge the Court to investigate and take appropriate action under Local Rule 210(b) to address the serious professional misconduct that led Judge McElroy to submit this disciplinary referral. Respectfully, this should include issuing an order to commence formal disciplinary proceeding against the involved DOJ attorneys under Local Rule 210(c)(1), or alternatively to refer and recommend these lawyers for discipline in the jurisdictions in which they are admitted to practice.

Respectfully submitted,

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[36] RIH opinion at *23.

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