UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

FEDERAL TRADE COMMISSION, *et al.*,

Plaintiffs,

v.

WORLD PROFESSIONAL ASSOCIATION FOR TRANSGENDER HEALTH, INC., a Texas corporation, *et al.*,

Defendants

Case No. 4:26-cv-00748-O

BRIEF IN OPPOSITION TO MOTION TO DISMISS

Table of Contents

Table of Authorities

Cases

Agency Actions

Statutes

Rules

Other Authorities

INTRODUCTION

There is nothing novel about this case. Plaintiffs protect consumers by bringing enforcement actions against organizations making misleading claims to profit themselves or their members. Courts have long upheld that authority, including with respect to misrepresentations by medical organizations, *see California Dental Association v. FTC*, 526 U.S. 756 (1999), insufficiently substantiated claims about a disputed scientific question, *see ECM Biofilms, Inc. v. FTC*, 851 F.3d 599 (6th Cir. 2017), or inadequately substantiated representations about a product's medical effectiveness, *see POM Wonderful, LLC v. FTC*, 777 F.3d 478 (D.C. Cir. 2015). The Amended Complaint alleges that WPATH has made misleading claims and omissions to profit its members, bringing this case within that longstanding authority.[1] That should end the inquiry.

WPATH's arguments misunderstand the nature of this case and the law. The Amended Complaint's requested relief would neither interfere with legitimate scientific debate nor regulate the practice of medicine. Instead, it would prevent WPATH from misleading consumers about dangerous and experimental treatments, thereby profiting its members. Moreover, the Constitution neither protects WPATH's deceptive representations and omissions nor immunizes WPATH from the FTC Act simply because it is promoting medical treatments to profit its members. Because the

[1] This Court has the discretion to resolve the Motion as "being addressed to the" Plaintiffs' Amended Complaint, ECF 70, and it should do so. *Rountree v. Dyson*, 892 F.3d 681, 683 (5th Cir. 2018). The Amended Complaint does not materially alter the 12(b)(6) question because the amendments do not differ from the fundamental theories of the Complaint. *See Abboud v. Lotta Dough, LLC*, 2025 U.S. Dist. LEXIS 35547 at *2 n.2 (W.D. Tex. Feb. 27, 2025) (declining to hold that a motion to dismiss was moot when an amended complaint that "relie[d] on the same . . . theory as" the original complaint was filed during the pendency of that motion). Instead, because WPATH's arguments apply to the Amended Complaint, this Court should exercise its discretion to "consider the motion as being addressed to the amended pleading" rather than delay resolving it. *Rountree*, 892 F.3d at 683–84.

Amended Complaint alleges significant violations of the consumer protection laws that the Plaintiffs enforce, the Motion should be denied.

BACKGROUND

The Plaintiffs filed a 123-page Complaint alleging that WPATH,[2] an organization that operates for the profit of its members, promotes pediatric medical transition products and services through false, misleading, and unsubstantiated representations and omissions, including by providing the means and instrumentalities for those representations and omissions to be repeated to consumers, in violation of State and federal consumer protection laws. ECF 1. WPATH moved to dismiss the Complaint. ECF 42. Plaintiffs filed an Amended Complaint containing the same causes of action and asserting the same theories as the Complaint. ECF 70 ("Am. Compl.").

ARGUMENT

I. Legal Standard

"In reviewing a Rule 12(b)(6) motion, the Court must accept all well-pleaded facts in the complaint as true and view them in the light most favorable to the plaintiff." *Doe v. X Corp.*, 821 F. Supp. 3d 632, 636 (N.D. Tex. 2026) (O'Connor, J.) (citation omitted). Although the Court need not "accept legal conclusions as true," it "assumes the[] veracity" of "well-pleaded factual

[2] This brief refers to all Defendants collectively as "WPATH." The extent to which Defendants are independent entities remains unclear. *Compare* Defendant World Professional Association for Transgender Health, Inc.'s Memorandum in Support of Its Motion to Dismiss, or, in the Alternative, Transfer Venue, ECF No. 55 at 1 (asserting that WPATH is a single "organization incorporated in Illinois and Texas") *with* Mem. at 8 (describing Defendants as "WPATH and two affiliated entities") *and* Defendant World Professional Association for Transgender Health, Inc.'s Opposition to Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction, ECF No. 38 at 20 n.6 (discounting WPATH's Texas incorporation and portraying WPATH as two entities incorporated in different States).

allegations" and "determines whether they plausibly give rise to an entitlement to relief." *Id.* at 637 (citations omitted).

The Court "may rely on the complaint, its proper attachments, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice," as well as documents "referred to" in the complaint and "central to the plaintiff's claims." *In re 2014 Radioshack ERISA Litig.*, 165 F. Supp. 3d 492, 496 (N.D. Tex. 2016) (O'Connor, J.) (quotation omitted). But the Court otherwise "may not consider new factual allegations made outside the complaint." *Dorsey v. Portfolio Equities, Inc.*, 540 F.3d 333, 338 (5th Cir. 2008).[3]

II. The Amended Complaint adequately pleads violations of the FTC Act and State consumer protection laws

To establish a violation of the FTC Act, the FTC must show that there was a material representation or omission that was likely to mislead consumers acting reasonably under the circumstances. *POM Wonderful*, 777 F.3d at 490; *Kraft, Inc. v. FTC*, 970 F.2d 311, 314 (7th Cir. 1992). WPATH's deceptive claims and omissions fit these criteria as they are likely to mislead reasonable consumers. Moreover, "claims that significantly involve health," like those alleged here, trigger "a presumption of materiality." *Kraft*, 970 F.2d at 322 (citation omitted). Plaintiffs likewise allege facts which satisfy the State law counts. *See* Am. Compl. ¶¶ 418–50.

[3] Both WPATH and WPATH's *amici* attempt to introduce facts beyond those this Court may consider on a motion to dismiss. *E.g.*, Defendant World Professional Association for Transgender Health, Inc.'s Memorandum in Support of Its Motion to Dismiss, ECF No. 53, at 4, 6 (hereinafter "Mem."); Brief of the Commonwealth of Massachusetts, *et al.*, As Amici Curiae in Support of Defendant's Motion to Dismiss, ECF No. 68, at 8–10 (hereinafter "WPATH Amici Br."). This Court should disregard them.

Rule 9(b) does not apply to FTC Act claims,[4] but the Amended Complaint satisfies it in any event. *See* Am. Compl. § XV. For some of these claims, WPATH responds that it has not used the exact words alleged in the Amended Complaint. *See* Mem. 16–20. But "[c]laims can either be expressed or implied." *Fanning v. FTC*, 821 F.3d 164, 170 (1st Cir. 2016) (quotation omitted). Courts ask how "consumers acting reasonably under the circumstances" would interpret a statement, including a statement relayed in substance through an intermediary, *infra* II.C, and what "overall net impression" it conveys. *POM Wonderful*, 777 F.3d at 490 (quotations omitted). "Liability may be imposed" for an implied claim if "at least a significant minority of reasonable consumers [would be] likely to take away the misleading claims." *Fanning*, 821 F.3d at 171. (quotation omitted). And "if a claim conveys more than one meaning, only one of which is misleading, a seller is liable for the misleading interpretation even if nonmisleading interpretations are possible." *Ibid*. (cleaned up). Although courts "may look at extrinsic evidence of consumer perceptions to" determine whether a claim is implied, they are "not required" to do so and can employ "common sense." *Id.* at 170 (citation omitted).[5]

---

[4] As WPATH acknowledges, the Fifth Circuit has not resolved this question. Mem. 11. But at least one Court of Appeals explained that it is error to apply Rule 9(b) to a Section 5 claim, because "[a] § 5 claim simply is not a claim of fraud as that term is commonly understood or as contemplated by Rule 9(b)." *FTC v. Freecom Comm., Inc.*, 401 F.3d 1192, 1203 n.7 (10th Cir. 2005). "Unlike the elements of common law fraud," the action which Rule 9(b) contemplates, "the FTC need not prove scienter, reliance, or injury to establish a § 5 violation," among other dissimilarities. *Ibid*. Regardless, WPATH itself treats Rule 9(b) as irrelevant to this action, referencing Rule 9(b) solely in the "Legal Standard" portion of its Motion. *See* Mem. vi, 11–12. Indeed, WPATH never argues that any specific allegation fails to satisfy Rule 9(b).

[5] WPATH's argument that there is no ongoing violation of the FTC Act based on the timing of the harm described in declarations attached to the Complaint, Mem. 25, attempts to answer the wrong question. The question on WPATH's Motion is whether the Amended Complaint *alleges* ongoing harm, and it does. *E.g.* Am. Compl. ¶ 22; *id.* ¶ 64 (alleging that SOC-8 is "the current version" of WPATH's deceptive publication). The declarations simply provide firsthand accounts of the harm that consumers suffer because of WPATH's misrepresentations and omissions.

A. WPATH makes deceptive establishment claims

Many of WPATH's core deceptive statements are misrepresentations about the strength of the evidence supporting its treatment recommendations and characterizations. *See infra* II.D. The FTC brings enforcement actions when an entity makes a misleading claim which "suggests that a product's effectiveness or superiority has been scientifically established," *i.e.*, "[a]n establishment claim." *POM Wonderful*, 777 F.3d at 490. Establishment claims can be "specific" or "non-specific." *Id.* at 491 (quotation marks omitted). Defendants make specific establishment claims if they "state[] a specific type of substantiation" for a claim, such as that it is supported by randomized controlled trials, in which case they "must possess the specific substantiation claimed." *Ibid.* (quotation omitted). Defendants make non-specific establishment claims by, for example, representing that "evidence" or "studies" support a claim, including by asserting the strength or other attributes of that evidence. *Ibid.* (quotation omitted). In that case, defendants "must possess evidence sufficient to satisfy the relevant scientific community of the claim's truth." *Ibid.* (quotation omitted).

WPATH's establishment claims are non-specific. SOC-8 makes recommendations regarding drugs, surgeries, and other treatments, but these are not "recommendations" in the colloquial sense. SOC-8 defines "we recommend" as "a 'strong recommendation' which indicates that: 'the evidence is of high quality,' that 'there is a high degree of certainty'" that the treatment's putative "'effects will be achieved in practice,'" "'there are few downsides of [the] therapy/intervention/strategy,'" and "'there is a high degree of acceptance among providers and patients or those for whom the recommendation applies.'" Am. Compl. ¶ 103. For example, SOC-8 issues a strong recommendation for surgeries including "breast augmentation" and "vaginoplasty" for children. *Id.* ¶ 104. SOC-8's recommendations are thus non-specific

establishment claims about the strength of evidence, *POM Wonderful*, 777 F.3d at 490–91, and they are the centerpiece of WPATH's core deceptive statements, *see id.* ¶¶ 391–405, 409–11.

It is irrelevant at the motion to dismiss stage whether SOC-8 cites studies. *Contra* Mem. 16–22. The question in cases concerning non-specific establishment claims is not whether the defendant has *any* evidence to support its claim, but whether it has evidence "sufficient to satisfy the relevant scientific community of the claim's truth." *POM Wonderful*, 777 F.3d at 491 (quotation omitted). And that is not a question amenable to resolution on a motion to dismiss. *See id.* at 484 (addressing the issue after "extensive administrative proceedings," including factfinding); *ECM Biofilms*, 851 F.3d at 607 (recounting a "three-week trial" as part of the case's procedural history). Plaintiffs have alleged that WPATH has made misleading establishment claims, including by rendering "strong recommendations." That WPATH points to various studies could matter at summary judgment or trial, but not here.

Aside from using defined terms in SOC-8 that themselves constitute non-specific establishment claims, WPATH repeatedly represents in general terms that particular treatments are "safe" or effective, for example. Am. Compl. ¶ 200. That, too, is a non-specific establishment claim because, in context, it conveys that WPATH has sufficient substantiation to support these claims, not that a particular "type of substantiation" supports the treatment. *POM Wonderful*, 777 F.3d at 491 (quotation omitted). And SOC-8 does not explain the type of substantiation provided by its sources, as would be required—though it would be insufficient alone—for a specific establishment claim. *See* Mem. 16–22. Further, once these claims reach consumers, whether repeated by clinicians or by WPATH itself in public statements, they are often stripped even of these references to other publications. *See* Am. Compl. ¶ 330; *id.* at 106 n.152. Accordingly, WPATH must "possess

evidence sufficient to satisfy the relevant scientific community of the claim's truth." *POM Wonderful*, 777 F.3d at 491 (quotation omitted).

In the medical context, the proper level of substantiation is typically at least one "well-conducted, placebo-controlled, randomized, double-blind study," particularly where a defendant asserts a "strong[] medical claim." *FTC v. QT, Inc.*, 448 F. Supp. 2d 908, 962 (N.D. Ill. 2006), *aff'd*, 512 F.3d 858 (7th Cir. 2008); *see POM Wonderful*, 777 F.3d at 501 (affirming a Commission order "insofar as the Commission's order imposes a general [randomized controlled trial]-substantiation requirement for disease claims"); *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1092 (9th Cir. 1994) (noting expert testimony establishing that a "randomized, double-blind, and placebo-controlled" test is "the generally-accepted scientific standard[]"); *Bristol-Myers Co. v. FTC*, 738 F.2d 554, 564 (2d Cir. 1984) (affirming a Commission order that future representations about analgesic's efficacy be made only after a double-blind placebo-controlled test); *FTC v. Sabal*, 32 F. Supp. 2d 1004, 1007 (N.D. Ill. 1998) (granting preliminary injunction where the Commission argued that "well-controlled, double-blind clinical tests" were required to support efficacy of hair-loss product (quotation omitted)). This requirement is especially critical where the claims concern children's health and medical needs, given the heightened risks and potentially irreversible consequences of pediatric medical transition. But as the Amended Complaint alleges, "SOC-8's guidelines and recommendations for providing transition services to children are unsupported by competent and reliable scientific evidence." Am. Compl. ¶ 145.

To the extent the Court considers any of WPATH's claims to be specific establishment claims, they are likewise unsubstantiated. As the Amended Complaint alleges, "WPATH's assertions about the necessity, safety, and efficacy of pediatric medical transition drugs, surgeries, and other interventions are not supported by competent and reliable scientific evidence."

Am. Compl. ¶ 69. For example, in addition to asserting that "strong evidence" backs many of its claims, WPATH asserts that its recommendations represent "expert consensus." *Id.* ¶¶ 393–94. But this expert consensus does not exist, both because WPATH disregarded the conclusions of its own expert-consensus process, *Id.* ¶ 84, and because there is no such consensus—indeed, Finnish and Swedish guidelines sharply restrict the pediatric procedures that WPATH promote. *Id.* ¶ 158. Even WPATH's members privately acknowledge this lack of consensus. *See id.* ¶ 95.

B. WPATH's deceptive statements are not legitimate scientific debate

WPATH cannot avail itself of case law that protects good-faith scientific debate, as WPATH's activities fall outside of that category. WPATH asserts that it engages in "academic activities" by publishing "academic papers" in "a peer-reviewed scientific journal" in an act of good-faith "scientific debate." Mem. 2, 4, 15, 23. But that is not the activity that the Amended Complaint alleges. Instead, Plaintiffs allege that WPATH operates for the profit of its members by publishing information that it knows to be deceptive, knowingly misstating the strength of the evidence supporting its assertions, and willfully failing to disclose significant conflicts of interest in violation of the policies it purports to follow. This conduct is intended to convince consumers to purchase the medical transition services that WPATH's members sell. Such deception is actionable and preventing it falls within the Plaintiffs' authority.

WPATH argues that its misrepresentations are pure opinions that are not actionable. *See* Mem. 13 (quoting *Presidio Enters., Inc. v. Warner Bros. Distrib. Corp.*, 784 F.2d 674, 679, 686 (5th Cir. 1986)). But under those cases, each of WPATH's claims is a factual claim, not an opinion, as each claim "(1) admits of being adjudged true or false in a way that (2) admits of empirical verification." *Presidio Enters.*, 784 F.2d at 679; *see infra* II.D (discussing claims). WPATH also cites cases that shield medical opinions that are part of legitimate scientific debate. *See* Mem. 13–14. Those cases do not apply here. They follow the logic that "[m]ost conclusions contained in a

scientific journal article are, in principle, 'capable of verification or refutation by means of objective proof,'" and thus would ordinarily be considered factual. *ONY, Inc. v. Cornerstone Therapeutics, Inc.*, 720 F.3d 490, 496 (2d Cir. 2013) (quotation omitted). And "it is the essence of the scientific method that the conclusions of empirical research are tentative and subject to revision" and so these cases deem these factual statements as scientific or medical opinions worthy of enhanced protection. *Ibid*. But that is the case only where "a statement is made as part of an ongoing scientific discourse," "directed to the relevant scientific community," "demonstrates at least some degree of basic scientific competence," and is "based on accurate descriptions of the data and methodology underlying those conclusions." *Id.* at 496–98. WPATH's statements satisfy none of those conditions.

Torrey v. Infectious Diseases Society of America does not control here. There, private plaintiffs brought fraud-based tort and RICO claims against a specialist society, and the Fifth Circuit held the guidelines at issue to be nonactionable medical opinion. 86 F.4th 701, 703–07 (5th Cir. 2023). This case differs in kind. It is a government enforcement action under the FTC Act, which requires no proof of scienter, reliance, or injury, *see Freecom Comms.*, 401 F.3d at 1203 n.7, and which reaches establishment claims—representations about the state of the evidence itself—that the common-law theories in *Torrey* did not involve, as well as State consumer protection laws. The four features that place WPATH's statements outside any protection for scientific debate were likewise absent there: (1) WPATH is a commercial enterprise organized for its members' profit; (2) WPATH's statements are directed at consumers, not the scientific community; (3) WPATH

knows or should know its statements are false; and (4) WPATH deceived its audience about its conflicts and the very methodology that makes scientific discourse self-correcting.[6]

1. WPATH is an organization devoted to the profit of its members, not a scientific enterprise

First, WPATH's attempt to paint itself as an "educational and academic" group is contrary to Plaintiffs' allegations. *See* Mem. 4. WPATH may argue at trial that it, like the group sued in *Torrey*, is "a professional society specializing in the study and treatment of . . . diseases." 86 F.4th at 702. But the Amended Complaint alleges no such thing. Instead, WPATH is an organization that "predominantly consists of clinicians who profit from" medical transition services, Am. Compl. ¶ 6, while "[o]ther members earn income in related work," *id.* ¶ 248. WPATH in turn "operates for the profit of its members by promoting the medical transition services that its members provide to children" and by lobbying for insurance coverage for those services. *Id.* ¶ 6; *see id.* ¶ 16. Indeed, "transition doctors formed the organization that would become WPATH" after "losing the support of insurance providers," which threatened to undo the medical transition industry's "decade of growth." *Id.* ¶ 55. WPATH's efforts are not primarily scientific, nor is WPATH engaged in legitimate scientific debate. Instead, it is engaged in advertising. *See id.* ¶ 123.[7]

---

[6] *Torrey* also reserved the question on which WPATH's argument depends. Because the plaintiff there "d[id] not contest" that publishing a medical opinion in an academic journal forecloses liability, the court "need not determine when, if ever, the mere publication of a medical or other scientific opinion might form the basis for a cause of action for misrepresentation or any other tort." 86 F.4th at 705 & n.4. Plaintiffs do contest that proposition. But the Court need not reach it, because WPATH did not publish an independent academic opinion at all.

[7] As explained in more detail *infra* III.A.2, WPATH's public efforts to promote medical transition are advertisements. Speech need not be "in the traditional form of an advertisement," or even list "price or availability" to be an advertisement. *Ariix, LLC v. NutriSearch Corp.*, 985 F.3d 1107, 1116 (9th Cir. 2021). And "[a]n advertisement is no less 'commercial' because it promotes brand awareness or loyalty rather than explicitly proposing a transaction in a specific product or

Moreover, Plaintiffs do not allege that SOC-8 was published in a "peer-reviewed journal." *See* Mem. 4 (referencing material beyond the Amended Complaint). To the contrary, Plaintiffs allege that WPATH self-publishes SOC-8 in its own journal. Am. Compl. ¶ 7; *id.* at 74 n.64. And to the extent SOC-8 is "peer-reviewed," Plaintiffs allege that WPATH ignore and obstructed such review. *See id.* ¶¶ 85–88, 117–21. WPATH did not "publish[] guidelines in an article in a scientific journal" in any meaningful sense, and in any event *Torrey* did "not determine" whether such conduct "might form the basis for a cause of action." *Torrey*, 86 F.4th at 705 n.4.

2. WPATH's deception has non-scientific goals

Plaintiffs do not seek to regulate debate between academics and experts. Instead, Plaintiffs allege that WPATH's has made false advertisements to consumers and intentionally caused consumers to be misled about the necessity, effectiveness, and safety of irreversible medical treatments. Such conduct falls outside the authority cited by WPATH related to "non-actionable opinions" directed at the relevant scientific community. Mem. 1. This is a bread-and-butter enforcement action against a corporation that is deceiving consumers.

WPATH cannot hide behind a façade of academia. "[S]tatements are not protected solely because they appear in a peer-reviewed journal." *Pacira BioSciences, Inc. v. Am. Soc'y of Anesthesiologists, Inc.*, 63 F.4th 240, 242 (3d Cir. 2023). Legitimate "scientific discourse" is protected in part because the statement is directed towards "other members of the relevant discipline or specialty" who are well-positioned to critically evaluate scientific statements. *ONY*, 720 F.3d at 497–98.

---

service." *Jordan v. Jewel Food Stores, Inc.*, 743 F.3d 509, 518 (7th Cir. 2014). Even informational speech can be an advertisement where, for example, it discusses a product or service "all in a positive tone." *Facenda v. N.F.L. Films, Inc.*, 542 F.3d 1007, 1017 (3d Cir. 2008).

But "statements made to consumers, not scientists" do not receive this protection. *Eastman Chem. Co. v. PlastiPure, Inc.*, 775 F.3d 230, 236 (5th Cir. 2014) (*quoting Eastman Chem. Co. v. PlastiPure, Inc.*, 969 F. Supp. 2d 756, 764 (W.D. Tex. 2013)). Consumers are ill-positioned to see through WPATH's deceptive statements, and deceiving consumers does not further scientific discourse. Thus, courts do not sit idly by when corporations make deceptive statements regarding science, and in fact regularly affirm enforcement actions against such offenders. *E.g.*, *FTC v. Nat'l Com'n on Egg Nutrition*, 517 F.2d 485, 487 (7th Cir. 1975) (affirming an FTC order against a "private, not-for-profit corporation" that "published and broadcast statements . . . that there is no scientific evidence that eating eggs increases the risk of heart disease or a heart attack."); *ECM Biofilms*, 851 F.3d at 606 (affirming an FTC order against misrepresentations regarding whether a product was biodegradable, despite that "[s]cientists disagree on the precise definition of the term 'biodegradable'" and that the defendant cited studies to support its claims). *Torrey* thus made clear that it was addressing communications directed at "the relevant scientific communities," not at communications "in connection with any advertising" "directed at consumers." *Torrey*, 86 F.4th at 706–07 (quotations omitted). Statements directed at consumers may be actionable. *Id.* at 707.

That WPATH intends its statements to be considered by consumers is at the core of the Amended Complaint. Am. Compl. ¶¶ 307, 411, 414, 417. WPATH's members "provid[e] parents with the SOC or other material containing WPATH's deceptive claims" and "directly invoke WPATH's 'Standard of Care' in encouraging their patients to purchase transition services." *Id.* ¶¶ 323, 325. And WPATH cannot now disclaim its own statement in SOC-8 urging "individuals" and "their families" to consider SOC-8 when making healthcare decisions. *Id.* ¶ 307. WPATH addresses insurance companies, too, urging them "to provide these medically necessary treatments and eliminate any exclusions from their policy documents . . . that preclude coverage." *Id.* ¶ 261.

Moreover, WPATH makes deceptive claims beyond SOC-8 that drop all pretense of academic discourse and are instead directed at convincing the public that its claims are true. *See* Am. Compl. ¶ 308 ("WPATH also posts statements on its website deceptively claiming that medical transition is 'safe,' 'lifesaving,' backed by 'rigorous research' and 'expert consensus,' 'evidence-based,' and 'medically necessary.'"). When the Cass Review detailed SOC-8's failings, WPATH responded with press releases declaring pediatric medical transition to be "medically necessary" and "lifesaving." *Id*. at 106 n.152. When States passed legislation restricting pediatric medical transition and when the New York Times published articles revealing some of WPATH's deceptions, WPATH responded with public advocacy statements repeating its deceptive claims. *Ibid.* The public, including parents and children, is the target of WPATH's advertising.

3. WPATH knows that its statements are false and misleading

WPATH cannot protect itself by labeling its knowingly deceptive statements as medical opinion. Even a statement of pure opinion "explicitly affirms one fact: that the speaker actually holds the stated belief." *Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund*, 575 U.S. 175, 184 (2015). Thus, when a speaker makes "pure statements of opinion" that are not "honestly held," the speaker engages in "deception." *Id.* at 186. Even a physician's expression of a medical opinion is unprotected where "the speaker does not actually hold that opinion," where the physician "rubber-stamp[s]" an opinion without exercising true clinical judgment, or where "it is based on information that the physician knew, or had reason to know, was incorrect." *United States v. AseraCare, Inc.*, 938 F.3d 1278, 1302 (11th Cir. 2019). *Torrey* did not consider this argument as the plaintiffs had abandoned it in the district court. *Torrey*, 86 F.4th at 707 n.6.

That principle applies with full force here. "WPATH knows that its recommendations are not supported by scientific evidence or medical consensus." Am. Compl. VII.B, ¶¶ 117–144. Plaintiffs do not allege that WPATH furnished the means and instrumentalities of deception

inadvertently, but that it did so "intentional[ly]." *Id.* ¶ 26. For example, WPATH willfully disregarded the conclusions of *its own expert review* when it removed age limits from its recommendations. *Id.* ¶ 18. As to WPATH's material omissions, WPATH now argues that it either disclosed the side effects (or at least similar side effects), or that it cited studies that disclose the side effects. But it does not dispute that it was aware of them. *See infra* II.D. WPATH cannot escape liability under the guise of scientific debate where, as here, it willfully misleads consumers.

Moreover, WPATH defines SOC-8's strong recommendations as indicating that "the evidence is of high quality," that "there is a high degree of certainty [that the intervention's] effects will be achieved in practice," that "there are few downsides of [the] therapy/intervention/strategy," and that "there is a high degree of acceptance among providers and patients or those for whom the recommendation applies." Am. Compl. ¶ 103. But "privately, SOC-8 drafters knew they did not have sufficient medical evidence to support their recommendations." *Id.* ¶ 90. Instead, "WPATH's SOC-8 authors had prejudged that SOC-8 would ultimately make strong recommendations in favor of pediatric medical transition regardless of whether the quality of the evidence supported such recommendations." *Id.* ¶ 93. WPATH can dispute those allegations at trial, but it cannot ignore them here. And those allegations preclude WPATH from claiming that its deceptive statements were made as part of a legitimate scientific debate.

4. WPATH has made deceptive statements about its methodology and conflicts

Protections for scientific debate require the statements to be directed at the relevant scientific community, but that alone is not sufficient. If the speaker is dishonest about how it arrived at those conclusions, then the scientific community cannot evaluate the claims on their merits, and they offer no value to scientific debate. They conceal the truth rather than reveal it. Protected statements must include "accurate descriptions of the data and methodology underlying

those conclusions," *ONY*, 720 F.3d at 498, as well as other "necessary context," like disclosure of "potential conflicts of interest," *Eastman Chem. Co*., 775 F.3d at 236 (quotation omitted).

WPATH's false statements regarding its methodology and conflicts would thwart even a scientist seeking to evaluate the validity of WPATH's statements. As discussed below, "WPATH disregarded established guideline-development standards," despite claiming to follow them. Am. Compl. ¶ 18; *see infra* II.D. This would prevent even the scientific community from "analyzing or refuting the soundness of the experimental design or the validity of the inferences drawn from [WPATH's] results" as WPATH was dishonest regarding the methodology and conflicts of interest that led to its deceptive recommendations. *ONY*, 720 F.3d at 497. WPATH's conduct is outside of *Torrey*'s scientific debate protections.

C. WPATH provides the means and instrumentalities of deception

The drugs and procedures that WPATH promotes are sold and performed by WPATH's members (and other clinicians), not WPATH itself. But "[t]hose who put into the hands of others the means by which they may mislead the public, are themselves guilty of a violation of Section 5 of the Federal Trade Commission Act." *Waltham Watch Co. v. FTC*, 318 F.2d 28, 32 (7th Cir. 1963); *see FTC v. Winsted Hosiery Co.*, 258 U.S. 483, 494 (1922). Thus, courts have held medical-industry defendants liable when they "furnished client clinics with the means and instrumentalities to violate the act by providing them with false and misleading ads that had a tendency to deceive the public" into believing that an advertised medical treatment was efficacious. *FTC v. Peyroux*, 723 F. Supp. 3d 1209, 1245 (N.D. Ga. 2024). In *Peyroux*, the defendant provided "information about stem cell products and how to administer them" and "conducted trainings with sample presentations and coaching on how to deliver lectures to the public." *Ibid*. The means and instrumentalities doctrine similarly applies in cases where the defendant provides information or a sales technique for an intermediary to use in deceiving consumers. For example, in *Regina*

Corporation v. FTC, a company violated Section 5 where it provided "list prices" to intermediaries and misrepresented that these prices were the going rates. 322 F.2d 765, 767 (3d Cir. 1963). The intermediaries then used those prices when charging consumers for the goods in question, often advertising that their goods were discounted from the fictitious list price. *Id.* at 767–68.; *see National Housewares, Inc.*, 90 F.T.C. 512, ¶ 208 (1977) (finding liability where wholesalers "developed a sales technique which encourage[d] its practitioners to deceive consumers").

Here, WPATH is liable because it "put[s] into the hands of others" the SOC, which is "the means by which" pediatric medical transition providers "may mislead the public." *Waltham Watch Company*, 318 F.2d at 32. WPATH offers its SOC as a tool to insurers and clinicians. *See* Am. Compl. ¶ 261. The SOC represents that pediatric transition is medically necessary. *Id.* ¶¶ 262–65. Providers rely on the SOC to represent to consumers that pediatric transition is medically necessary, often repeating the substance of WPATH's claims. *Id.* § X. Even where medical transition providers do not repeat *verbatim* the misleading statements contained in the SOC, WPATH provides them with the means and instrumentalities of deception. *Id.* ¶ 330. Providers are constrained by their medical licenses and liability concerns. They cannot sell their expensive medical procedures without a scientific basis to do so. And few, if any, parents would consent to such dangerous and life-altering drugs and procedures if providers did not represent—consistent with WPATH's deceptive statements—that pediatric medical transition will save their children's lives. WPATH's deceptive statements thus supply the justification for providers' treatment recommendations. Consumers need not ever hear the deceptive statements that form the basis for the recommendation—although many do—to be deceived because those misrepresentations are embedded in the clinical advice they receive. *See id* § X. When consumers receive advice from a medical provider, they reasonably assume that these recommendations reflect reliable scientific

evidence, and they are deceived when their doctors' recommendations are instead based on deceptive statements concocted by WPATH. *See Peyroux*, 723 F. Supp. 3d at 1230–31 (discussing providing "training" and "lectures"); *id.* at 1245 (discussing "coaching" clinicians).

Thus, like the company in *Regina Corporation*, WPATH provides the informational predicate for the deception that providers ultimately inflict upon consumers. Means and instrumentalities cases do not turn on whether the defendant disseminates physical marketing items; what matters is that the defendant conveys deceptive claims to intermediaries with the intent and expectation that those intermediaries will use its claims to deceive consumers. *Regina Corporation*, 322 F.2d at 767–68 (not discussing any provision by the manufacturer of physical price lists to consumers); *see also National Housewares*, 90 F.T.C. at ¶ 208 (finding liability where wholesalers "developed a sales technique which encourage[d] its practitioners to deceive consumers," so "[i]t [wa]s not surprising, then," that those practitioners engaged in deceptive practices). WPATH intended that here. Moreover, WPATH expressly states in SOC-8 that it intends for "individuals" and "their families" to review SOC-8. Am. Compl. ¶ 307. It cannot now argue that it did not intend them to consider the misleading statements contained therein.[8]

D. The Amended Complaint states a claim for each deceptive statement

Counts I.A. and I.B. Counts I.A. and I.B. assign liability to WPATH's claims that pediatric medical transition is necessary to prevent and effective at preventing suicide in children.

[8] Plaintiffs' State law claims similarly provide for liability via indirect interaction between WPATH and consumers. For example, under Texas law, a defendant's deceptive act or trade practice can be actionable under the Deceptive Trade Practices Act based on a mere connection with a consumer's transaction in goods or services. *See Amstadt v. U.S. Brass Corp.*, 919 S.W.2d 644, 649–50 (Tex. 1996); *Knight v. International Harvester Credit Corp.*, 627 S.W.2d 382, 388–89 (Tex. 1982) (concluding that a consumer had a DTPA claim for the defendant's deceptive acts "connected with" a sale).

Am. Compl. ¶ 409(A)–(B). Plaintiffs allege where and when WPATH made these claims. *Id.* ¶¶ 378–87. They are contained in SOC-8 itself. *See id.* ¶¶ 161–170. WPATH also conveys these statements to the public in other ways. *See id.* at 106 n.152; *id.* ¶ 387. These include claims that pediatric medical transition is "lifesaving," "medically necessary," and "reduce[s] suicidality." *Ibid.*; *id.* ¶¶ 385–86. Reasonable consumers hearing these claims will "understand those claims to mean that medical consensus and scientific evidence establish that medical transition is necessary and effective to prevent suicide." *Id.* ¶ 167. Indeed, clinicians "often repeat" these "deceptive phrases or concepts from SOC-8," including by "stating or strongly implying that if parents do not consent to medical transition, their children will commit suicide" and "the parents will be to blame." *Id.* ¶¶ 330–31; *see also id.* ¶ 19.

WPATH makes these claims despite an "absence of evidence that these interventions reduce the incidence of suicide." Am. Compl. ¶ 18; *see also id.* ¶ 69 ("WPATH's assertions about the necessity, safety, and efficacy of pediatric medical transition drugs, surgeries, and other interventions are not supported by competent and reliable scientific evidence."). WPATH responds by essentially denying this allegation. *See* Mem. 16. But the place for WPATH to deny allegations is in its answer and at trial, not in a motion to dismiss.

Count I.C. Count I.C. adequately alleges that WPATH's claim that puberty blockers are "fully reversible" is deceptive. Am. Compl. ¶ 409(C). Plaintiffs allege that WPATH makes this claim in SOC-8. *Id.* ¶¶ 9, 64, 171–95, 388. WPATH repeats this claim on its website. *Id.* ¶ 178. Providers repeat this claim to patients. *Id.* ¶¶ 19, 326, 339. But it is false. *Id.* ¶¶ 69, 171–95, 338. And "WPATH knows that its representations about the reversibility of puberty blockers are deceptive," with a co-author of the relevant SOC-8 chapter stating that this claim "should have an 'asterisk' next to it." *Id.* ¶¶ 18, 195. Indeed, WPATH concedes that it is aware of "the connection

between the use of puberty blockers and poor bone health later in life." Mem. 17. It is deceptive to communicate to consumers that a procedure is "fully reversible" while knowing of its connection to permanent harm.

Count I.D. Count I.D. assigns liability to WPATH's deceptive claim that cross-sex hormones improve mental health. Am. Compl. ¶ 409(D). This includes claims that the administration of cross-sex hormones "positively impact[s] the mental health and quality of life of [children]." *Id*. ¶ 390. WPATH also claims that "hormone therapy is considered a lifesaving intervention." *Id*. ¶ 385. Plaintiffs allege that WPATH lacks sufficient evidence for these claims. *E.g.*, *Id*. ¶ 145. WPATH responds that it cites studies after at least some of these statements. Mem. 17. But citing another publication does not insulate WPATH from liability for deceptive statements, much less show that WPATH has the level of proof necessary to make such establishment claims. *See supra* II.A. Again, this is a dispute for trial.

Count I.E. Count I.E. assigns liability to WPATH's deceptive claim that performing breast amputations on children is safe, effective, and consistently beneficial. Am. Compl. ¶ 409(E). This includes a "strong recommendation" with respect to surgical interventions for children, which indicates that "the evidence is of high quality" and that "there are few downsides of [the] therapy/intervention/strategy." *Id*. ¶¶ 391–92. Not so. *See id*. § VIII.D.iv.

WPATH argues that its strong recommendation for this procedure, and its other statements in Chapter 13 of SOC-8, apply only "*for adults*." Mem. 18. Not so. The second sentence of Chapter 13 reads: "This chapter describes surgery and postoperative care recommendations for TGD adults *and adolescents*." SOC-8 at S128 (emphasis added).[9] WPATH could be correct that the evidence

[9] WPATH uses a capacious definition of "adolescent" which applies to children as young as 8 or 9 years old. Am. Compl. at 5 n.1. Here, as in the Amended Complaint, Plaintiffs use "child"

it cites relates to mastectomies on adults, not children. But SOC-8's statements still apply to both adults and children.[10] WPATH could also be correct that Chapter 13 and its recommendations were originally drafted to apply only to adults. But WPATH contradicted its expert consensus process and removed age limits from those recommendations. Am. Compl. ¶ 114. Thus, SOC-8 contains a "strong recommendation" for breast amputation despite an "absence of competent and reliable scientific evidence" supporting that procedure for children. *Id*. ¶ 160; *see id.* ¶ 395.

Count II.A. Count II.A assigns liability to WPATH's deceptive claims that "SOC-8 represents unbiased, evidence-based expert consensus." Am. Compl. ¶ 412(A). WPATH represents that SOC-8 is "consensus based expert opinion" and is backed by "expert consensus." *Id*. ¶¶ 393–99. But WPATH disregarded the results of its own process for obtaining expert consensus, and in any event "there is no consensus concerning pediatric medical transition services." *Id*. ¶ 159; *see id.* ¶¶ 131, 397. WPATH further represents that it follows certain conflict of interest standards, when in fact it disregards them. *See id*. ¶ 395–96.

WPATH responds that "disputes about the reliability of a scientific study's disclosed methodology cannot create an actionable falsehood." Mem. 18–19 (quoting *Pacira BioSciences*, 63 F.4th at 247). That authority is inapplicable for several reasons, *see supra* II.B, but most relevant

---

to describe an "unemancipated person under the age of majority," *i.e.*, the term's ordinary meaning. Child, Black's Law Dictionary (12th ed. 2024); *see* Am. Compl. at 5 n.1.

[10] WPATH also misstates SOC-8's prerequisites for operating on children, asserting that SOC-8 permits such surgeries only after "any '[m]ental health concerns' have been addressed." Mem 18. But SOC-8 does not require that children's mental health concerns be resolved or meaningfully mitigated before surgery. Instead, it only requires that they be addressed to the extent that they "could negatively impact the outcome of" the "surgical intervention" such as by impeding "medication adherence" or "attending follow-up appointments." SOC-8 at S63, S256. This "does not mean all mental health challenges can or should be resolved completely" before surgery under WPATH's recommendations. SOC-8 at S63. Regardless, even if mental health conditions were resolved, the evidence does not support a recommendation that children's breasts be amputated.

here is that WPATH misrepresented that it followed a particular methodology when it in fact did not. And the case law upon which WPATH relies applies only where claims are "based on accurate descriptions of the data and methodology underlying those conclusions." *ONY*, 720 F.3d at 498. The Amended Complaint assigns liability not to SOC-8's disclosed methodology, but to WPATH's repeated disregard of the methodology that it claimed to follow. It is deceptive for WPATH to state that it arrived at its recommendations through a Delphi expert consensus process when in fact it disregarded the results of that process with respect to pediatric medical transition procedures. Am. Compl. ¶ 114. Nor can WPATH tell SOC-8's readers that it followed conflict of interest rules that it flouted, or falsely represent that its authors were unconflicted. *See id*. ¶ 395–96. And it cannot tell consumers that its recommendations reflect expert consensus when its conclusions are sharply debated at best and represent the consensus only of those who profit from selling these services at worst. *See id*. ¶¶ 131, 159–60.

To begin with, WPATH falsely asserts that "[c]onsensus of the final recommendations was attained using a Delphi process," when in fact its removal of age limits did not obtain consensus through that process. Am. Compl. ¶ 88–89. WPATH argues that readers should have known that its representation regarding consensus was untrue, as SOC-8's methodology section stated generally that there was a "Revision of Final Draft based on comments." Mem. 19. But that does not put readers on notice that those comments and revisions were excluded from the Delphi process, or that WPATH disregarded an attempt to arrive at an expert consensus on performing medical transition procedures on children in response to political pressure and to protect its members' profits. *See* Am. Compl. § VIII.A.ii–iv. And a reasonable reader could understand WPATH's representation that "the *final* recommendations" were "attained using a Delphi process" to include that the *final* product of SOC-8 followed the Delphi process. *Id*. ¶¶ 88–89 (emphasis

added). A one-line disclaimer, which itself is unclear, does not preclude that reasonable net impression.

Next, WPATH claims that the conflict-of-interest rules that it purports to follow are "absurd" and improperly asserts facts outside the pleadings in arguing that no other medical association follows them. Mem 19–20. But what matters is that WPATH stated it was following them, but did not. *See* Am. Compl. § VIII.A.i. Conflicts of interest under these standards include "professional affiliations and practice specialization, reimbursement incentives, intellectual preconceptions and previously stated positions." *Id*. ¶ 70. Most, if not all, relevant SOC-8 authors had such conflicts. *Id*. ¶ 83. WPATH falsely represents that SOC-8 complied with WHO and NAM standards in reviewing "[c]onflicts of interests . . . as part of the selection process," *id*. ¶ 82, when WPATH did not disclose or manage conflicts prior to the selection of guideline members. *Id*. ¶ 81. Whether WPATH believes the guidelines that it professed to follow are absurd is irrelevant. Moreover, regardless of which standards were used, SOC-8 should have disclosed that its authors profited from the procedures they were recommending and had additional reputational and intellectual conflicts. *See id*. ¶¶ 78–80, 83. WPATH thus misled consumers both by representing that it followed certain standards (when it did not) and by stating that its authors had "[n]o" significant conflicts of interest (when they did). *Id*. ¶ 82.

Count II.B. Count II.B. assigns liability to WPATH's representation that pediatric medical transition is the "standard of care" for children who express dissatisfaction with or distress about their sex traits. Am. Compl. ¶ 412(B). WPATH claims that these procedures are "medically necessary" and "makes 'strong recommendations' with respect to cross-sex hormones, puberty blockers, and surgical interventions for children, thereby asserting that 'the evidence [for the intervention] is of high quality,' 'there are few downsides,' and 'there is a high degree of acceptance

among providers' for the treatment." *Id*. ¶¶ 400–02. This is "[d]espite the low-quality evidence" supporting its recommendations. *Id*. ¶ 400. And it deceptively calls these recommendations the "standard of care," invoking the legal standard for competent and adequate medical treatment, even though these recommendations are not the "standard of care." *Id*. ¶¶ 128–131, 400.

WPATH responds that it cites to "over 1,500 studies" in SOC-8. Mem. 20. But, to the extent WPATH is not attempting to improperly introduce these studies on a motion to dismiss, the number of studies that SOC-8 cites is beside the point. WPATH's recommendations are unsupported by reliable and competent scientific evidence. *E.g.*, Am. Compl. ¶ 145. WPATH is free to dispute the allegation that its evidence is not sufficiently competent or reliable, but that is a matter for trial, not a motion to dismiss. WPATH also argues that "[d]octors can review those citations themselves and decide whether they support SOC-8's recommendations or establish a 'standard of care.'" Mem. 20 (quotation omitted). This again ignores that WPATH intends for SOC-8 to be reviewed and considered by "individuals" and "their families," not just doctors, and that WPATH created SOC-8 as a tool for WPATH members to use to mislead consumers. *See supra* II.C.

Count III. The Amended Complaint alleges that WPATH failed to disclose several material side effects of the treatments it recommends to children. Am. Compl. ¶ 415–17. WPATH provides four main responses. *See* Mem. 20–22. First, it identifies one side effect that is disclosed in an entirely different chapter. *See id.* Second, it points to similar side effects that it does disclose. *See id*. Third, it argues that it cites studies that disclose these side effects. *See id.* Fourth, it argues that it has no duty to disclose side effects at all. *See id.* Each argument fails.

First, as to the allegation that it fails to disclose hot flashes as a side effect of puberty blockers when administered to children, WPATH notes that it discloses this side effect elsewhere in SOC-8. Mem. 21 (citing SOC-8 at S91). Specifically, WPATH devotes a chapter of SOC-8 to

"eunuchs." SOC-8 Chapter 9. This term, in WPATH's usage, refers to a "distinct gender identity"—that is, a person might identify not as a man or woman but as a eunuch. SOC-8 at S88. In WPATH's view, these individuals may need "medically necessary gender-affirming medical and/or surgical treatments" such as puberty blockers or "surgical castration." SOC-8 at S88–90. WPATH warns that eunuchs prescribed puberty blockers may experience "hot flashes, fatigue, metabolic effects, and loss of bone mineral density." SOC-8 at S91. But where children are concerned, WPATH makes no such disclosure. Am. Compl. ¶ 403. Thus, when doctors, children, or their parents look to the relevant chapters for guidance on treatment, they will not find this disclosure. *Id*. ¶ 307. Further, a disclosure of accurate information in a separate document, fine print, or an otherwise inconspicuous location is not enough to cure an "otherwise deceptive" representation. *FTC v. Brown & Williamson Tobacco Corp.*, 778 F.2d 35, 44 n.7 (D.C. Cir. 1985); *see id.* at 42–43; *FTC v. Corpay, Inc.*, 164 F.4th 807, 836 (11th Cir. 2026). If WPATH considers a side effect of puberty blockers material enough to warn eunuchs, then it is material enough to warn children and their parents. WPATH's failure to do so is deceptive.

Second, WPATH then notes that it warns of side effects that are similar to, but generally less serious than and distinct from, undisclosed side effects. *See* Mem. 20–22. For example, instead of "vocal pain" WPATH warns of "[d]eepening of voice." *Id.* 21. Instead of "vaginal pain" WPATH warns of "[v]aginal atrophy." *Ibid.* Instead of "erectile pain" WPATH warns of "[e]rectile [d]ysfunction." *Ibid*. It does not warn that such dysfunction may be "persistent" long after hormones cease. *See ibid*; Am. Compl. ¶ 205. Instead of "cognitive problems" related to puberty blockers, WPATH notes that "potential neurodevelopmental impact" is "an area in need of continued study." Mem. 21. These are different side effects, and to the extent WPATH believes them to be the same it has willfully concealed their true nature to deceive consumers. Parents

deciding on treatment for their children—especially after being told their children may commit suicide—may not be especially concerned if their child experiences "erectile dysfunction" while undergoing treatment. If they are instead told the truth that their child might "experience[] erections that [are] excruciatingly painful in a way" that feels like "broken glass or stabbing needles," parents may rethink that decision. Complaint, Ex. 7 ¶ 49, ECF No 1-7; *see* Am. Compl. ¶ 193. And the possibility that erectile dysfunction may persist long after treatment ends might dissuade parents from consenting to these procedures. *Id.* ¶¶ 205, 207. Thus, omitting these side effects is deceptive. And although WPATH may think that its warnings are adequate, that is a dispute for trial.

Third, WPATH alleges that it cites studies that reveal these symptoms. *See* Mem. 21–22. This Court should disregard that argument as it relies on material outside of the Amended Complaint. But it is also incorrect. Failing to include those symptoms in SOC-8, along with representing that "there are few downsides" to the procedures, deceives consumers who review SOC-8, have its claims repeated to them by clinicians, or receive treatment recommendations from clinicians relying on SOC-8. Am. Compl. ¶ 96. Again, if these sources disclose side effects, a disclosure of accurate information in a separate document is not enough. *See Corpay*, 164 F.4th at 836 (discussing case law holding that disclaimers must be sufficiently prominent and unambiguous, among other requirements). WPATH's argument demonstrates only that WPATH knew that these side effects existed and should have disclosed them.

Fourth, WPATH similarly argues that doctors bear the responsibility for disclosing side effects, while it bears none. Mem. 22. Clinicians—including most of WPATH's members—do have a responsibility to inform their patients of the likely side effects of medical transition treatments. But that does not give WPATH *carte blanche* to make deceptive statements without

accountability. In essence, WPATH's argument creates a game of hot potato. WPATH passes responsibility to doctors, while doctors, if sued, would pass responsibility to WPATH by claiming to merely follow WPATH's "Standards of Care." But WPATH cannot hide behind doctors.

Likewise, WPATH encourages "individuals" and "their families" to consider SOC-8 in making healthcare decisions, Am. Compl. ¶ 307—but it does not warn them that they must read the "over 1,500 scientific studies" to learn of significant side effects. Mem. 1. WPATH is responsible for its own deceptive statements and omissions.

III. WPATH's constitutional arguments fail

A. The Amended Complaint pleads that WPATH is engaged in misleading commercial speech, which enjoys no First Amendment protection

WPATH's argument that this enforcement action violates the First Amendment mischaracterizes this dispute and ignores precedent. The First Amendment does not protect deceptive commercial speech, and it is routine for State and federal governments to bring enforcement actions seeking to enjoin such speech. Nor does the Amended Complaint and the relief it seeks constitute viewpoint discrimination. Plaintiffs allege that each of WPATH's deceptive statements was made to "generate significant profit" for its members. Am. Compl. ¶ 246. The First Amendment does not protect such conduct.

1. It is routine for the FTC to bring enforcement actions against organizations that engage in misleading commercial speech

Congress wrote WPATH's business model into the FTC Act. The Act reaches any "association, incorporated or unincorporated, which is organized to carry on business for its own profit *or that of its members*." 15 U.S.C. § 44 (emphasis added). That is precisely what the Amended Complaint alleges WPATH to be. Am. Compl. ¶¶ 6, 16, 246–350. Whether the Act applies turns on whom the organization is designed to profit, not on its tax status. And the FTC has enforced the Act against organizations like WPATH from the agency's earliest days. *See, e.g.*, *FTC*

v. Association of Flag Mfrs., 1 F.T.C. 55, 57–58 (1918).[11] And for just as long, courts have affirmed FTC enforcement actions against organizations that act for the profit of their members, regardless of corporate form. *See, e.g.*, *FTC v. Pacific States Paper Trade Ass'n*, 273 U.S. 52, 59 (1927).

"The FTC Act directs the Commission to 'prevent' the broad set of entities under its jurisdiction 'from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.'" *California Dental Ass'n*, 526 U.S. at 768 (quoting 15 U.S.C. § 45(a)(2)). That congressional directive extends to putative "[n]onprofit entities organized on behalf of for-profit members" as those entities "have the same capacity" and "incentives" to violate the FTC Act. *California Dental Ass'n*, 526 U.S. at 768 (addressing an enforcement action against "a voluntary nonprofit association of local dental societies to which some 19,000 dentists belong," *id.* at 759); *see* 15 U.S.C. § 44. And, as the unanimous Supreme Court explained,[12] a putative nonprofit may "have certain advantages" in violating the FTC Act as it "would enjoy the screen of superficial disinterest while devoting itself to serving the interests of its members without concern for doing more than breaking even." *Id.* at 768.

It is often these organizations' speech that brings them under the FTC's jurisdiction. "[L]obbying, litigation, marketing, and public relations for the benefit of" an organization's "members' interests" are "activities" that create "economic benefits" which satisfy the FTC Act's "jurisdictional touchstone." *California Dental Ass'n*, 526 U.S. at 767. That the FTC gains jurisdiction over such organizations based on their speech establishes that such speech is "in or affecting commerce." 15 U.S.C. § 45(a)(1); *California Dental Ass'n*, 526 U.S. at 767–68

---

[11] FTC decisions are published in volumes, accessible on the FTC's website at https://www.ftc.gov/legal-library/browse/cases-proceedings/commission-decision-volumes.

[12] The Court unanimously agreed on the FTC's jurisdiction over such organizations but split on an unrelated question regarding "rule of reason" analysis.

(explaining that such speech satisfies the FTC Act's jurisdictional provision). Similarly, the State causes of action apply to commercial speech like WPATH's. *See* AS § 45.50.471; Iowa Code § 714.16; Neb. Rev. Stat. § 87-302; Tex. Bus. & Com. Code § 17.46.[13]

2. The Amended Complaint alleges that WPATH has engaged in misleading commercial speech

The Amended Complaint alleges facts that establish WPATH's speech to be commercial. *E.g.*, Am. Compl. ¶¶ 253–59 (explaining insurance-related market dynamics), 260–70 (recounting WPATH's response to those dynamics in SOC-7 and SOC-8), 271–88 (explaining the success and profitability of WPATH's efforts). WPATH's speech is foundational to its members' profitability. *See id*. ¶¶ 6–7, 13–14, 16, 246–350. It is therefore not a close question whether WPATH's speech is commercial, and this Court need not go further. *See Ariix*, 985 F.3d at 1115 (explaining that the *Bolger* factors for commercial speech apply when "the facts present a close question").

Even assuming it is necessary to apply the *Bolger* factors, WPATH's speech is commercial. The Supreme Court has provided three "no[n-]dispositive" factors to guide the commercial speech analysis when "the facts present a close question." *Ariix*, 985 F.3d at 1115–16 (discussing *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 66–67 (1983)). They ask whether "[1] the speech is an advertisement, [2] the speech refers to a particular product, and [3] the speaker has an economic motivation." *Ariix*, 985 F.3d at 1116 (quotation omitted). Additional principles guide the analysis. Even speech that is not itself a "proposal[] to engage in commercial transactions" may be

[13] The deceptive omission claims, Am. Compl. ¶¶ 403–405, derive from affirmative statements. Specifically, the omission of various risks and side effects is pertinent because WPATH affirmatively represents, via a "strong recommendation," that various treatments have "few downsides," among other things. *Id.*, *see supra* II.A (explaining the meaning of a "strong recommendation"). The failure to disclose a substantial downside to a treatment is a deceptive omission in the context of such a "strong recommendation."

commercial speech. *Bolger*, 463 U.S. at 66. Nor does speaking about a product or service which is the topic of debate, scientific or otherwise, render speech "entitled to the constitutional protection afforded noncommercial speech." *Id.* at 68. To hold otherwise would allow organizations "to immunize false or misleading product information from government regulation simply by including references to public issues." *Ibid*. *Bolger* itself involved a drug company that manufactured contraceptives and primarily sold them to wholesalers. *Id.* at 62. The company's speech included "informational pamphlets discussing the desirability and availability of prophylactics in general." *Ibid*. But the Court held that such speech was commercial "notwithstanding" the company's discussion of public health issues. *Id*. at 67–68.

WPATH's speech is commercial under the *Bolger* factors. As discussed in more detail below, WPATH's speech meets the first two prongs as it promotes specific medical transition services. But courts often find the third factor, which examines the motivation of the speaker, to be outcome-determinative. *See Ariix*, 985 F.3d at 1116–18; *see also P&G Co. v. Amway Corp.*, 242 F.3d 539, 552 (5th Cir. 2001) (remanding for consideration of the "determinative" third factor).

Plaintiffs allege that WPATH was founded "to promote the transition service industry's financial interests" following a decline in insurance coverage for medical transition drugs and surgeries, Am. Compl. § VII.A; *id.* ¶¶ 51–56, 246–59, that each of WPATH's deceptive statements was made to "generate significant profit" for its members, *id*. ¶ 246, and that WPATH's efforts are lucrative, *id*. ¶ 271–315.

Put simply, WPATH speaks with economic motive. *Ariix* is instructive. It did not matter that the company in *Ariix*, like WPATH, self-published a document "that compares and reviews nutritional supplements sold in the direct marketing industry," "portray[ed] itself as an independent company that presents only objective data and scientific analyses to the public," disclaimed any

bias, and represented that it "simply documents recent findings in the scientific literature." 985 F.3d at 1111–12. In *Ariix*, as here, the plaintiffs alleged that the company was not independent but was instead seeking profit by skewing its purportedly neutral scientific commentary. *Id*. at 1118–19. And the defendant in *Ariix*, like WPATH, failed to disclose conflicts of interest. *Id*. at 1118. Plaintiffs allege that WPATH "conceived [SOC-8] to juice sales of [medical transition] products [and services], actively misled the public about [its] supposed independence, and fiddled with [its] own [methodology] to boost" its members' profits. *Id*. at 1119. The Amended Complaint thus alleges the same pattern that the Ninth Circuit held sufficient in *Ariix*: a self-published guide conceived to drive sales, a false claim of independence, and a methodology bent to serve members' profits. *Cf. id.* at 1111. WPATH speaks with economic motive, so its speech is commercial.

WPATH's speech meets the remaining two factors because it is an advertisement and it refers to specific products—medical transition drugs, surgeries, and related services. Speech need not be "in the traditional form of an advertisement," or even list "price or availability" to be an advertisement. *Ariix*, 985 F.3d at 1116. Instead, "today's sophisticated and subtle marketing campaigns" often conceal advertisements within other media. *Id.* at 1116. That is why a self-published document "that compares and reviews nutritional supplements sold in the direct marketing industry" was commercial speech, even though the author "portray[ed] itself as an independent company that presents only objective data and scientific analyses to the public," including by claiming to rely "on scientific criteria" in reviewing products, disclaiming any bias, and representing that it "simply documents recent findings in the scientific literature." *Id.* at 1111–12. Similarly, informational speech can be commercial when it discusses a product or service "all in a positive tone." *Facenda*, 542 F.3d at 1017. Moreover, "[a]n advertisement is no less 'commercial' because it promotes brand awareness or loyalty rather than explicitly proposing a

transaction in a specific product or service." *Jordan*, 743 F.3d at 518. Thus, speech that "enhance[s] the [speaker's chosen] brand in the minds of consumers" performs "an unmistakable commercial function." *Ibid*.

WPATH's speech fits the bill. WPATH has systematically overemphasized the benefits of pediatric medical transition while deemphasizing or omitting the downsides. Am. Compl. ¶¶ 68–245. It has made bold proclamations of medical necessity and strong recommendations in favor of specific products—*i.e.*, drugs, surgeries, and related treatments—without the necessary scientific foundation to support such recommendations. *Ibid*. And it did this both to secure insurance coverage and to provide its members with ammunition to sell pediatric medical transition products and services to parents. *Id*. ¶¶ 6–20, 253–88, 316–50. In short, SOC-8 "enhance[s] the [pediatric medical transition] brand in the minds of consumers" by creating the net impression that pediatric medical transition is safe, effective, and medically necessary, and it does so by discussing specific drugs, surgeries, and related treatments. *Jordan*, 743 F.3d at 518. That WPATH purports to "enjoy the screen of superficial disinterest while devoting itself to serving the interests of its members" does not excuse it from the FTC Act or the States' consumer protection laws. *California Dental Ass'n*, 526 U.S. at 768. WPATH's speech is commercial.

Because the Amended Complaint alleges that WPATH's commercial speech is misleading, that speech falls outside of the First Amendment's protections. "For commercial speech to come within [the First Amendment], it at least must concern lawful activity and not be misleading." *POM Wonderful*, 777 F.3d at 499 (quotation omitted).[14]

---

[14] At minimum, restrictions on "misleading commercial speech need only survive rational basis scrutiny, by being 'reasonably related to the State's interest in preventing deception of consumers.'" *Greater Baltimore Ctr. for Pregnancy Concerns, Inc. v. Mayor & City Council of Baltimore*, 721 F.3d 264, 283 (4th Cir. 2013) (quotation omitted). Plaintiffs allege that WPATH is

3. This enforcement action does not constitute viewpoint discrimination

WPATH asserts that the claims in this action are "improper viewpoint-based restrictions," but that argument fails for three reasons. *See* Mem. 30–35.

First, WPATH misunderstands the nature of this dispute. Plaintiffs do not seek to "prevent individuals and organizations like WPATH from" participating in scientific debate. Mem. 31. Nor are the Plaintiffs "attempting to insert themselves into the middle of this medical debate and silence those with whom they disagree." Mem. 33. Plaintiffs are not, through this action, taking a side in any genuine scientific debate. Courts have consistently held that the First Amendment does not protect misleading establishment claims, as such statements do not merely "espouse one side of a genuine controversy." *National Com'n on Egg Nutrition*, 517 F.2d at 489. Misleading statements, even those which purport to weigh in on "a medical controversy," *id.* at 487, or on matters where "[s]cientists disagree," *ECM Biofilms*, 851 F.3d at 606, are tainted by deception such that they are "unprotected by the First Amendment," *POM Wonderful*, 777 F.3d at 500 (addressing misleading claims about whether medical science established the efficacy of a product). WPATH will presumably dispute whether its statements are, in fact, misleading or that it was, in fact, economically motivated in making them. But those are matters for summary judgment or trial, not a motion to dismiss.

Instead, Plaintiffs are seeking to enjoin WPATH from making deceptive statements and deceptively omitting information in order to promote pediatric medical transition and secure insurance payments for its members, and to obtain monetary relief for such deceptive conduct under the appropriate State laws. Am. Compl. ¶¶ 406–51; *id.* § XVIII. This action therefore targets

---

engaged in such deception and seek to enjoin it (amongst other relief), so this action is reasonably related to addressing that deception.

deceptive commercial speech, not speech based on a particular viewpoint, so it is not a viewpoint-based restriction. *See, e.g.*, *id*. ¶ 409 (asserting that several of WPATH's claims are unlawful not because they express a particular viewpoint, but because the statements are "false, misleading, or unsubstantiated"). In other words, WPATH is free to argue whatever side of the debate it wishes, but it may not mislead consumers, including by providing the means and instrumentalities to deceive consumers, in doing so. And because deceptive commercial speech does not "come within [the First Amendment]," WPATH's unlawful speech falls outside the First Amendment's protection. *POM Wonderful*, 777 F.3d at 499 (affirming FTC ruling that certain advertisements were "entitled to no First Amendment protection").[15]

Chiles v. Salazar does not help WPATH. There, the Court held that a Colorado law triggered strict scrutiny because it was an "egregious" restriction on "what views" a licensed counselor "may and may not express" during talk therapy. *Chiles v. Salazar*, 146 S. Ct. 1010, 1024 (2026). Three central features of that case are absent here. To begin with, *Chiles* concerned a statute that barred an entire category of speech according to the viewpoint expressed. In contrast, Plaintiffs challenge specific statements as deceptive; WPATH remains free to make other claims about pediatric medical transition, including about purported benefits, provided it does so honestly. Next, the speech in *Chiles* was noncommercial speech. *Chiles* did not address commercial speech, did not

[15] WPATH relies on a preliminary ruling in a different case concerning a now-withdrawn civil investigative demand. Mem. 35 (suggesting that the court in *World Pro. Ass'n for Transgender Health v. FTC*, 2026 WL 1257321 (D.D.C. May 7, 2026) agreed with "this" *i.e.*, WPATH's, "conclusion" regarding asserted viewpoint discrimination). That reliance is misplaced. WPATH's "transient" result in a now-moot case in a different jurisdiction raising different legal theories on a factual record not before this Court is inapplicable here. *Lackey v. Stinnie*, 604 U.S. 192, 201 (2025); *see Dorsey*, 540 F.3d at 338. In any event, the D.C. court later rejected WPATH's argument that this case overlaps with the D.C. action. *World Pro. Ass'n for Transgender Health v. FTC*, 2026 WL 1999008, at *1–3 (D.D.C. July 10, 2026).

apply commercial-speech precedent, and did not disturb the settled rule that misleading commercial speech is unprotected. Finally, nobody alleged that the counselor in *Chiles* deceived anyone; deception is the entirety of this case. Justice Kagan's concurrence proves the point—she and Justice Sotomayor joined the majority precisely because the law discriminated based on viewpoint, observing that "a content-based but viewpoint-neutral law . . . would raise a different and more difficult question." *Id*. at 1029 (Kagan, J., concurring). Liability here turns on whether WPATH's statements are deceptive, not on the position it advances.

Second, WPATH again argues that its statements are non-actionable "opinion." That argument is no stronger the second time around. As explained in more detail above, WPATH does not express bona fide scientific opinions of the sort that case law protects. WPATH drafted SOC-8 to maximize insurance coverage for its members, not to convey tentative, testable conclusions to the scientific community. *Supra* II.B; *see* Am. Compl. ¶¶ 246–88. And the statements that Plaintiffs challenge are establishment claims—factual representations "suggest[ing] that a product's effectiveness or superiority has been scientifically established." *POM Wonderful*, 777 F.3d at 490; *see supra* II.A. WPATH's establishment claims turn on whether it possesses "the level of evidence required to convince the relevant scientific community of the claim's truthfulness," *POM Wonderful*, 777 F.3d at 498 (quotation omitted), *i.e.*, whether sufficient competent and reliable scientific evidence supports WPATH's *factual* assertions, express or implied.

Courts have consistently rejected similar First Amendment challenges to enforcement actions against misleading establishment claims. For example, the Seventh Circuit rejected a First Amendment argument when the FTC sought to enjoin an organization's misleading statements relating to the scientific evidence linking "eating eggs" to "the risk of heart disease or a heart attack." *National Com'n on Egg Nutrition*, 517 F.2d at 487. Despite there being "a medical

controversy about the subject," *id.*, the court held that there was no "First Amendment problem" because issuing "misleading" statements is categorically different than "espous[ing] one side of a genuine controversy," *id*. at 489; *see POM Wonderful*, 777 F.3d 499–500 (substantially rejecting a First Amendment challenge to an FTC order because the statements at issue were misleading, despite that petitioners cited studies to support their claims).

And in *ECM Biofilms*, the FTC alleged that a company's representations regarding a product that purportedly "accelerate[d] the biodegradation of plastics manufactured with the additive" were inadequately substantiated and, therefore, misleading. 851 F.3d at 605. The Sixth Circuit noted that "[s]cientists disagree on the precise definition of the term 'biodegradable.'" *Id.* at 606. And the company pointed "to nineteen laboratory tests that, it claims," showed that its biodegradability representations were not misleading, while the FTC argued that "thirteen [other] tests" instead demonstrated that those claims were misleading. *Ibid*. Despite the scientific nature of the dispute, the court rejected the company's First Amendment challenge to the FTC's order because the FTC had not abridged the company's "right to disseminate truthful scientific information." *Id*. at 614. Instead of treating such speech as expressing non-actionable opinion or viewpoint, the court affirmed the FTC's remedy: requiring that the company possess "competent and reliable" scientific evidence proving its claims before labeling its products as "biodegradable," or provide a disclaimer accompanying any claim of biodegradability. *Id*. at 615–17. Thus, a scientific dispute does not immunize misleading or inadequately substantiated statements from consumer protection laws. *See also Eastman Chem. Co.*, 775 F.3d at 236 (explaining that statements "open to scientific or public debate" are not "immune" under the First Amendment).

Third, as these cases demonstrate, the proper locus for a First Amendment dispute in a case regarding establishment claims is at the remedy stage, not on a motion to dismiss. *See ECM*

Biofilms, 851 F.3d at 615–17 (rejecting First Amendment challenge to an FTC order governing future speech); *POM Wonderful*, 777 F.3d at 500–05 (rejecting First Amendment challenge to FTC findings and rejecting in part First Amendment challenge to the scope of an injunctive order); *National Comm'n on Egg Nutrition*, 517 F.2d at 489–90 (rejecting First Amendment argument against "issuance of an injunction" and defining the scope of the injunction to cover the types of statements found misleading). WPATH is free to raise such arguments at that stage, but this Court should not allow WPATH to circumvent the normal course of litigation by misapprehending the nature of this action.

This Court should reject WPATH's First Amendment argument and hold that "when someone falsely claims to be independent," *e.g.*, Am. Compl. ¶¶ 68–89, "rigs" medical guidelines to maximize its members' "compensation," *e.g.*, *id*. ¶¶ 90–270, "and then" its members "profit[] from that perceived objectivity," *e.g.*, *id*. ¶¶ 271–350, "that speaker has drowned the public trust for economic gain," and "[s]ociety has little interest in protecting such conduct under the mantle of the First Amendment," *Ariix*, 985 F.3d at 1118–19.

B. The Tenth Amendment does not exempt medical organizations from the FTC Act

WPATH's Tenth Amendment argument fares no better because it never engages with the only question that the Tenth Amendment poses. The Amendment "states but a truism that all is retained which has not been surrendered," *United States v. Darby*, 312 U.S. 100, 124 (1941), and so "[i]f a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States," *New York v. United States*, 505 U.S. 144, 156 (1992). The FTC Act is an exercise of Congress's commerce power, and WPATH does not contend otherwise. Nor does that action commandeer any State or state officer; Plaintiffs seek relief against a private corporation. That ends the Tenth Amendment inquiry. What remains is

WPATH's actual argument—that some background principle exempts medical organizations from the FTC Act. But there is no such principle.

The FTC has a long history of enforcing the FTC Act against medical organizations that engage in deceptive acts or practices. *E.g.*, *California Dental Ass'n.*, 526 U.S. at 759; *FTC v. Indiana Fed'n of Dentists*, 476 U.S. 447, 448–49 (1986); *American Med. Ass'n v. FTC*, 638 F.2d 443, 446–47 (2d Cir. 1980) (discussed with approval by *California Dental Ass'n*, 526 U.S. at 765 n.6); *Empire State Pharm. Soc'y*, 114 F.T.C. 152 (1991); *Michigan State Med. Soc'y*, 101 F.T.C. 191 (1983); *Forbes Health Sys. Med. Staff*, 94 F.T.C. 1042 (1979); *Indiana Dental Ass'n*, 93 F.T.C. 392 (1979); *Medical Serv. Corp.*, 88 F.T.C. 906 (1976). If these enforcement actions violated the Tenth Amendment, courts would have said so rather than affirming time and again that the FTC Act applies to medical organizations. *See California Dental Ass'n.*, 526 U.S. at 766–68; *Indiana Fed'n of Dentists*, 476 U.S. at 448 (holding that the FTC Act applied to a dispute concerning "commercial relations among certain Indiana dentists, their patients, and the patients' dental health care insurers"); *American Med. Ass'n*, 638 F.2d at 448 (affirming that "business aspects" of a medical organization's "activities" are still "within the scope of the" FTC Act—which applies to activities "in or affecting commerce," 15 U.S.C. § 45.). Indeed, neither WPATH nor its State *amici* cite a case holding that the Tenth Amendment bars the FTC Act from applying to medical organizations. *See* Mem. 25–30, *see generally* WPATH Amici Br.

Nevertheless, WPATH and its *amici* fight a straw man. As explained above, the FTC and the State Plaintiffs are not seeking to usurp State authority to regulate medicine, preempt State law, or take part in the substantive debate around medical transition through this action. *Contra* WPATH Amici Br. at 2, Mem. 25–30. This case only concerns WPATH's deceptive statements and omissions. Am. Compl. ¶¶ 375–403. If the Plaintiffs win, the resulting order will not remove the

State laws of WPATH's *amici* from the books and those *amici* will remain free to determine what treatments are (in their view) medically necessary. But WPATH will be prohibited from making misleading establishment claims and other deceptive statements and omissions, and it will be required to pay compensation and penalties under the State Plaintiffs' laws. *Id*. § XVIII. In other words, the debate will continue, but it will do so on honest terms.

WPATH also misrepresents the law, claiming that 42 U.S.C. § 1395 "*explicitly* disapproves of any effort by the FTC to 'exercise supervision' over state judgments about the practice of medicine." Mem. 30 (emphasis added). Not so. Instead, that statute provides that "[n]othing *in this subchapter* shall be construed to authorize any Federal officer or employee to exercise any supervision or control over the practice of medicine." 42 U.S.C. § 1395 (emphasis added). The statute thus poses three fatal problems for WPATH's interpretation. *First*, the subchapter to which the statute applies governs Medicare, which WPATH appears to realize, Mem. 26, but soon forgets, Mem. 29–30.[16] If the statutory basis for this action was a statute within that subchapter, then WPATH might have a point. It is fortunate, then, that the FTC brings this action under the FTC Act, Am. Compl. ¶¶ 406–17, which is not the subchapter to which 42 U.S.C. § 1395 applies. Indeed, the FTC Act is not even in the same *title* of the United States Code. *See* 15 U.S.C. § 45. *Second*, 42 U.S.C. § 1395 does not "*explicitly* disapprove[] of any effort by the FTC" to do anything at all. Mem. 30 (emphasis added). Indeed, the statute does not mention the FTC. *Third*, 42 U.S.C. § 1395 does not "forbid[]" anything. Mem. 29. Instead, it clarifies that the Medicare statutes do not "authorize" certain actions. 42 U.S.C. § 1395.

[16] WPATH asserts that the Medicare statutes are "most analogous here," Mem. 26, but does not explain how a statute governing administration of a federal health insurance program is analogous to consumer protection law. It is not.

WPATH's invocation of *FTC v. National Casualty Company* proves the point. Mem. 29. In that case, the McCarran-Ferguson Act provided that the Sherman Act, Clayton Act, and FTC Act "shall be applicable to the business of insurance to the extent that such business is not regulated by State law." *FTC v. National Cas. Co.*, 357 U.S. 560, 562 n.2 (1958).[17] Thus, unlike 42 U.S.C. § 1395, the McCarran-Ferguson Act explicitly barred the FTC from enforcing its statutes if State law regulated insurance. *Id.* at 562–63. If anything, this case demonstrates that when Congress seeks to bar the FTC Act from applying to an industry in certain circumstances, it says so explicitly. But here, there is no statute that bars the FTC from applying the FTC Act to misleading commercial speech by a medical organization.

The logical conclusion of WPATH's argument would provide any entity that engages in medical discourse *de facto* immunity from the FTC Act. That is not the law.

IV. Texas, Nebraska, and Iowa have standing

WPATH's argument that Texas, Nebraska, and Iowa lack standing is incorrect. WPATH's argument is twofold. First, WPATH argues that these States lack standing to seek injunctive relief because "the injuries alleged are exclusively retrospective." Mem. 36–38. Second, WPATH argues that these States lack standing to seek monetary relief the statutes of limitations have run. Mem. 37. Both arguments fail.

WPATH's statute-of-limitations argument lacks merit. Mem. 37. "[O]ne of the incidents of sovereignty" is that "*nullum tempus occurrit regi*," that is, "no time runs against the King." *Fennelly v. A-1 Mach. & Tool Co.*, 728 N.W.2d 163, 168 (Iowa 2006). Because "[l]imitations

[17] The latest amendment to the McCarran-Ferguson Act, which reinstates the application of federal antitrust and competition law to health insurance companies, further demonstrates that the division between federal and State regulation of medicine is one of policy, not constitutional law. *See* Competitive Health Insurance Reform Act of 2020, Pub. L. No. 116-327 (2021).

derive their authority from statutes," the sovereign "was held never to be included, unless expressly named." *Ibid.* Thus, States are "immune from the statute of limitations in order to preserve public rights." *Ibid*; *see Avila v. State*, 252 S.W.3d 632, 647 (Tex. App.—Tyler 2008, no pet.); *Thomas v. State*, 226 S.W.3d 697, 710 (Tex. App.—Corpus Christi 2007, pet. dism'd); *In re Ernst's Guardianship*, 62 N.W.2d 110, 111 (Neb. 1954). WPATH does not identify any applicable exception to this rule, so its argument fails. *See* Mem. 37. The States have standing to seek monetary relief.

WPATH's argument on injunctive relief fares no better. Start with Texas. The Deceptive Trade Practices Act ("DTPA") prohibits "[f]alse, misleading, or deceptive acts or practices in the conduct of any trade or commerce." Tex. Bus. & Com. Code § 17.46(a) (hereinafter DTPA § 17.46(a). The DTPA "shall be liberally construed." *Id*. § 17.44(a). Deceptive trade practices include "causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services," *id*. § 17.46(b)(2); "representing that goods or services have . . . uses, [or] benefits" "which they do not have," *id*. § 17.46(b)(5); and inducing consumers to enter transactions by "failing to disclose information concerning goods or services which was known at the time of the transaction," *id*. § 17.46(b)(24).

Texas is not required to prove that any consumer was deceived. An act is "false, misleading, or deceptive if it has the *capacity* to deceive an ignorant, unthinking, or credulous person." *Doe v. Boys Clubs of Greater Dallas, Inc.*, 907 S.W.2d 472, 479–80 (Tex. 1995) (emphasis added, quotation omitted). "Moreover, it is not necessary for the State to allege any injury to a patient" or other consumer. *Holzman v. State*, 2013 WL 398935, at *3 (Tex. App.—Corpus Christi, Jan. 31, 2013, pet. denied). And Texas need not prove that WPATH directly engaged in the provision of the goods or services because "[p]rivity . . . is not a consideration . . . . The only requirement is that

the goods or services sought or acquired by the consumer form the basis of his complaint." *Flenniken v. Longview Bank and Trust Co.*, 661 S.W.2d 705, 707 (Tex. 1983). Thus, all that is required for a defendant's deceptive act or trade practice to be actionable under the DTPA is a mere connection with a consumer's transaction in goods or services. *Amstadt*, 919 S.W.2d at 649–50; *Knight*, 627 S.W.2d at 388–89 (concluding that a consumer had a DTPA claim for the defendant's deceptive acts "connected with" a sale).

Texas' ban on pediatric medical transition, Tex. Health & Safety Code § 161.702, *et seq.*, has no bearing on Texas' entitlement to injunctive and other available relief. Under Texas law, an injunction under the DTPA remains available despite that another statute prohibits the same conduct. *See Molano v. State*, 262 S.W.3d 554, 563 (Tex. App.—Corpus Christi 2008, no pet.) (explaining that the statute broadly provides for restitution of funds "acquired by unlawful means"). And the DTPA contains an anti-mootness provision for Attorney General enforcement actions, such that the "[c]essation of unlawful conduct" does not deprive the court of jurisdiction "under any circumstances." Tex. Bus. & Com. Code § 17.47(a); *see also Matthews, on behalf of M.M. v. Kountze Indep. Sch. Dist.*, 484 S.W.3d 416, 418 (Tex. 2016) (holding the cessation of challenged conduct does not "deprive a court of the power to hear or determine claims for prospective relief.").

Nebraska's claims are also not barred by a lack of standing. First, Nebraska is not required to allege or prove any consumer was deceived or otherwise harmed by WPATH's deceptive trade practices. *See* Neb. Rev. Stat. §§ 87-302(a), 87-303.05(1), 87-303.11. Nebraska's Uniform Deceptive Trade Practices Act ("NE UDTPA") authorizes the Attorney General to seek injunctive relief "[w]henever the Attorney General has cause to believe a person has engaged in or is engaging in any deceptive trade practice . . . listed in section 87-302." Neb. Rev. Stat. § 87-303.05.

Similarly, § 87-303.11(1) subjects any person who violates § 87-302 to civil penalties and explicitly authorizes the Attorney General to seek recovery of those civil penalties. Notably absent from these sections is any language requiring the Attorney General to allege or prove the deceptive trade practice has harmed or will harm any consumer. This absence is made more conspicuous when these sections are contrasted with that authorizing private action: "A person *likely to be damaged* by a deceptive trade practice of another may bring an action for, and the court may grant, an injunction." Neb. Rev. Stat. § 87-303(a) (emphasis added). Further, the deceptive trade practices listed in § 87-302 only describe each deceptive act or practice without any reference to any effect the act or practice may have on a consumer. For example, § 87-302(a)(2) prohibits "caus[ing] likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services" (emphasis added), and § 87-302(a)(5) prohibits "represent[ing] that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have." The violation is causing confusion or misunderstanding likely or making a false representation. Therefore, Nebraska does not need to allege future harm to consumers from WPATH's deceptive trade practices. Nebraska is only required to allege the deceptive trade practices themselves, which it has done. *See supra* II.D.

That the conduct WPATH promotes is illegal in Nebraska does not defeat Nebraska's claims and, in fact, bolsters Nebraska's interest in prohibiting WPATH's misleading representations and omissions. As demonstrated by WPATH's *amici*, several states have few restrictions on adolescents obtaining puberty blockers, hormone therapy, or pediatric medical transition surgery. Although WPATH's prior and ongoing representations continue to dictate the purported standard of care for medical providers outside of Nebraska, adolescents in Nebraska are still at risk of harm. That risk presents specific and concrete harm giving rise to Nebraska's *parens*

patriae interest. WPATH's reliance on Nebraska's current law prohibiting certain procedures for adolescents is misplaced, as it goes against the grain of when injunctive relief may be appropriate. *See State ex rel. Douglas v. Ledwith*, 281 N.W.2d 729, 736 (Neb. 1979) ("An injunction is a remedy designed to control future behavior, and whether that behavior is occurring at the time of the decree granting the injunction is generally irrelevant to the propriety of its issuance.").

Nor are Iowa's claims are barred by a lack of standing. Iowa is entitled to seek a preliminary or permanent injunction if "it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in a practice declared to be unlawful by this section." Iowa Code § 714.16(7). Under the Iowa Consumer Fraud Act, it is "deceptive advertising within the meaning of the" statute to advertise "certain services are performed on behalf of clients or customers" that do not provide the benefit claimed. Iowa Code § 714.16(2)(a). Thus, because WPATH "has engaged in" conduct that violates the Iowa Consumer Fraud Act, Iowa has standing to seek a permanent injunction. Iowa Code § 714.16(7).

CONCLUSION

This Court should deny WPATH's Motion to Dismiss.

Dated: August 18, 2026

Respectfully submitted,

Of Counsel

Jonathan Cohen
Chief Litigation Counsel
District of Columbia Bar No. 483454*

/s/ Michael Dingman
Senior Counsel to the Director
District of Columbia Bar No. 90001474*
R. Cooper Vaughan
Senior Counsel to the Director
Virginia State Bar No. 92580
Glenna Goldis
Assistant Director for Special Projects
New York Reg. No. 4868600*
Hans Clausen
Attorney
Georgia Bar No. 153250*

Federal Trade Commission
Bureau of Consumer Protection
600 Pennsylvania Avenue, NW
Washington, DC 20580
Fax: (214) 953-3079
E-mail: MDingman@FTC.gov

*Admitted *pro hac vice*

FOR THE STATE OF ALASKA:

CORI M. MILLS
Acting Attorney General of Alaska

Charles J. Gartland
Civil Division Director
Alaska Bar No. 2509064*
Alaska Dept. of Law
1031 W. 4th Ave.
Suite #200
Anchorage, AK 99501
Telephone: (907) 269-5100
Fax: (907) 269-5100
E-mail: charles.gartland@alaska.gov

*Admitted *pro hac vice*

Attorney for Plaintiff
STATE OF ALASKA

FOR THE STATE OF IOWA:

BRENNA BIRD
Attorney General of Iowa

Eric Wessan

Eric H. Wessan
Solicitor General
Iowa Attorney General's Office
Iowa Bar Pin: AT0014313
1305 E. Walnut St.
2d Floor
Des Moines, IA 50263
Telephone: (515) 823-9117
E-mail: eric.wessan@ag.iowa.gov

Attorney for Plaintiff
STATE OF IOWA

FOR THE STATE OF NEBRASKA:

MICHAEL T. HILGERS
Attorney General of Nebraska

Benjamin J. Swanson (pro hac vice forthcoming)
Nebraska Bar No. 27675
Assistant Attorney General
Erik W. Fern
Deputy Bureau Chief
Nebraska Bar No. 23733*
Consumer Protection Bureau
Office of the Nebraska Attorney General
2115 State Capitol
Lincoln, Nebraska 68508
Telephone: (402) 471-3811
Fax: (402) 471-4725
E-mail: erik.fern@nebraska.gov
E-mail: benjamin.swanson@nebraska.gov

*Admitted *pro hac vice*

Attorneys for Plaintiff
STATE OF NEBRASKA

FOR THE STATE OF TEXAS:

KEN PAXTON
Attorney General of Texas

Brent Webster
First Assistant Attorney General

Ralph Molina
Deputy First Assistant Attorney General

Austin Kinghorn
Deputy Attorney General for Civil Litigation

Johnathan Stone
Chief, Consumer Protection Division

David Bizar
Assistant Attorney General
Texas State Bar No. 24110737
Office of the Attorney General of Texas
Consumer Protection Division
P.O. Box 12548
Austin, Texas 78711-2548
Telephone: (512) 463-2185
Fax: (512) 473-8301
E-mail: David.Bizar@oag.texas.gov

CERTIFICATE OF COMPLIANCE

I, Michael Dingman, hereby certify that this document complies with the length limits specified in this Court's Order of August 14, 2026, ECF 66, because it and Plaintiffs' concurrently filed Brief in Opposition to Defendants' Motion to Dismiss or, in the Alternative, Transfer Venue do not exceed 55 pages, excluding the items listed in Federal Rule of Appellate Procedure 32(f) and Local Rule (Civil) 7.2(c).

/s/ Michael Dingman
Michael Dingman

Appendix

TABLE OF CONTENTS

Opinions

Abboud v. Lotta Dough, LLC

United States District Court for the Western District of Texas, Austin Division

February 27, 2025, Decided; February 27, 2025, Filed

Case No. 1:24-CV-00482-JRN

Reporter
2025 U.S. Dist. LEXIS 35547 *; 2025 LX 229537

Monica Abboud, on behalf of herself and all those similarly situated, Plaintiff, v. Lotta Dough, LLC, d/b/a Hoboken Pie, Defendant.

Counsel: **[*1]** For Monica Abboud, on behalf of herself and all those similarly situated, Plaintiff: Abbas Kazerounian, Kazerounian Law Group APC, Costa Mesa, CA; Ahren A. Tiller, PRO HAC VICE, BLC Law Center APC, San Diego, CA.

Judges: JAMES R. NOWLIN, SENIOR UNITED STATES DISTRICT JUDGE.

Opinion by: JAMES R. NOWLIN

Opinion

ORDER

Before the Court is Hoboken Pie's supplemental motion to dismiss. Dkt. 19.[1] For the reasons set forth below, the Court denies this motion.

I. Background

Monica Abboud brings this class-action suit against Hoboken Pie for violating the Telephone Consumer Protection Act (TCPA). Dkt. 11, at ¶ 1. Abboud alleges that Hoboken Pie violated *Section 227(c)(5) of the TCPA* by sending her two unsolicited text messages despite her registration on the national do-not-call registry. *Id.* at ¶¶ 16, 19-20, 46. Abboud explains that Hoboken Pie uses an anonymous telemarketing company to send text messages on its behalf and that "[Hoboken Pie] is vicariously liable for the actions of any third party they may have hired to market their services." *Id.* at ¶¶ 8, 18. To support her vicarious-liability claim, Abboud cites a ruling from the Federal Communications Commission (FCC) that a seller may be held vicariously liable for violations of *Section 227(c)* that are committed by third-party telemarketers. *Id.* at ¶ 9 **[*2]** (quoting *In re Dish Network, LLC, 28 FCC Rcd. 6574, 6574 (2013)*).

Hoboken Pie seeks to dismiss Abboud's complaint under *Federal Rule of Civil Procedure 12(b)(6)*. Dkt. 19, at 1. Hoboken Pie argues that Abboud's vicarious-liability argument is premised "on an interpretation of the TCPA by the [FCC] under the aegis of *Chevron* deference." *Id.* at 2. Hoboken Pie notes that the

[1] Hoboken Pie filed a separate motion to dismiss on the basis that Plaintiff lacks standing and that she accepted the terms of a binding arbitration agreement. Dkt. 12, at 5. The Court denied that motion in a previous order. Dkt. 20.

Supreme Court recently overruled *Chevron* in *Loper Bright Enterprises v. Raimondo, 603 U.S. 369, 412, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024)*; therefore, Hoboken Pie contends that "Plaintiff's reliance on *Chevron* to impose vicarious liability *vìz-a-vìz* an interpretation of the TCPA by the [FCC] is not binding on this Court." *Id.* at 3. Hoboken Pie urges this Court to interpret the TCPA by applying traditional rules of statutory interpretation, asserting that this will result in the dismissal of Abboud's complaint. *Id.* at 3-4.

II. Legal Standard

"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.'" *Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)* (quoting *Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)*). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* In deciding a motion to dismiss, the Court accepts all well-pleaded facts as true and views those facts **[*3]** in the light most favorable to the plaintiff. *Richardson v. Axion Logistics, L.L.C., 780 F.3d 304, 305-6 (5th Cir. 2015)*.

III. Analysis

The Court denies Hoboken Pie's motion to dismiss for two reasons.[2] First, the FCC's ruling may very well be entitled to deference, even after *Loper Bright*. In *Loper Bright*, the Supreme Court "[did] not call into question prior cases that relied on the *Chevron* framework." *603 U.S. at 412*. "The holdings of those cases that specific agency actions are lawful . . . are still subject to statutory *stare decisis* despite our change in interpretive methodology." *Id.* This matters here because the Supreme Court has already crossed paths with the FCC's ruling. In *Campbell-Ewald Co. v. Gomez*, the Court recognized that "the [FCC] has ruled that, under federal common-law principles of agency, there is vicarious liability for TCPA violations." *577 U.S. 153, 168, 136 S. Ct. 663, 193 L. Ed. 2d 571 (2016)*. The Court noted that the Ninth Circuit had deferred to the FCC's ruling and stated that "we have no cause to question it." *Id.* Thus, *Campbell* seems to fall within the category of cases that *Loper Bright* does not call into question.

Second, even if the FCC's ruling is not entitled to deference, an independent analysis reveals that the agency got it right. *Section 227(c)(5)* authorizes claims by "[a] person who has received more than one telephone call **[*4]** within any 12-month period by or *on behalf of* the same entity in violation of the regulations prescribed under this subsection." *47 U.S.C. § 227(c)(5)* (emphasis added).[3] This language

---

[2] A brief note on mootness: Hoboken Pie requested leave to file this supplemental motion to dismiss, Dkt. 9, which the Court previously granted. Before the Court did so, however, Plaintiff filed an amended complaint. Dkt. 11. The Court recognizes that "[a] Plaintiff's filing of an amended complaint *may* render moot a pending motion to dismiss." *Rodriguez v. Xerox Bus. Servs., LLC*, No. EP-16-CV-41-DB, 2016 WL 8674378, at *1 (W.D. Tex. June 16, 2016) (emphasis added). But the Court declines to deny this motion as moot because Plaintiff's amended complaint relies on the same vicarious-liability theory as her original complaint. *Compare* Dkt. 1, at ¶¶ 8, 9, *with* Dkt. 11, at ¶¶ 8, 9; *see Rountree v. Dyson, 892 F.3d 681, 683-84 (5th Cir. 2018)* ("If some of the defects raised in the original motion remain in the new pleading, the court simply may consider the motion as being addressed to the amended pleading.") (quoting 6 Charles Alan Wright & Arthur R. Miller, FED. PRAC. & PROC. CIV. § 1476 (3d ed.)).

[3] Neither party disputes that this provision applies equally to text messages. *See Facebook, Inc. v. Duguid, 592 U.S. 395, 400 n.2, 141 S. Ct. 1163, 209 L. Ed. 2d 272 (2021)*.

"contemplates that a company can be held liable for calls made on its behalf, even if not placed by the company directly." *Krakauer v. Dish Network, L.L.C., 925 F.3d 643, 659 (4th Cir. 2019)*. That reading is bolstered by the presumption that "when Congress creates a tort action, it legislates against a legal background of ordinary tort-related vicarious liability rules and consequently intends its legislation to incorporate those rules." *Meyer v. Holley, 537 U.S. 280, 285, 123 S. Ct. 824, 154 L. Ed. 2d 753 (2003)*. At least two other courts have interpreted *Section 227(c)(c)* in the wake of *Loper Bright*, and both found that it allows for vicarious liability. *See Tatum v. Dboss Funding, LLC, No. 6:23-CV-565-JDK-KNM, 2024 U.S. Dist. LEXIS 226013, 2024 WL 5098503, at *3 (E.D. Tex. Nov. 13, 2024)*; *Cacho v. McCarthy & Kelly LLP, 739 F. Supp. 3d 195, 213, 218 (S.D.N.Y. 2024)*. This Court declines Hoboken Pie's invitation to find otherwise.

IV. Conclusion

Accordingly, **IT IS ORDERED** that Defendant's supplemental motion to dismiss (Dkt. 19) is **DENIED**.

SIGNED on February 27, 2025.

/s/ James R. Nowlin

JAMES R. NOWLIN

SENIOR U.S. DISTRICT JUDGE

End of Document

2013 WL 398935
Only the Westlaw citation is currently available.

SEE TX R RAP RULE 47.2 FOR
DESIGNATION AND SIGNING OF OPINIONS.

MEMORANDUM OPINION
Court of Appeals of Texas,
Corpus Christi–Edinburg.

Madelyn HOLZMAN, M.D., Appellant,
v.
The STATE of Texas, Appellee.

No. 13–11–00168–CV.
|
Jan. 31, 2013.

On appeal from the 94th District Court of Nueces County, Texas. Robert Galvan, Judge.

Attorneys and Law Firms

Eric S. Stewart, Corpus Christi, TX, for Madelyn Holzman, M.D.

Michael Aguirre and Ricardo Madrigal, Asst. Atty. Gen., McAllen, TX, for The State of Texas.

Before Chief Justice VALDEZ and Justices GARZA and BENAVIDES.

MEMORANDUM OPINION

Memorandum Opinion by Chief Justice VALDEZ.

***1** By two issues, which we address as one, appellant, Madelyn Holzman, M.D., appeals from the trial court's order denying her motion to dismiss based on the failure of the State of Texas to comply with the expert report requirements of chapter 74 of the Texas Civil Practice and Remedies Code. *See* TEX. CIV. PRAC. & REM.CODE ANN. § 74.351 (West 2011). We affirm.

I. BACKGROUND

The State of Texas, acting through the Office of the Attorney General, filed this suit against appellant after it discovered that appellant had allegedly discarded approximately 200 medical files containing sensitive personal information about her patients in a trash dumpster accessible to the public. The State asserted causes of action under the Deceptive Trade Practices Act and the Identity Theft Enforcement and Protection Act. *See* TEX. BUS. & COM.CODE ANN. §§ 17.01–.926 (West 2011 & West Supp.2011); §§ 521.001–.152 (West 2011 & West Supp.2011).

In its live petition, the State alleges in relevant part:

> In the regular course of business, defendant[ ] provide[s] medical services to [her] patients. Defendant[ ] maintain[s] the patient's medical file, in [her] possession, custody, and control and has kept all of the files, as part of defendant[']s[ ] business records, since the inception of the medical practice.
>
> ...
>
> Although the medical files contain sensitive personal information that could be used to steal the identities of individuals or to permit access to an individual's private medical information, defendant[ ] failed to implement and maintain reasonable procedures to protect and safeguard from unlawful use or disclosure any sensitive personal information collected or maintained by defendant[ ] in the regular course of business ....
>
> As a consequence of defendant[']s[ ] failure to implement and maintain reasonable procedures to protect and safeguard such information, on or about May 2, 2009, approximately 200 of defendant[']s[ ] medical files, containing sensitive personal information, were found in a trash dumpster that was readily accessible to the public in Corpus Christi, Texas.

One hundred and twenty days after the State filed suit, appellant filed a motion to dismiss the lawsuit, arguing that the claims alleged by the State were subject to the provisions of chapter 74 of the Texas Civil Practice and Remedies Code and that the claims should be dismissed because the State had failed to comply with the provisions of that chapter. *See* TEX. CIV. PRAC. & REM.CODE ANN. § 74.351. The trial court denied the motion, and this appeal ensued. *See id.* § 51.014(a)(9) (West 2011).

II. ANALYSIS

A. Applicable Law

Chapter 74 of the Texas Civil Practice and Remedies Code entitles a defendant to dismissal of a healthcare liability claim if the defendant is not served, within 120 days of the date suit was filed, with an expert report showing that the claim has merit. *See id.* § 74.351(b). The report must provide a fair summary of the expert's opinions as of the date of the report regarding: (1) applicable standards of care; (2) the manner in which the care rendered by the healthcare provider failed to meet the standard of care; and (3) the causal relationship between that failure and the injury, harm, or damages claimed. *Id.* § 74.351(r)(6).

***2** To avoid dismissal, the report must present an objective good-faith effort to comply with these requirements. *See id.* § 74.351(l). A "good-faith effort" in this context simply means a report that does not contain a material deficiency. *Samlowski v. Wooten,* 332 S.W.3d 404, 409–10 (Tex.2011). To constitute a good-faith effort, the report must provide enough information to: (1) inform the defendant of the specific conduct the plaintiff has called into question; and (2) provide a basis for the trial court to conclude that the claims have merit. *See Bowie Mem'l Hosp. v. Wright,* 79 S.W.3d 48, 53 (Tex.2002). The report must include the expert's opinion on each of the three elements: (1) standard of care; (2) breach; and (3) causal relationship. *Id.* A report cannot merely state the expert's conclusions about these elements. *Id.* "Rather, the expert must explain the basis of his statements to link his conclusions to the facts." *Earle v. Ratliff,* 998 S.W.2d 882, 890 (Tex.1999).

B. Standard of Review

The denial of the motion to dismiss is reviewed for abuse of discretion. *Jelinek v. Casas,* 328 S.W.3d 526, 539 (Tex.2010). However, when the issue, as in this case, involves the applicability of chapter 74 to the plaintiff's claims and requires an interpretation of the statute, we apply a de novo standard of review. *Buck v. Blum,* 130 S.W.3d 285, 290 (Tex.App.-Houston [14th Dist.] 2004, no pet.); *Ponce v. El Paso Healthcare Sys., Ltd. .,* 55 S.W.3d 34, 36 (Tex.App.-El Paso 2001, pet. denied).

C. Discussion

This case involves two distinct issues: (1) Are the claims in this case healthcare liability claims subject to the provisions of chapter 74? (2) If so, is the State of Texas subject to the provisions of chapter 74?

A healthcare liability claim consists of three elements: [1] "(1) a physician or health care provider must be a defendant; (2) the claim or claims at issue must concern treatment, lack of treatment, or a departure from accepted standards of medical care, or health care, or safety or professional or administrative services directly related to health care; and (3) the defendant's act or omission complained of must proximately cause the injury to the claimant." *Tex. West Oaks Hosp., LP v. Williams,* 371 S.W.3d 171, 180 (Tex.2012); *Marks v. St. Luke's Episcopal Hosp.,* 319 S.W.3d 658, 662 (Tex.2010).

In this case, the first element is not in dispute. The relevant inquiry concerns the second and third elements.

"A cause of action alleges a departure from accepted standards of safety if the act or omission complained of is an inseparable part of the rendition of medical services." *Valley Baptist Med. Ctr. v. Azua,* 198 S.W.3d 810, 814 (Tex.App.-Corpus Christi 2006, no pet.). If the essence of the suit is a healthcare liability claim, a party cannot avoid the requirements of chapter 74 through artful pleading. *Diversicare Gen. Partner, Inc. v. Rubio,* 185 S.W.3d 842, 851 (Tex.2005). Therefore, in determining whether the claim is governed by chapter 74, we review the underlying nature of the claim and not the labels used by claimants. *Azua,* 198 S.W.3d at 814.

***3** The core allegations in this case are that, in the course of providing healthcare to patients, (1) appellant maintained medical files, (2) the files contained private medical information, (3) appellant had a duty to keep the information confidential, and (4) appellant breached that duty with respect to 200 files by disposing of them in a trash dumpster accessible to the public.

The Dallas Court of Appeals has previously noted that "[m]aintaining the confidentiality of patient records is part of the core function of providing health care services." *Sloan v. Farmer,* 217 S.W.3d 763, 768 (Tex.App.-Dallas 2007, pet. denied). According to the court, "any duty [a healthcare provider] may have had to maintain the confidentiality of the health-care communication is inextricably intertwined with the physician-patient relationship and the health-care services to which the communication pertains." *Id.* Thus, in *Sloan,* the court concluded that chapter 74 was applicable to claims involving alleged breaches of confidentiality between physician and patient. *Id.* at 768–69.

Assuming the foregoing establishes the second element of a healthcare liability claim, what remains missing is an allegation of a patient's injury or death. *See Marks,* 319 S.W.3d at 662. Obviously, the State is not a patient. Nor has the State alleged that any patient suffered bodily injury or death. If any non-physical injury has been alleged in this suit, it arises from the medical files being deposited in a trash dumpster accessible to the public. However, the State did not allege that this act caused any person to suffer any injury. There is no allegation that any confidential information actually fell into the hands of any third-parties—only that the information could have potentially been accessed by the public. Thus, the injury, if any, is purely hypothetical. Moreover, it is not necessary for the State to allege any injury to a patient to recover the civil penalties it seeks in its live petition. *See* TEX. BUS. & COM.CODE ANN. §§ 17.47(c) (DTPA); 521.151(a) (ITEPA). Therefore, we conclude that the third element for a healthcare liability claim is absent in this case.

Accordingly, the trial court did not err in denying appellant's motion to dismiss. Appellant's two issues are overruled.

III. CONCLUSION

The judgment of the trial court is affirmed.

Dissenting Memorandum Opinion by Justice GINA M. BENAVIDES.

DISSENTING MEMORANDUM OPINION

Dissenting Memorandum Opinion by Justice BENAVIDES.

***3** The Texas Supreme Court has issued two recent opinions, *Loaisiga v. Cerda,* 379 S.W.3d 248 (Tex.2012), and *Texas West Oaks Hospital v. Williams,* 371 S.W.3d 171 (Tex.2012), which take an expansive view of the Texas Medical Liability Act. Because the current case law from Texas's high court supports the propositions that chapter 74 of the Texas Civil Practices and Remedies code trumps the other causes of action pleaded in this case, and that chapter 74 applies to the State of Texas, I dissent.

I. BACKGROUND

***4** The State of Texas, through the Office of the Attorney General, filed suit against Dr. Holzman when it discovered that her medical office discarded nearly two hundred medical files in a trash dumpster easily accessible to the public. The medical files contained sensitive personal health information, including full names, social security numbers, dates of birth, and medical conditions, of several of Dr. Holzman's patients and former patients. The medical conditions, in particular, revealed intensely personal information: these conditions included diagnoses for mental retardation; neurogenic bladder, or lack of bladder control; urinary tract infections; gross hematuria (blood in the urine); diabetes; incontinence; growths in the scrotum; and spermatocele, or scrotal cysts.

The State's lawsuit asserted causes of action under the Texas Deceptive Trade Practices Act (DTPA) and the Identity Theft Enforcement and Protection Act (ITEPA), claiming that Dr. Holzman promised, but breached, a statutory duty to implement and maintain reasonable procedures to protect her patients' personal information. *See* TEX. BUS. & COM.CODE ANN. §§ 17.01–.926; §§ 521.001–.152 (West 2011 & West Supp.2011).

One-hundred twenty days after the State filed its suit, Dr. Holzman filed a motion to dismiss the lawsuit. Arguing that the State's lawsuit fell within the ambit of the Texas Medical Liability Act, Dr. Holzman contended that the case should be dismissed because of the State's failure to file a mandatory expert report as required by chapter 74. *See* TEX. CIV. PRAC. & REM.CODE ANN. § 74.351(a). Dr. Holzman argued that the lawsuit was "within the purview of Chapter 74's limitation of health care liability ... [which] controls over all other law, including each statute relied on by Plaintiff." *See id.* § 74.002 (West 2011) (providing that "in the event of a conflict between this chapter and another law ... this chapter controls to the extent of the conflict."). The trial court disagreed that this case was a health care liability lawsuit and denied the motion to dismiss.

I would hold that the trial court erred in this regard, and would grant the motion to dismiss.

II. WHICH STATUTE APPLIES

There are three statutes at issue in this lawsuit: the Texas Medical Liability Act (TMLA), the DTPA, and the ITEPA. By her first issue, Dr. Holzman claims that the trial court erred when it failed to recognize that this case is a health care liability claim under chapter 74 of the civil practice and remedies code and did not grant her motion to dismiss. I agree.

A. Standard of Review and Applicable Law

"The characterization of a claim as a health care liability claim is a threshold question" in chapter 74 interlocutory appeals. *Pallares v. Magic Valley Coop.,* 267 S.W.3d 67, 70 (Tex.App.-Corpus Christi 2008, pet. denied). Whether a cause of action is a health care liability issue is reviewed de novo. *Molinet v. Kimbrell,* 356 S.W.3d 407, 411 (Tex.2011).

***5** It is well-settled law in Texas that a "health care liability claim cannot be recast as another cause of action to avoid the requirements of the [medical liability act]." *See Diversicare Gen. Partner, Inc. v. Rubio,* 185 S.W.3d 842, 851 (Tex.2005) (providing that courts are not "bound by niceties of pleadings ..."). "When the essence of the suit is a health care liability claim, a party cannot avoid the requirements of the statute through the artful pleading of his claim." *See Sloan v. Farmer,* 217 S.W.3d 763, 767 (Tex.App.-Dallas 2007, pet. denied) (citing *Diversicare,* 185 S.W.3d at 848; *Garland Cmty. Hosp. v. Rose,* 156 S.W.3d 541, 543 (Tex.2004); *MacGregor Med. Ass'n v. Campbell,* 985 S.W.2d 38, 40 (Tex.1998)). The same underlying set of facts cannot give rise to separate DTPA, ITEPA, and health care liability claims. *See Yamada v. Friend,* 335 S.W.3d 192, 197 (Tex.2009). If the same facts give rise to claims under multiple statutes or common-law torts, "then the [TMLA] and its procedures and limitations will be effectively negated." *Id.; see also* TEX. CIV. PRAC. & REM.CODE ANN. § 74.002 (providing that "in the event of a conflict between this chapter and another law ... this chapter controls to the extent of the conflict.").

Whether a case falls under chapter 74 requires an examination of the underlying nature of the claim. *See Sorokolit v. Rhodes,* 889 S.W.2d 239, 242 (Tex.1994). "If the act or omission that forms the basis of the complaint is an inseparable part of the rendition of health care services, or if it is based on a breach of the standard of care applicable to health care providers, then the claim is a health care liability claim." *Sloan,* 217 S.W.3d at 767 (citing *Garland Cmty. Hosp.,* 156 S.W.3d at 544). The claim must have three elements. *Marks v. St. Luke's Episcopal Hosp.,* 319 S.W.3d 658, 662 (Tex.2010). First, a physician or healthcare provider must be the defendant. *Id.* Second, the suit must be about a "claimed departure from accepted standards of ... professional or administrative services directly related to health care." *Id.* Third, the defendant's act or omission departure must proximately cause the patient's injury or death. *Id.*

B. Rebuttable Presumption in Health Care Liability Claims

Recently, the Texas Supreme Court handed down *Loaisiga v. Cerda* and reaffirmed that "the broad language of the [TMLA] evidences legislative intent for the statute to have expansive application." 379 S.W.3d 248 (Tex.2012). Importantly, the high court announced in this case that "the breadth of the statute's text essentially creates a presumption that a claim is a [health care liability claim] if it is against a physician or health care provider and is based on facts implicating the defendant's conduct during the patient's care, treatment, or confinement". *Id.* at 256. This presumption is rebuttable, however. *Id.* For example, the supreme court noted that, "in some instances the only possible relationship between the conduct underlying a claim and the rendition of medical services or healthcare will be the healthcare setting ..., the defendant's status as a doctor or health care provider, or both." *Id.*

***6** The underlying case appears to meet all of the criteria for a chapter 74 claim. *See Marks,* 319 S.W.3d at 662. First, the defendant, Dr. Holzman, is a health care provider or physician. *See id.* Second, the State's claim is that Dr. Holzman had a duty to keep her patients' information private and dispose of it in a proper, lawful way, and that Dr. Holzman departed from that duty. *See id.; Sloan,* 217 S.W.3d at 767 (holding, in case where a treating physician released health information to a patient's employer, that a physician's "duty of confidentiality is inseparable from the health care services to be provided, and the claimed breach necessarily implicates the standard of care.").

The majority focuses on the third element for a chapter 74 claim, that of injury. *See Marks,* 319 S.W.3d at 662. I believe that Dr. Holzman's failure to protect her patients' medical records injured her patients' privacy rights by revealing sensitive personal and medical data. Admittedly, as the majority notes, there is nothing in the record documenting that any confidential information fell into the hands of third parties. It is obvious, however, that someone found these patient records—otherwise this lawsuit would not have materialized. The dangers of revealing full names, social

security numbers, and dates of birth are well-documented. Disclosure of this information can lead to significant personal and financial ruin in the form of identity theft, credit card theft, and worse. *See, e.g., Tex. Comptroller of Pub. Accounts v. AG of Tex.,* 354 S.W.3d 336, 345 (Tex.2010) (recognizing that "[i]t is universally agreed that social security numbers are at the heart of identity theft and fraud, and in today's Internet world where information ... can be instantly and anonymously obtained by anyone with access to the worldwide web, the danger is even greater"). Furthermore, third parties learning about personal medical conditions involving mental or reproductive health issues can cause severe embarrassment or mental anguish. These types of injuries are foreseeable if a patient's medical records are not properly stored or destroyed.

Because *Loaisiga* presumes that chapter 74 applies in cases involving physicians or health care providers and their conduct, here, I would presume that Dr. Holzman's patients were injured when their records were carelessly discarded in a trash bin accessible to the public. *Loaisiga,* 379 S.W.3d at 256. This presumption was not rebutted by the State. *Id.* Because all of the elements of a "health care liability claim" are met, *see Marks,* 319 S.W.3d at 662, I would hold that chapter 74 applies.

C. Definition of a "Person" Under Chapter 74

The State argues, however, that chapter 74 should not apply to it because it is not a "claimant" under the meaning of the TMLA. *See* TEX. CIV. PRAC. & REM.CODE ANN. § 74.001(a)(2). A "claimant," under the statute, is "a person, including a decedent's estate, seeking or who has sought recovery of damages in a health care liability claim." *Id.* The State contends that it is not a "person" under the statute. Instead, it asserts that it brought this lawsuit in its capacity as a sovereign entity to protect Texas patients and their private medical information.

***7** Here again, I rely on another recent supreme court case. *Texas West Oaks Hospital v. Williams* expanded the meaning of a "claimant" under the TMLA. 371 S.W.3d at 175. In *Texas West Oaks,* a mentally ill patient, Mario Vidaurre, died at Texas West Oaks Hospital, a private mental health facility. *Id.* One of the hospital's technicians, Frank Williams, was injured in the events leading to Vidaurre's death. *Id.* Vidaurre's estate sued Texas West Oaks and Williams, and Williams countersued Texas West Oaks for failing to properly train, supervise, and protect its employees. *Id.* West Oaks filed a motion to dismiss on the grounds that Williams's claims constituted health care liability claims and he failed to serve an expert report. *Id.* at 175–76; *see* TEX. CIV. PRAC. & REM.CODE ANN. § 74.351(a). Williams contended that his claims were grounded in strict negligence and that his claims as an injured worker " 'flow[ed] from the employment relationship' between Williams and West Oaks and [were] not 'directly related' to health care." *Tex. W. Oaks,* 371 S.W.3d at 176.

The Texas Supreme Court disagreed. In its opinion, it explained as follows:

> "Person" is not defined in the [Texas Medical Liability Act] and therefore must be given its common law meaning. Changing the term "patient" to "claimant" and defining "claimant" as a "person" expands the breadth of [health care liability claims] beyond the patient population. This in turn necessarily widened the reach of the expert report requirement ....

Id. at 178 (internal citations omitted). In sum, the court concluded that the TMLA "does not require that the claimant be a patient of the health care provider for his claims to fall under the Act, so long as the Act's other requirements are met." *Id.* at 174.

As previously stated, I believe that chapter 74's "other requirements are met" in the underlying case. *Id.; see Marks,* 319 S.W.3d at 662. The State, although not a "person" or a "patient", can be considered a "claimant" under the proper application of *Texas West Oaks.* Accordingly, chapter 74 should apply to the State. [1]

D. Conclusion

Because the presumption that this case is a health care liability claim has not been rebutted, *see Loaisiga,* 379 S.W.3d at 256, and the State is a "claimant" under the statute, *see Tex. W. Oaks,* 371 S.W.3d at 178, I would hold that chapter 74 applies to this lawsuit. Accordingly, the State was required to have produced an expert report within one-hundred twenty days after the lawsuit was filed. *See* TEX. CIV. PRAC.

& REM.CODE ANN. § 74.351(a). I would sustain Dr. Holzman's first issue.

III. ATTORNEY'S FEES

Dr. Holzman also claims that she is entitled to attorney's fees because the State failed to file an expert report under section 74.351(b). Because I conclude that chapter 74 applies in this matter, I would also sustain Dr. Holzman's second issue. [2]

IV. CONCLUSION

***8** Because I believe the majority failed to apply recent Texas Supreme Court law that makes chapter 74 applicable to this case, I would reverse the trial court's judgment and grant Dr. Holzman's motion to dismiss.

All Citations

Not Reported in S.W.3d, 2013 WL 398935

Footnotes

1 Chapter 74 of the Civil Practice and Remedies Code provides the following definition of a healthcare liability claim:

> a cause of action against a health care provider or physician for treatment, lack of treatment, or other claimed departure from accepted standards of medical care, or health care, or safety or professional or administrative services directly related to health care, which proximately results in injury to or death of a claimant, whether the claimant's claim or cause of action sounds in tort or contract.

TEX. CIV. PRAC. & REM.CODE ANN. § 74.001(a)(13) (West 2011).

1 I would also point out that the Code Construction Act lends support to the notion in *Texas West Oaks Hospital* that a "person" can mean a "corporation, organization, government, or governmental subdivision or agency ...." TEX. GOV'T CODE ANN. § 311.005(2) (West 2005).

2 In the motion to dismiss, Dr. Holzman's attorney, Van Huseman, included an affidavit and a copy of his firm's billing records. The State objected to the affidavit. However, the record does not reveal whether the trial court considered the affidavit at issue in this case or the objections filed in response to it. For this reason, I would remand this issue to the trial court for disposition on the attorney's fees issue.

End of Document

2026 WL 1257321
Only the Westlaw citation is currently available.
United States District Court, District of Columbia.

WORLD PROFESSIONAL ASSOCIATION FOR TRANSGENDER HEALTH, Plaintiff,

v.

FEDERAL TRADE COMMISSION, et al., Defendants.

Civil Action No. 26-532 (JEB)
|
Signed 05/07/2026

Attorneys and Law Firms

Caleb Hayes-Deats, Isabella M. Oishi, Abbe David Lowell, Schuyler Standley, Pro Hac Vice, Lowell & Associates, PLLC, Washington, DC, for Plaintiff.

John Bailey, Daniel F. Mummolo, DOJ-United States Attorney's Office, Washington, DC, Alex Potapov, Ethan D. Beck, Jonathan Abraham Cohen, Ross Cooper Vaughan, Federal Trade Commission, Washington, DC, for Defendant Federal Trade Commission.

John Bailey, Daniel F. Mummolo, DOJ-United States Attorney's Office, Washington, DC, Alex Potapov, Ethan D. Beck, Ross Cooper Vaughan, Federal Trade Commission, Washington, DC, for Defendants Andrew N. Ferguson, Mark R. Meador, John Doe, 1, John Doe, 2, John Doe, 3.

Aaron Martin Panner, Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C., Washington, DC, for Amici Academic Pediatric Association, American Academy of Child, American Academy of Nursing, American Association of Physicians for Human Rights, Inc., American College of Osteopathic Pediatricicians, American College of Physicians, American Pediatric Society, American Psychiatric Association, Association of American Medical Colleges, National Association of Pediatric Nurse Practitioners, Pediatric Endocrine Society, American College of Obstetricians & Gynecologists, Society of Adolescent Health and Medicine, Society of Pediatric Nurses.

Morgan Blair Carmen, Office of the Massachusetts Attorney General, Boston, MA, for Amicus Curiae States.

Jessica Polansky, Pro Hac Vice, Omar Francisco Gonzalez-Pagan, Morgan Walker, Lambda Legal Defense & Education Fund, Inc., New York, NY, Karen Loewy, Lambda Legal Defense & Education Fund, Inc., Washington, DC, for Movant Lambda Legal Defense and Education Fund, Inc.

MEMORANDUM OPINION

JAMES E. BOASBERG, Chief Judge

***1** This case involves another nonprofit organization — the World Professional Association for Transgender Health (WPATH) — working in the field of transgender health and medicine that has been the target of a Federal Trade Commission investigation and has received a Civil Investigative Demand for records. As the Court has already considered the issues presented in this case in its Opinion (also released today) granting preliminary relief to the Endocrine Society, Endocrine Soc'y v. FTC, No. 26-512, ECF No. 38 (Endocrine PI Op.) (D.D.C. May 7, 2026), it will incorporate those conclusions and thus need not repeat its full analysis here. Like the Endocrine Society, WPATH has shown it is likely to succeed on its First Amendment retaliation claim against the FTC. As the other preliminary-injunction factors also favor Plaintiff, the Court will award the same relief as the Endocrine Society obtained — namely, it will preliminarily enjoin the FTC from implementing its CID against WPATH.

I. Background

WPATH is a nonprofit organization "dedicated to promoting science-based medical care, education, research, and public policy in transgender health." ECF No. 3-2 (Leo Lewis Declaration), ¶ 3. As part of its educational and academic activities, it publishes and updates the Standards of Care, which "articulate a professional consensus about the psychiatric, psychological, medical, and surgical management of transgender people." Id., ¶ 9. Those Standards, including the most recent version, rest on the premise that there exist "people with gender identities or expressions that differ from the gender socially attributed to the sex assigned to them at birth." ECF No. 32-1 (SOC8) at 55. That premise underlies WPATH's educational, research, and advocacy efforts, including the symposia it hosts, mentorship programs it offers, and public statements or amicus briefs it files relating to transgender health. See Lewis Decl., ¶ 18.

The Trump Administration, and the heads of certain agencies within the Executive Branch, take the contrary view and disclaim the existence of gender identities that diverge from a person's sex assigned at birth and the suitability of treatment of such divergence. See, e.g., Protecting Children from

Chemical and Surgical Mutilation, Exec. Order No. 14187, 90 Fed. Reg. 8771, 8771 (Feb. 3, 2025) (lamenting "dangerous trend" of medical treatments premised on "radical and false claim that adults can change a child's sex through a series of irreversible medical interventions"). This Court's Opinion in the parallel suit brought by the Endocrine Society details the range and depth of animus displayed by the President and agency leadership toward gender-affirming care. See Endocrine PI Op. at 3–7. The Administration has singled out WPATH as an organization that "lacks scientific integrity" and "spur[s]" "blatant harm done to children." 90 Fed. Reg. at 8771.

The FTC has joined the rhetorical campaign against proponents of the view that some individuals are transgender and require medical treatment for that condition. The Court refers again to the evidence catalogued in its prior Opinion, including hostile denunciations of "being transgender" as contrary to "biological truth" at an FTC workshop on gender-affirming care for minors. See Endocrine PI Op. at 7 (quoting Endocrine Soc'y, No. 26-512, ECF No. 9-22 (FTC Workshop Tr.) at 30, 61 (D.D.C. Feb. 24, 2026)).

***2** In January 2026, the FTC issued Civil Investigative Demands to WPATH and two other nonprofit proponents of gender-affirming care — the Endocrine Society and the American Academy of Pediatrics. See ECF No. 1 (Compl.), ¶¶ 113, 130. The CIDs each sought to determine whether the target organization "ha[s] made, or assisted others in making, false or unsubstantiated representations or engaged in unfair practices in connection with the marketing and advertising of Pediatric Gender Dysphoria Treatment" and demanded a swath of documents reflecting internal and external communications from the recipients. See ECF No. 3-8 (CID) at ECF p. 4; see also Endocrine Soc'y, No. 26-512, ECF No. 9-25 (Endocrine CID) at ECF p. 6 (D.D.C. Feb. 24, 2026); Am. Acad. of Pediatrics v. FTC (AAP), 26-508, ECF No. 1-1 (AAP CID) at ECF p. 6 (D.D.C. Feb. 17, 2026). All three CID recipients brought actions in this district and sought preliminary relief in part on the ground that the FTC was retaliating against each organization for its protected speech in support of gender-affirming care. See ECF No. 3-1 (PI Mot.); Endocrine Soc'y, No. 26-512, ECF No. 9-1 (Endocrine PI Mot.) (D.D.C. Feb. 24, 2026); AAP, 26-508, ECF No. 6 (AAP PI Mot.) (Feb. 20, 2026). The AAP case was assigned to Judge Christopher R. Cooper and the other two to this Court. This Court held a hearing on April 7, 2026, on both the instant Motion and the Endocrine Society's parallel request for a preliminary injunction barring the FTC from implementing or enforcing its CID. See Minute Entry of April 7, 2026.

II. Legal Standard

"A preliminary injunction is an extraordinary remedy never awarded as of right." Winter v. NRDC, 555 U.S. 7, 24, 129 S.Ct. 365, 172 L.Ed.2d 249 (2008). "A plaintiff seeking a preliminary injunction must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." Sherley v. Sebelius, 644 F.3d 388, 392 (D.C. Cir. 2011) (alterations in original) (quoting Winter, 555 U.S. at 20, 129 S.Ct. 365). "[I]f the government is the opposing party," the latter two factors "merge." Glob. Health Council v. Trump, 153 F.4th 1, 12 (D.C. Cir. 2025).

"The moving party bears the burden of persuasion and must demonstrate, 'by a clear showing,' that the requested relief is warranted." Hosp. Staffing Sols., LLC v. Reyes, 736 F. Supp. 2d 192, 197 (D.D.C. 2010) (quoting Chaplaincy of Full Gospel Churches v. England, 454 F.3d 290, 297 (D.C. Cir. 2006)). A court "may deny a motion for preliminary injunction, without further inquiry, upon finding that a plaintiff is unable to show either irreparable injury or a likelihood of success on the merits," making those two factors "particularly crucial." Luokung Tech. Corp. v. Dep't of Def., 538 F. Supp. 3d 174, 182 (D.D.C. 2021) (emphasis in original) (quotation marks omitted).

III. Analysis

Little distinguishes the key legal and factual features of WPATH's claim from the Endocrine Society's. The Court will nonetheless discuss the relevant differences and their impact on its analysis of the preliminary-injunction factors while referring to its reasoning in the parallel case Endocrine Society v. FTC where overlap exists. As in its prior Opinion, the Court finds that preliminary relief is warranted on WPATH's First Amendment retaliation claim alone and thus does not consider its other claims. See Endocrine PI Op. at 11.

A. Likelihood of Success on Merits

To start, the FTC's contentions that WPATH is unlikely to succeed on the merits of its claim because the Court lacks jurisdiction and WPATH has no cause of action fail for the same reasons the Court discussed in its Opinion in Endocrine Society v. FTC. There, the FTC raised nearly

identical arguments to those in this case. Compare ECF No. 32 (Gov. Opp.) at 17–23, with Endocrine Soc'y, No. 26-512, ECF No. 30 (Endocrine Gov. Opp.) at 14–21. The Court reaffirms that when a plaintiff alleges "existing and continuing First Amendment harms" caused by the FTC's investigative actions, including the issuance of a CID, the FTC Act does not deprive district courts of jurisdiction. Media Matters for Am. v. FTC, 2025 WL 2988966, at *4 (D.C. Cir. Oct. 23, 2025); see also Endocrine PI Op. at 14. A plaintiff may, moreover, sue to enjoin executive officers from maintaining such unconstitutional actions, Armstrong v. Exceptional Child Ctr., Inc., 575 U.S. 320, 327, 135 S.Ct. 1378, 191 L.Ed.2d 471 (2015); see also Endocrine PI Op. at 18, and the FTC Act has not foreclosed that ability here. See Endocrine PI Op. at 19.

***3** WPATH has demonstrated that its leadership second-guesses whether to make statements or undertake activities in light of the CID and that it has ceased "certain educational and certification programs" for fear of Government targeting or infringement on members' privacy. See ECF No. 3-4 (Asa Radix Declaration), ¶¶ 21, 24. As these ongoing harms stem from the FTC's own investigative actions, they place WPATH's claim in the same category as other First Amendment claims against the FTC that courts in this district — not to mention the D.C. Circuit — have reasoned may go forward. Media Matters, 2025 WL 2988966, at *4; Endocrine PI Op. at 17.

WPATH also presents similar evidence supporting its likelihood of success on its First Amendment claim as the Endocrine Society did. To refresh, WPATH must show that 1) it "engaged in conduct protected under the First Amendment"; 2) the Government's alleged retaliatory action was "sufficient to deter a person of ordinary firmness in plaintiff's position from speaking again"; and 3) there exists "a causal link between" the protected speech and the retaliatory action. Aref v. Lynch, 833 F.3d 242, 258 (D.C. Cir. 2016) (quotation marks omitted). As it did in its briefing on the Endocrine Society's Motion, the FTC concedes that WPATH "engages in some protected First Amendment conduct," leaving only the latter two elements at issue. See Gov. Opp. at 24; see also Endocrine Gov. Opp. at 21.

WPATH has demonstrated the CID's chilling effect on its protected speech. Its declarations describe an undercurrent of fear among staff and members following the CID: fear that "statements ... will be misrepresented and distorted ... if WPATH is forced to disclose internal discussions and information to the FTC," fear that specific members will become targets, and fear that academic professionals will not openly discuss their ideas given the possibility of turnover. See ECF No. 3-6 (Scott Leibowitz Declaration), ¶¶ 38, 41; see also Radix Decl., ¶¶ 18–19 (detailing longstanding importance of confidentiality in member communications). That fear is not extrapolation to some future action: the CID demands "all Documents reflecting or constituting Communications with other organizations, institutions, or individuals regarding the development and publication of SOC 8," and all documents "including tests, reports, studies, scientific literature, and written opinions" that WPATH relied upon to assert that pediatric-gender-dysphoria treatment is safe and effective. See CID at ECF pp. 5–6. Those two items alone encompass a vast swath of academic or research discussion in which WPATH engages. Where an agency "demands" a nonprofit's "private member" information, it "encourage[s] groups and individuals to cease or modify protected First Amendment [activity] the government disfavors." First Choice Women's Res. Ctrs., Inc. v. Davenport, 608 U.S. ——, ——, 146 S.Ct. 1114, 1125, 224 L.Ed.2d 672 (2026). The threat is all the greater when the agency seeks the substance of member communications and, in so doing, predictably stifles future speech. What is more, the CID seeks WPATH's future communications, making the chilling effect readily discernible. See CID at ECF p. 4. WPATH is likely to succeed on this element.

Plaintiff has also demonstrated that it is likely to succeed on establishing a causal link between the FTC's retaliatory motive and its decision to issue a CID. As the Court explained in Endocrine Society, WPATH must show that such retaliatory motive was the but-for cause of the FTC's action. See Endocrine PI Op. at 23–24 (citing Nieves v. Bartlett, 587 U.S. 391, 399, 139 S.Ct. 1715, 204 L.Ed.2d 1 (2019)). The circumstantial evidence of animus towards WPATH overlaps significantly with the record in the Endocrine Society's case, as most of it concerns the "pattern of litigation and information demands," along with articulated hostility towards proponents of gender-affirming care. Id. at 30 (quoting Media Matters, 2025 WL 2988966, at *6); see also id. at 24. WPATH has been explicitly identified as one of those targeted proponents. See, e.g., 90 Fed. Reg. at 8771 (discussing WPATH); FTC Workshop Tr. at 20–21 (discussing WPATH's "activist agenda" and "fraud" committed "against the American public). The Court finds that, in line with its reasoning in Endocrine Society, WPATH has presented circumstantial evidence sufficient to establish that retaliation for its protected speech motivated the FTC's

issuance of a CID. While the FTC could show later on that it would have issued the CID regardless of its retaliatory motive, it has not done so on this preliminary record.

***4** The FTC's attempted demonstration of a legitimate purpose sounds in the same register as its arguments opposing the Endocrine Society's motion and falls similarly flat. The Commission correctly states that it is not limited to "requesting information from potential wrongdoers only," and it asserts that it is investigating unfair trade practices by WPATH or a third party. See Gov. Opp. at 28. It has not, however, articulated "a plausible connection between the CID and the suspected violations that concern the FTC." Endocrine PI Op. at 27. As with its purported investigation of the Endocrine Society, the FTC has failed to offer a logical justification connecting WPATH to commercial representations and the supposed violators. Id. at 28. There is thus little circumstantial evidence providing a basis for the Court to conclude that the FTC would have issued the CID absent a retaliatory motive.

The FTC contends that "WPATH, in particular, may have information relevant to the Commission's investigation." Gov. Opp. at 26. It points to documents that it argues "suggest that WPATH at times acted ... to preserve insurance coverage and avoid regulatory scrutiny" of pediatric-gender-dysphoria treatment, and that it "attempt[ed] to suppress" adverse research. Id. The existence of hidden research or intentional mischaracterizations could indeed offer a logical basis for an investigative demand. The Commission, however, points to no record evidence supporting either rationale. Id. at 26 (citing only id. at 14–15). It did submit two communication threads released as part of discovery in unrelated cases in different districts. Id. at 8. The first is an exchange of edits and emails between academics regarding a WPATH statement on the medical necessity of gender-affirming care. See ECF No. 32-2 (Edits Email). They discuss the concept of medical necessity as a threshold requirement for various programs in the United States, including insurance coverage and prison medical care, and the need to include "medical necessity" in the statement. Id. at 43. The other document is an email exchange about ongoing research; in the midst of the discussion, one participant references "having issues with this sponsor [WPATH] trying to restrict our ability to publish." ECF No. 32-3 (Research Email) at ECF p. 3.

Neither document transforms the FTC's investigative actions into logical ones evincing a legitimate purpose. The first concerns drafts of language WPATH later adopted; the second, an unspecified frustration with Plaintiff. The FTC has provided no context or logical link connecting this evidence to concerns about "fabricat[ion]" or "untoward influence" that would justify a CID "that seeks extensive internal and external communications." Endocrine PI Op. at 30. And, as the Court previously reasoned, concerns about verifying WPATH's public statements can be addressed by consulting the lengthy bibliography accompanying its Standards of Care. Id.; see also SOC8 at S178–246. The Court's concern about the mismatch between the FTC's stated investigatory aims and its tenuous path to uncovering violations remains unabated. On this preliminary record, with extensive evidence of animus and wafer-thin justifications lacking evidentiary support, it finds that WPATH is likely to demonstrate a causal link between its protected speech and the FTC's issuance of the CID. Plaintiff thus prevails on this first "crucial" factor. Luokung, 538 F. Supp. 3d at 182.

B. Other Factors

As to irreparable harm, the declarations submitted by WPATH describe interruptions to its "educational programs," "mentorship programs," and the closing of an online meeting for discussion of transgender-health topics. See Lewis Decl., ¶ 3; Radix Decl., ¶ 24. Members of WPATH's Board of Directors describe hesitancy in their communications given the possibility of turnover to the FTC. See ECF No. 3-5 (Loran Schechter Declaration), ¶¶ 17–20; Leibowitz Decl., ¶¶ 38–41. Contrary to the FTC's assertion that such harms "stem[ ] from WPATH's own choices or speculation about the actions of third parties," Gov. Opp. at 44, disruption of First Amendment activity is an "inevitabl[e]" effect of government scrutiny. First Choice, —— U.S. at ——, 146 S.Ct. at 1125 (quoting Buckley v. Valeo, 424 U.S. 1, 65, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976)). Because WPATH has made it " 'apparent' " that its " 'constitutional rights are violated,' " it has "easily clear[ed] the irreparable-harm requirement to warrant preliminary relief." Endocrine PI Op. at 31 (quoting Mills v. District of Columbia, 571 F.3d 1304, 1312 (D.C. Cir. 2009)).

***5** The remaining factors also militate in Plaintiff's favor. As it did when considering the Endocrine Society's Motion, the Court analyzes the balance of equities and public-interest factors together because they "merge if the government is the opposing party." Media Matters for Am. v. Paxton, 138 F.4th 563, 585 (D.C. Cir. 2025). WPATH's interest in "vindicating the right to be free of retaliation for its protected speech" is similarly compelling, and the public interest in the exercise of free-speech rights supports an injunction. See Endocrine

PI Op. at 32. The Government's interest in enforcing the law cannot overcome those interests, especially because it remains free to deploy other investigative tools and because this relief is not permanent. Id. at 33. With all factors counseling in favor of relief, the Court will grant WPATH's Motion to preliminarily enjoin operation of the CID. As with the Endocrine Society, it will deny WPATH's request to issue a broader injunction barring the FTC from "taking further unlawful action interfering with or retaliating against WPATH[ ]." ECF No. 3 (PI Mot. Mem.)

Finally, the Court will require WPATH to post a $1.00 bond, in keeping with Federal Rule of Civil Procedure 65(c)'s requirement and the recognition that most costs stemming from the ultimate enforcement of the CID will fall on WPATH. See Endocrine PI Op. at 33. The Court will also deny the Government's request to stay its preliminary injunction pending appeal, see Gov. Opp. at 45, because its injunction requires no action from either party and only enjoins the FTC from further action regarding the CID. See Endocrine PI Op. at 34.

IV. Conclusion

The Court will grant WPATH's Motion in large part and preliminarily enjoin the FTC from implementing or enforcing its issued CID. It will deny the Motion to the extent it seeks further relief. An Order so stating will issue this day.

All Citations

--- F.Supp.3d ----, 2026 WL 1257321

End of Document

2026 WL 1999008
Only the Westlaw citation is currently available.
United States District Court, District of Columbia.

WORLD PROFESSIONAL ASSOCIATION FOR TRANSGENDER HEALTH, Plaintiff,

v.

FEDERAL TRADE COMMISSION, et al., Defendants.

Civil Action No. 26-532 (JEB)
|
Signed July 10, 2026

Attorneys and Law Firms

Caleb Hayes-Deats, Isabella M. Oishi, Abbe David Lowell, Schuyler Standley, Pro Hac Vice, Lowell & Associates, PLLC, Washington, DC, for Plaintiff World Professional Association for Transgender Health.

John Bailey, Daniel F. Mummolo, DOJ-United States Attorney's Office, Washington, DC, Alex Potapov, Ethan D. Beck, Jonathan Abraham Cohen, Ross Cooper Vaughan, Federal Trade Commission, Washington, DC, for Defendant Federal Trade Commission.

John Bailey, Daniel F. Mummolo, DOJ-United States Attorney's Office, Washington, DC, Alex Potapov, Ethan D. Beck, Ross Cooper Vaughan, Federal Trade Commission, Washington, DC, for Defendants Andrew N. Ferguson, Mark R. Meador, John Doe, 1, John Doe, 2, John Doe, 3.

Aaron Martin Panner, Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C., Washington, DC, for Amici Academic Pediatric Association, American Academy of Child, American Academy of Nursing, American Association of Physicians for Human Rights, Inc., American College of Osteopathic Pediatricians, American College of Physicians, American Pediatric Society, American Psychiatric Association, Association of American Medical Colleges, National Association of Pediatric Nurse Practitioners, Pediatric Endocrine Society, American College of Obstetricians & Gynecologists, Society of Adolescent Health and Medicine, Society of Pediatric Nurses.

Morgan Blair Carmen, Office of the Attorney General, Boston, MA, for Amicus Amicus Curiae States.

MEMORANDUM OPINION AND ORDER

JAMES E. BOASBERG, Chief Judge

***1** When parties seek an extraordinary remedy, they must make an extraordinary showing. After expedited briefing and a hearing yesterday, the Court finds that Plaintiff World Professional Association for Transgender Health has not made that showing in its request for a Temporary Restraining Order to block the Federal Trade Commission's enforcement action in a different forum. It therefore will deny WPATH's Motion for Temporary Restraining Order.

To obtain a TRO under Federal Rule of Civil Procedure 65(b), a movant must show that (1) it "is likely to succeed on the merits"; (2) it "is likely to suffer irreparable harm in the absence of preliminary relief"; (3) "the balance of equities tips in [the movant's] favor"; and (4) such order "is in the public interest." Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008) (standard for preliminary injunction); see also Sterling Comm. Credit — Mich., LLC v. Phoenix Indus. I, LLC, 762 F. Supp. 2d 8, 13 (D.D.C. 2011) ("same substantive standard [for preliminary injunction] ... applies" to TRO).

Earlier this year, WPATH sued the FTC in this Court alleging that the Commission's investigative efforts violated its First Amendment rights. See ECF No. 1 (Compl.). In that challenge, this Court in May partially granted WPATH's Motion for a Preliminary Injunction halting the "implement[ation] or enforc[ement of]" the "issued CID" that the FTC had served on WPATH seeking a broad range of internal records. See ECF No. 41 (Mem. Op.) at 11. The Court held that WPATH had shown that it was likely to succeed on the merits of its claim that the FTC issued the CID in retaliation for WPATH's constitutionally protected speech and that Plaintiff faced irreparable harm without preliminary relief. Id. at 5–6, 9–10. The Court declined, however, to grant WPATH broader relief, confining its holding to the facts that gave rise to the specific CID before it. Id. at 11.

The FTC and several states then brought a separate enforcement action against WPATH in the Northern District of Texas. FTC v. WPATH, No. 26-748, ECF No. 1 (FTC Compl.) (N.D. Tex. June 17, 2026). They allege that WPATH violated the FTC Act's prohibitions on unfair or deceptive trade practices and false advertising. Id. at 111. WPATH returned to this Court and sought a TRO enjoining the FTC from pursuing its Texas litigation. See ECF No. 45

(Mot. TRO). Plaintiff contends that the FTC's suit concerns the exact same subject matter as its previously filed pre-enforcement challenge in this Court and would frustrate the pre-existing preliminary injunction. See ECF No. 45-1 (Mem. TRO) at 13, 21. It asserts that the FTC should proceed in this Court, not the Northern District of Texas, and it seeks an anti-suit injunction to that effect. Id. at 2.

One of WPATH's grounds for emergency relief is its contention that halting the FTC's progress in the Northern District of Texas is necessary to protect this Court's jurisdiction over its prior injunction. Id. at 21. The D.C. Circuit has held that anti-suit injunctions that "protect the ordering court's own jurisdiction" are more readily justified than ones whose "only purpose is to destroy" another court's jurisdiction. NextEra Energy Glob. Holdings B.V. v. Kingdom of Spain, 112 F.4th 1088, 1105 (D.C. Cir. 2024) (quotation marks omitted). Where a movant can demonstrate that an anti-suit injunction is required to preserve the court's jurisdiction, then, emergency relief might well be warranted. Id. at 1106 (such injunction warranted to prevent "interfere[nce] with the district court's jurisdiction") (quotation marks omitted).

***2** WPATH has not demonstrated such a threat. The Court sees no potential for "frustration of the preliminary injunction [it] has already issued" from the separate Texas litigation. See Mem. TRO at 13 (quotation marks omitted). However the parties characterize the ongoing action in the Northern District of Texas, it is not an attempt to enforce the CID, which the FTC has withdrawn. See also ECF No. 43 (Not. Withdrawal). And, as discussed above, this Court's only decision was confined to the CID. WPATH points out that the FTC's Texas suit attacks certain of its statements that bear a striking resemblance to the "Covered Statements" that the CID targeted, which could open it up to discovery in Texas of the very same information. See Mem. TRO at 11–13. But the Court's injunction did not protect WPATH from complying with all information-seeking processes — only the CID that the Court held was likely retaliatory. This Court retains its ability to consider future matters raised by any party. There is thus no threat to this Court's jurisdiction from different proceedings in a different court.

WPATH's remaining justification for emergency relief halting the Texas proceedings — that the FTC's suit is duplicative of litigation in this Court, id. at 13, 15 — seeks an anti-suit injunction where no jurisdictional issues are implicated. A truly compelling showing would thus be needed to warrant this Court's disrupting proceedings in a coordinate district and doing so on an emergency basis with truncated briefing and consideration.

WPATH has not made such a showing. The Court is skeptical that either Federal Rule of Civil Procedure 13(a) — which requires that parties bring related claims as compulsory counterclaims in an initial suit — or the rationale for avoiding duplicative litigation applies to actions by the Government to enforce the law. Several courts have reasoned that a plaintiff who files a pre-enforcement challenge to stop the FTC from obtaining information cannot then force the Commission to bring later enforcement actions as compulsory counterclaims in plaintiff's chosen forum. See, e.g., FTC v. Carter, 464 F. Supp. 633, 639 (D.D.C. 1979) (FTC not required to seek to enforce subpoena "as a counterclaim to respondents' pre[-]enforcement injunctive action brought in New York"); In re FTC Corp. Patterns Rep. Litig., 432 F. Supp. 274, 283–84 (D.D.C. 1977) (expressing "hesitancy" at "treat[ing] an enforcement action as a compulsory counterclaim"); A. O. Smith v. FTC, 417 F. Supp. 1068, 1088 (D. Del. 1976) (similar); Audubon Life Ins. Co. v. FTC, 543 F. Supp. 1362, 1370 (M.D. La. 1982) (FTC Act establishes "statutory scheme" that plaintiff cannot circumvent by compelling counterclaim).

As the Court mentioned during yesterday's hearing, linking a suit by the FTC to pre-enforcement-investigation challenges risks allowing plaintiffs "to choose the forum and pace of the litigation simply by bringing pre[-]enforcement actions." In re FTC, 432 F. Supp. at 284. Courts have been hesitant to force government agencies to comply with a counterclaim requirement that would compress their investigative timelines and force hasty litigation decisions. Cf. Caleshu v. United States, 570 F.2d 711, 713–14 (8th Cir. 1978) (requiring tax-"collection action to be asserted as a compulsory counterclaim in a [taxpayer's] refund suit ....would drastically reduce the government's collection time period"). This Court is thus not prepared to conclude that an action that "involve[s] assertion of rights under a Congressionally mandated enforcement scheme" is akin to a private dispute between parties that should reasonably be consolidated in one forum and time. See In re FTC, 432 F. Supp. at 284. And before one court acts to terminate another's jurisdiction, it must be on sure footing indeed.

The Court's conclusion that immediate action is unwarranted is bolstered by WPATH's inability to show that it currently faces irreparable harm. A temporary restraining order "is an emergency procedure that is appropriate only when an

applicant is in need [of] immediate relief." 11A Wright & Miller's Federal Practice & Procedure § 2951 (3d ed. Apr. 2026 update). The harm must be "great" in its impact and "certain" in its arrival to warrant preemptive action before a court can fully ascertain the merits of the parties' positions. Wis. Gas Co. v. FERC, 758 F.2d 669, 674 (D.C. Cir. 1985). WPATH cites two sources of harm: violation of its First Amendment rights by the Texas litigation and monetary harm incurred by "litigating two separate cases." Mem. TRO at 23. To find the existence of the first harm, however, this Court must hold that being subject to a suit in the Northern District of Texas is itself a violation of WPATH's First Amendment rights — else no harm would flow. While WPATH hinges its argument on the Court's May decision, that holding extended only to the facts before it: the lack of justification for the sweeping CID the FTC issued to WPATH. See Mem. Op. at 7, 11. The Court was not prepared in May to prejudge every permutation of the FTC's future actions as unconstitutionally retaliatory, and its role is not to do so now. Without such a holding, WPATH is subject only to an entity's standard obligation to litigate once a government agency brings a claim against it — that is, no harm at all.

***3** Nor does the cost of maintaining two suits warrant emergency relief. The dual litigation is undoubtedly onerous to WPATH. Preliminary relief, however, requires significant monetary loss. Clevinger v. Advoc. Holdings, Inc., 134 F.4th 1230, 1234 (D.C. Cir. 2025) ("Mere injuries ... in terms of money, time and energy ... are not enough.") (quotation marks omitted). "[T]he expense and disruption of defending oneself in protracted adjudicatory proceedings is not an irreparable harm." John Doe Co. v. CFPB, 849 F.3d 1129, 1135 (D.C. Cir. 2017) (quotation marks and alterations omitted) (company required to defend itself in separate enforcement action not irreparably injured). Nor has litigation in this Court progressed to the point where proceedings in Texas would constitute "a vexatious attempt to relitigate issues already decided." Am. Horse Protection Ass'n v. Lyng, 690 F. Supp. 40, 44 (D.D.C. 1988); cf. Rich v. Butowsky, 2020 WL 7016436, at *2 (D.D.C. Mar. 31, 2020) (irreparable harm where counsel is "forced to devote resources to litigating" second suit and parties had already "invested significant time and resources in advancing fact discovery" in first suit). As the Court noted during yesterday's hearing, WPATH is free to cite this Court's prior Opinion in any attempt to stave off discovery in the Texas action.

Without a showing that Plaintiff is likely to succeed on its Motion or faces irreparable harm, the Court ORDERS that WPATH's Motion for Temporary Restraining Order is DENIED.

All Citations

Slip Copy, 2026 WL 1999008

End of Document