

## **The Department of Justice Focuses on Prevention and Treatment of Substance Abuse**

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Attorney General Matt Denn took office in January 2015, and has focused on the issue of reducing violent crime in Delaware. He proposed a plan for more police officers on patrol in Wilmington, legislation to crack down on young people caught with guns, and proposed using bank settlement funds for programs addressing crime along with the root cause issues of addiction, education, reentry and housing. He also established a new Office of Civil Rights and Public Trust.

When I ran for Delaware Attorney General in 2014, Delaware's opioid epidemic was not highlighted in my campaign. I certainly had a position paper on it – informed by, among other people, our guest editor Dr. Horton – but it was not a prominent part of what I talked about.

That changed quickly when I took office in January of 2015, and started witnessing – firsthand – the dramatic impact that substance abuse has on law enforcement in Delaware. Our criminal prosecutors told me then that over half, and in some cases, two-thirds of their caseloads were connected in some way to drug addiction and drug trafficking. That's not just drug crimes; that's all crimes – homicides, violent felonies, burglaries, robberies, home invasions, and right on down the line.

Those numbers from two years ago remain unchanged, and may – in fact – be getting worse.

Aside from substance abuse being a top driver of criminal activity, I also got a closer view of the raw human cost of the opioid epidemic, as I met more and more families who had lost children, brothers, sisters, and parents to drug overdoses. We have all heard the stories by now – good kids who got hooked through prescriptions they received after a sports injury or an auto accident, and transitioned into illegal drugs when either the prescription or the money ran out. Others are kids who tried opioids one time at a party and were immediately hooked.

So, after just a few months in office, even though the Department of Justice doesn't have any formal role in the prevention and treatment of substance abuse, I decided that DOJ needed to become much more vocal about addressing this epidemic. Delaware has a long way to go, but working with advocacy organizations like ATTACK Addiction, a group of family members who have lost loved ones to drug overdoses, and with medical professionals like Doctor Horton, our state is in many ways leading the nation in terms of the thought and energy that it is investing in the fight against the opioid epidemic. Here is what we have been working on.

### **1. Revision of the State's Regulations for Prescription of Opioids.**

In the summer of 2015, DOJ weighed in vocally with the state's Office of Controlled Substances on its planned revisions to the state's regulations for prescription of opioid drugs. Our recommendations were focused in two areas. For short-term prescription of opioids, we thought substantially more communication should occur between prescribers and patients before those drugs were prescribed, with respect to side effects and possible alternatives. For longer-term opioid prescriptions, we had the same concerns with respect to communication, but also additional concerns relating to monitoring of patients. Part of the reason for our recommendations was that Delaware consistently ranks near the top of the country with respect to the volume of opioids that are prescribed per capita. Although the Office of Controlled

Substances did not adopt our recommendations verbatim, it did adopt a set of regulations that thoughtfully incorporated DOJ's concerns and placed Delaware near the forefront of the country with respect to how closely it regulates the prescription of these drugs. The new regulations went into effect in April, and we are watching with interest to see how they affect actual prescribing practices.

## **2. Breaking Down Private Insurance and Medicaid Barriers to Drug Treatment.**

It is no secret that too few Delawareans willing to seek substance abuse treatment are able to access appropriate treatment. Our observation from talking to both practitioners and patients is that a big part of this treatment shortfall is private insurers and Medicaid; individuals who wanted to get treated for substance abuse were either blocked by insurers at the front door, or had their treatment downgraded or terminated by insurers before they had an opportunity to complete treatment. This past year, DOJ worked with the General Assembly to pass legislation that would attack this problem directly. One of the bills that was passed prevents insurers from imposing pre-authorization requirements on persons seeking to get in the front door to drug treatment, and circumscribes the type of "utilization review" that can occur during a person's first two weeks of treatment. The second bill provides legal and medical assistance to individuals denied treatment by either Medicaid or private insurers on the basis that the treatment is not medically necessary. These two bills, which take effect later this calendar year, should break down at least some of the obstacles created by public and private insurance to people getting appropriate drug treatment.

## **3. Holding Drug Manufacturers Accountable.**

For some time, Delaware has helped to lead an effort among a majority of the country's Attorneys General to investigate whether drug manufacturers have violated state laws in the manufacture and marketing of opioid drugs. Until recently, the existence of that investigation was confidential, but the states recently agreed among themselves to disclose the existence of the investigation (which is still ongoing). Separately from that investigation, our office recently posted an RFP inviting private law firms who might wish to investigate and, if warranted, pursue legal action against opioid manufacturers on behalf of Delaware to make proposals to the state for the terms under which they would do so. Together, these efforts will allow Delaware – if the investigations conclude that the manufacturers violated Delaware law – to hold the opioid manufacturers financially accountable for the impact that their practices have had on Delawareans.

## **4. Expanded Use of Naloxone.**

Delaware has been among the most aggressive states in the country in encouraging its police officers and other first responders to carry Naloxone, which can be used to resuscitate opioid overdose victims. The success of Delaware's efforts is largely due to the efforts of ATTACK Addiction. One of the significant obstacles for first responders is the cost of purchasing the drug. To address that challenge, the Department of Justice invited all of the state's law enforcement agencies to apply for start-up funds for the purchase of Naloxone from the State Law Enforcement Assistance Fund (SLEAF), a fund overseen by DOJ, created by assets seized from persons involved in drug crimes. A number of police departments applied for these funds and all

requests were granted. Although the SLEAF funds are limited, our office will continue to be supportive of state support for the purchase of Naloxone by local law enforcement agencies.

## **5. Heightened Oversight of Prescription Practices.**

In addition to the state's revised regulations regarding prescription of opioids, DOJ also worked with the General Assembly to pass legislation that will allow the Office of Controlled Substances to make better use of the state's prescription drug database to identify unusually high-volume opioid prescribers. It also allows the office to make initial determinations as to whether those prescribers are complying with state laws and appropriate medical practices in their prescription practices. To the extent that those inquiries raise concerns, referrals will be made for follow-up to the appropriate licensing authorities or, where concerns are raised about criminal activity, appropriate law enforcement authorities.

## **6. Helping the State Adopt Thoughtful, Evidence-Based Approaches to the Opioid Epidemic.**

As important as all of the steps described above will prove to be, it is also our office's perception that much of the state's past approach to addressing the opioid epidemic has been based on anecdotal evidence. Thus, we have taken two steps to try to ensure that – moving forward – the state is able to take additional steps based on a combination of anecdotal and more concrete evidence. The first step was working with the General Assembly in 2016 to create a Drug Overdose Fatality Review Commission – the first statewide commission of its kind in the country-- that will carefully review all deaths resulting from opioid fatalities and make annual recommendations to the state for changes based upon its systemic review of those deaths. Doctor Horton is the chair of that Commission. The second step was DOJ's retention in 2016 of a nationally recognized consultant to conduct a "treatment inventory" for Delaware, where he would comprehensively review the unmet needs in Delaware's network for treatment of opioid addiction and suggest specific, prioritized steps to fill those unmet needs. The consultant's report is in its final stages and will be released this summer. One of the focuses of his report will be on the state's ability to expand the responsible use of medically assisted treatment of substance use disorder.

With the steps described above, I am hopeful that DOJ has – over the last two years – been a helpful partner in aggressively addressing Delaware's opioid epidemic and in laying the foundation to continue improving the state's response in the future. Attacking this epidemic may not be part of our statutory mandate, but it is a moral imperative and our office will continue to be actively involved in this fight.

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