

White Collar Defense

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Federal Court Blocks DOJ Subpoena Targeting Gender-Affirming Care Records

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The Department of Justice's (DOJ) initial attempts to carry out the White House's goal of eliminating gender-affirming health care to minors have hit substantial roadblocks. As one example, a federal court in Massachusetts last month quashed a DOJ subpoena to Boston Children's Hospital seeking a broad array of employee and patient information concerning gender-affirming care. The court held that DOJ could not articulate a proper purpose for the subpoena and found that it was "motivated by bad faith."

Background

On January 28, 2025, the White House issued Executive Order 14187 (EO), "Protecting Children from Chemical and Surgical Mutilation," describing gender-affirming care as a "stain on our Nation's history" and demanding an end to all such care.¹ To advance the goals of the EO, Attorney General Pam Bondi in April 2025 issued a guidance memo² instructing the DOJ to open investigations into suspected cases of female genital mutilation. The memo urged the DOJ's Civil Division to pursue violations of the Food, Drug, and Cosmetic Act (misbranding) and False Claims Act (false billing) concerning those who provide gender-affirming care.

Subpoena of Boston Children's Hospital

The DOJ this summer issued more than 20 administrative subpoenas to health care providers that provide gender-affirming care.³ Boston Children's Hospital received one such subpoena, which sought personnel files for approximately 2,000 employees and contained 15 requests seeking a broad range of information such as billing records, consent forms, information related to puberty blockers and hormones, and, most notably, personal identifying information for minors who received gender-affirming care. Boston Children's Hospital moved to quash the subpoena.⁴

Decision Quashing the Subpoena

U.S. District Court Judge Myong Joun (D. Mass.) granted Boston Children's Hospital's motion to quash, holding that:

- Evidence of bad faith is relevant to the court's determination about whether the government's investigation was being pursued for a proper purpose. The court found the DOJ was "motivated only by bad faith."
- The DOJ failed to demonstrate a legitimate investigative purpose for the subpoena. Instead of submitting proof of a proper purpose, the government relied on its own statements about the dangers of gender-affirming care for minors and argued that it would not have issued the subpoena unless it were for an "appropriate" investigation. As the court put it: "This logic, if followed, would preclude any form of judicial review as the Government's self-proclaimed say-so would always be sufficient to defeat a motion to quash. This is no logic at all."
- The DOJ cannot broadly investigate a hospital for providing gender-affirming care to advance its goal of ending the practice. Instead, any investigation must be tied to a health care fraud offense—which is what the statute authorizing the subpoena (18 U.S.C. § 3486) calls for. But the DOJ subpoena sought broad categories of documents "that are virtually unlimited in scope."
- The DOJ did not offer "an iota of suspicion" that Boston Children's Hospital had engaged in fraudulent billing or off-label promotion of gender-affirming care medication. Instead, the DOJ appeared to be on a "fishing expedition" for wrongdoing.
- The DOJ's goal of "issuing the subpoena [was] to interfere with the Commonwealth of Massachusetts' right to protect [gender-affirming care] within its borders, to harass and intimidate [Boston Children's Hospital] to stop providing such care, and to dissuade patients from seeking such care."

What's Next

The government could reissue a more narrowly tailored subpoena or it could appeal the District Court's decision—though it has not done so yet. In the meantime, we expect the court's decision to serve as a blueprint for similar challenges to the DOJ's administrative subpoenas and investigative demands in other jurisdictions. Health care providers that receive any kind of government subpoena or other process should contact Lowenstein Sandler for guidance in responding.

¹ <https://www.federalregister.gov/documents/2025/02/03/2025-02194/protecting-children-from-chemical-and-surgical-mutilation>

² <https://www.justice.gov/ag/media/1402396/dl>

³ <https://www.justice.gov/opa/pr/departments-justice-subpoenas-doctors-and-clinics-involved-performing-transgender-medical>

⁴ *In re Administrative Subpoena No. 25-1431-019*, No. 25-mc-91324, 2025 WL 2607784 (D. Ma. Sept. 9, 2025).

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