

Memorandum



Subject:
MDPA Opioid Strategy

Date:
December 1, 2016

To:
All AUSAs, LECC, Victim-Witness Staff,
and Public Information Officer

From:
Bruce D. Brandler
United States Attorney

I. Introduction.

On September 21, 2016, the Attorney General issued a memorandum announcing the Department of Justice's strategy to combat the heroin epidemic engulfing our nation. That strategy rests on three interrelated pillars: prevention, enforcement, and treatment. While opioid abuse is a national problem that requires a national strategy, the Department recognizes that its efforts must be tailored to the needs of each region and implemented by those who know their communities best. For that reason, the Deputy Attorney General directed each United States Attorney's Office to draft and implement a district-specific opioid strategy focusing on prevention, enforcement, and treatment. This document constitutes our district's strategy to combat the opioid and heroin epidemic in the Middle District of Pennsylvania.

II. Description of the Problem.

In the Middle District of Pennsylvania and across the nation, we are gripped by a public health crisis regarding the overuse and availability of prescription pain medications, heroin, and powerful new synthetic opioids such as fentanyl and carfentanil. More Americans now die every year from drug overdoses than they do in motor vehicle crashes or homicides. According to the Centers for Disease Control and Prevention (CDC), Pennsylvania had the eighth highest rate of overdose deaths in the United States in 2014. In 2015, the number of drug-related deaths reported in Pennsylvania increased 23.4% to 3,383

deaths. In the most recent data for 2015, more than 81% of those who died from drug-related overdoses were found to have either heroin or other opioids in their system.

Sadly, today's heroin epidemic has hit home in the Middle District of Pennsylvania. The national drug overdose death rate in 2014 (most recent available) was 14.7 per 100,000 people. The 2015 statewide drug overdose death rate in Pennsylvania was 26 per 100,000 people. Several counties in the Middle District of Pennsylvania exceeded the statewide drug overdose death rate—Dauphin (30.04), Lackawanna (33.3), Luzerne (29.83), Monroe (27.64), Wayne (35.16), Montour (32.33), and Carbon (28.14). In York (99), Luzerne (96), and Dauphin (82) Counties alone, there were 277 drug-related overdose deaths reported. Initial data for 2016 indicates that the death rate and the number of deaths will continue to increase.

Unfortunately, the number of drug-related deaths is only a small part of the story. Overdoses that result in serious mental and physical injuries are not accounted for in those statistics, nor are the multitude of crimes associated with individuals who are addicted to opioids and commit crimes to support their habit. The havoc this epidemic wreaks on our community is "enormous and growing" according to DEA Acting Administrator Chuck Rosenberg, "and all of our citizens need to wake up to these facts."

III. MDPA Activities Leading up to This Strategy.

Our office began to address this growing problem in October 2014 when our prosecution priorities were issued. We listed trafficking in heroin and synthetic opiates, diversion of painkillers and other drugs by medical professionals and pharmacies, and distribution of synthetic and misbranded drugs via the internet, as prosecution priorities.

In April 2015, our office reached out to several District Attorney's Offices requesting that they join with us to combat the heroin problem. As a result of that initiative, DEA and the FBI began to receive reports of drug overdose fatalities and overdoses causing serious physical

injuries more frequently and in a more timely manner, which led to increased prosecutions on a federal level.

In May 2015, Bill Houser and Daryl Bloom, two of the office's most experienced and able prosecutors, were named our district's "Smart on Crime" AUSAs. Since that time, Bill and Daryl have consulted with a broad range of law enforcement officers and community stakeholders to develop a Smart on Crime Action Plan, which includes many items to address the opioid epidemic in our district. As described in more detail below, that Action Plan incorporates drug prevention, education, and reentry issues, all of which are key components of the district's opioid strategy.

In March 2015 and May 2015, we held two drug summits for all AUSAs involved in the prosecution of drug crimes. The purpose of those meetings was to get suggestions from our experienced cadre of drug prosecutors on what steps our office could take to combat the opioid epidemic. Many of those suggestions have been incorporated into this opioid strategy.

On the enforcement side, our office issued comprehensive guidelines in October 2015 for handling heroin cases. These guidelines were also the product of the drug summits we held earlier that year. In sum, the guidelines made clear that our office would prosecute heroin cases aggressively by not only charging the most serious readily provable offense that is consistent with the defendant's conduct, but also by requiring a guilty plea to the most serious readily provable offense consistent with the defendant's conduct, informed by an individualized assessment of the specific facts and circumstances of each particular case. Most recently, the sentencing memorandum introduction which was attached to the October 2015 guidelines was made mandatory in all heroin cases.

On September 19, 2016, our office, along with the Pennsylvania Department of Drugs and Alcohol Programs, held a full-day symposium on heroin and prescription drug abuse in Pennsylvania. The symposium was attended by approximately 100 local stakeholders, including law enforcement and other government officials, legislators,

medical professionals, and community leaders from the mid-state area. Topics included an overview of the opioid problem, treatment methodologies and challenges, case studies on recent federal prosecutions, and legislative initiatives in Pennsylvania and elsewhere. The symposium included an exchange of ideas and collaboration designed to address specific needs within the Middle District of Pennsylvania.

As a result of an idea presented at the September symposium, our office sent out numerous letters in October 2016 to all the police departments in the Middle District of Pennsylvania that did not carry and administer Naloxone, the life-saving opioid antidote that can reverse the effect of an opioid-induced drug overdose. We encouraged those police departments to carry and administer Naloxone, not only to save the lives of drug users who overdose, but also to save the lives of police officers who may accidentally overdose from dangerous opioids that can be absorbed through the skin upon contact during an officer's response to an overdose scene. We have received communications from multiple police departments that they have begun carrying Naloxone in direct response to our letters.

IV. The MDPA Opioid Strategy.

A. Prevention and Education.

One of the great challenges in combatting today's heroin epidemic lies with raising public awareness. It is well-recognized that a key to preventing opioid addiction, and concomitantly opioid overdoses, is education. Most community leaders and members of the public have never confronted a large-scale heroin crisis, and they may not understand that it is a pervasive threat in every neighborhood, rich or poor, urban or rural. To combat the problem, we must become effective messengers. And when our limited resources prevent us from doing more, we must recruit others to become effective messengers.

In order to get the message out, our office will develop a community education plan that highlights the dangers and warning

signs of opioid abuse, the available treatment options, the available support groups, and other available resources. Other United States Attorney's Offices in neighboring districts, such as the United States Attorney's Office in the Western District of Pennsylvania, already have developed excellent community education plans, and our office will use their plans as models for our own. Several members of our office will be in charge of developing our community education plan and implementing it, including the FAUSA, the two Smart on Crime AUSAs, the Law Enforcement Community Coordinator, the Victim-Witness Coordinator, and the public information officer. Other AUSAs and support staff who express an interest in participating will also join this core group of individuals on an as-needed basis.

A primary component of our community education plan will be to create a formal presentation that can be made to various audiences and in various venues throughout the district, addressing the heroin epidemic and offering tangible solutions. Potential speakers might include physicians, treatment providers, people in recovery, family members of overdose victims, law enforcement officers, members of the USAO staff, and elected public officials. Potential venues for these presentations might include "town hall" meetings, in particular communities hard-hit by the heroin epidemic, elementary, middle, and high schools, business and civic organizations, along with community and religious organizations, and half-way houses, jails, and prisons housing incarcerated individuals soon to be released into the community. The presentation, which should be tailored to the specific needs of the particular audience, would be a multi-media event, including not only speakers, but also audio-visual displays and written materials and other items that can be distributed to the participants and taken home with them.

In recognition of the fact that our district has limited resources, is expansive geographically, and predominantly rural in character, most of the presentations will be made to areas with larger populations and those communities showing the greatest need. There are several other ways, however, to get the message out besides making a live presentation. Our office will endeavor to coordinate and create a

website containing information on overdose prevention and links to recovery-based resources. Our office will endeavor to create a local "speakers" bureau made up of law enforcement officers, doctors, judges, treatment professionals, and other stakeholders who could speak at public meetings regarding heroin and opioids at schools, recreation centers, civic centers, union halls, and anywhere else people want information about the epidemic. Our office will endeavor to distribute the widely acclaimed documentary, "Chasing the Dragon: The Life of an Opioid Addict," which is a DEA and FBI-produced compilation of heart-wrenching, first-person accounts by addicts and family members about their experiences dealing with opioid and heroin addictions. As we did with our letter to the Chiefs of Police encouraging their departments to carry and administer Naloxone, we can send copies of "Chasing the Dragon" (and links to it on the internet) to each and every school principal and superintendent throughout the district to encourage them to show it to their students. It is anticipated that the members of the committee developing and implementing the community education plan will find additional methods to educate the public and will incorporate those methods into the plan as they are found.

B. Enforcement.

As the primary enforcer of the nation's federal drug laws, the Department of Justice must use its investigative, regulatory, and prosecutorial authority to deter and punish drug traffickers and others who are most responsible for this epidemic. This includes prosecutions against the leaders of traditional drug trafficking organizations, the essential members of those DTO's, recidivists who repeatedly distribute heroin despite prior convictions for the same conduct, and rogue health care providers, pharmacists, and pharmaceutical employees who contribute to the available supply and overuse of prescription opioid painkillers.

Our office, along with our federal, state, and local law enforcement partners, have done tremendous work in the area of enforcement. Our work, however, is not done. These investigations and cases must take

the highest priority. Consistent with the heroin guidelines issued in October 2015 and consistent with the Department's Smart on Crime initiative, these cases must be prosecuted aggressively and strategically to insure maximum deterrence.

In addition to aggressive and strategic enforcement, our office should take the following steps to enhance the investigation and prosecution of these cases. First, we must encourage information sharing. In order to prosecute overdose cases resulting in death or serious physical injury, it is essential that federal law enforcement receive notification of all such events in a timely manner. Federal law enforcement agencies such as the FBI and DEA employ a large number of task force officers who are members of local police departments, and those task force officers can be effective conduits for sharing information. This ad-hoc approach, however, is not the most effective means for information sharing. The lead OCDETF attorney should take steps to increase information sharing by creating an intelligence clearing house, or fusion center, to receive reports of heroin overdoses from first responders and local police departments. An example of such a clearing house is being used in the Western District of Pennsylvania, and our office should model our efforts on that clearing house. Notifications to the clearing house will not only allow us to federalize more overdose cases, but will also result in investigatory leads, enhancing our other drug prosecutions.

Second, heroin overdose cases have historically been treated as medical events, rather than serious crimes. We can improve the prospects for survival from overdoses through medical intervention and the administration of Naloxone, while also assuring a viable prosecution by making sure the first responders have received training on how to process the overdose scene, collect evidence, and mine cell phone history. Our office, along with our federal law enforcement partners, should provide training to first responders, including police, fire, and EMTs from each of the counties in the MDPA where overdoses are prevalent.

Third, our office should increase its prosecutions, criminally and civilly, of rogue health care providers who overprescribe pain medication for no other reason than to line their own pockets. The DEA has primary responsibility for enforcing the regulatory provisions of the Controlled Substances Act, including the registration of individuals and entities involved in the prescribing, dispensing, or distribution of the controlled substances, including manufacturers, distributors, prescribing practitioners, and pharmacies ("registrants"). DEA has the authority to investigate criminal and civil charges and to bring administrative sanctions against registrants who violate its requirements. Our office, through our criminal and civil health care fraud coordinators, should work with the DEA and our state counterparts to identify and prosecute those rogue registrants. While such investigations have been undertaken sporadically in the past and have had some success, we should endeavor to prioritize these investigations and increase their frequency to maximize deterrence.

C. Treatment.

No matter how robust our prevention and enforcement efforts, there will always be individuals who succumb to the agony of addiction. Substance abuse disorders are treatable chronic brain diseases, but they are very difficult to overcome.

Our office, like other U.S. Attorney's Offices, is primarily a prosecutorial agency and has limited ability to provide treatment options to individuals who need it. There are, however, certain steps we can take for individuals who are addicted to opioids.

First, we can help identify individuals who are most in need of treatment. Our law enforcement partners frequently interact with witnesses, defendants, and others who have opioid use disorders. Sometimes in the course of our investigations, our staff may also interact with these individuals. When such individuals are identified, they should be directed to appropriate treatment providers and facilities at the earliest possible time. The earlier that treatment is initiated, the greater the likelihood of preventing serious or lasting consequences.

Our Victim-Witness Coordinator and the U.S. Probation Office can serve as a resource in getting these individuals to an appropriate treatment provider.

Second, defendants who have opioid use disorders and need treatment, should be identified by AUSAs at sentencing so that judges can note that need in Judgment and Commitment Orders and so that the Bureau of Prisons and Probation officials can fulfill that need.

Third, every case, whether drug-related or not, should be evaluated to determine if the target of the investigation has a substance abuse disorder and whether a federal prosecution is warranted. Low-level, non-violent offenders with no criminal record who suffer from substance abuse disorders and commit a petty crime related to their addiction may be appropriate candidates for pretrial diversion or non-custodial sentences that require substance abuse treatment, rather than incarceration. That being said, drug addiction is not an excuse for criminal behavior, and serious crimes committed by drug addicts must be punished accordingly. Under 18 U.S.C. § 3553(a)(1) and § 3553(a)(2)(D), the fact that a defendant has a substance abuse disorder should be accounted for at sentencing, to the extent that the disorder significantly contributed to the commission of the offense and to the extent that the defendant needs substance abuse treatment.

Fourth, our office will seek to increase the number of drug and alcohol assessments and referrals to medication-assisted treatment (MAT) for people who are incarcerated or on probation. We will continue to promote efforts to increase the availability of Naloxone in the community as a safe antidote of opioid overdose. We will continue to support Good Samaritan laws and prescription drug monitoring programs (PDMPs). We will continue to support measures to increase capacity for the treatment of addiction.

V. Conclusion.

To combat the opioid epidemic, the U.S. Attorney's Office must work together with other federal, state, and local agencies and

stakeholders to seek a comprehensive solution. The strategy outlined in this memo embraces an approach that focuses on prevention, enforcement, and treatment, and identifies next steps that are immediately actionable. I know that many other actions are currently being taken, and this strategy is meant to complement, not supplant, the extraordinary work already being done by our office and our federal, state, and local partners.