New Challenges for Attorneys General: The Opiod Epidemic in Virginia

**Overview of Problem in Virginia**

* Heroin overdose fatalities in Virginia have more than doubled from 100 deaths in 2011 to 239 deaths in 2014, while an additional 547 Virginians died from prescription drug overdose in 2014
* Between 2011 and 2013, every region of the state experienced an increase in heroin overdose fatalities
* More Virginians were killed in 2014 by heroin and prescription opioid drug overdose than car crashes

**General Herring’s 5 Point Heroin/Rx Plan**

In September of 2014, General Herring launched a multi-faceted 5 point plan to address the growing heroin and prescription drug epidemic. Recognizing that we could not “arrest our way out of this”, he focused on education, policy, and prevention efforts as well as increased enforcement.

**Legislation**

In 2015, three important policy initiatives passed the Virginia legislature that changed the way the state address addiction:

Safe Reporting Law: This new law encourages reporting of overdoses in progress by establishing an affirmative defense for minor possession or intoxication crimes if a person reports an overdose, remains on the scene, and identifies themselves as the reporter. Safe reporting provisions currently exist in 21 other states and the District of Columbia.

Expanding availability of naloxone:  Naloxone is a prescription drug that counteracts the effects of a heroin or prescription opioid overdose. This new law expanded naloxone access and use by any law enforcement agency in the Commonwealth. It also provides immunity to law enforcement who administers the drug. Additionally, it created a standing order for naloxone prescriptions that allow patients to obtain naloxone directly from the pharmacists without a visit to the doctor.

Expanding access to the Prescription Monitoring Program: This new law allows probation officers to access Virginia's Prescription Monitoring Program to ensure their probationers are not getting opioid prescriptions they are not authorized to have.

**Prevention & Education**

Recognizing the problem before it starts is a key component of the solution. As part of General Herring’s Prevention and Education piece, the office developed the following training materials and curriculum to teach students, teachers, first responders and community leaders some important things to know about addiction and how we should be treating it:

The Office of Attorney General has developed a comprehensive program to help middle and high school age children make good decisions and avoid trouble with the law by having a better understanding of how it impacts them. Through this program, a module dealing specifically with prescription drug abuse and heroin abuse has been added to use in the classroom.

Law enforcement training materials, including a specially produced video, that is currently being developed to show law enforcement what to expect when they arrive at the scene of an overdose, how to respond, and any new laws that come out of this year's General Assembly session.

"Prescription Drug Take-Back" training materials so police departments or community organizations can help keep unused prescriptions off the streets.

**Documentary**

In December, General Herring’s office premiered **Heroin: *The Hardest Hit*** a powerful documentary produced by his office on the heroin and prescription drug epidemic and its effects on Virginians. The film examines the epidemic from all angles with Virginians sharing their own stories of addiction and overdose, testimony from parents who lost their children to an overdose, and insights from law enforcement and public health professionals who are working to address the crisis. General Herring has travelled to all corners of the Commonwealth screening the documentary and meeting with stakeholders and community leaders. Additionally, this has been aired several times since its premiere and has been shown in various markets throughout Virginia.

**Enforcement**

Licensing Boards

When a doctor, pharmacist, or pharmacy technician is accused of overprescribing, stealing, or otherwise making prescription opiates available illegally, the Office of Attorney General is responsible for presenting evidence to professional regulatory boards for possible license revocation. General Herring has committed to aggressively seek suspension, revocation, or other appropriate sanctions against individuals who violate their professional responsibilities and make it easier for Virginians to abuse prescription opiates.

Partnerships

General Herring assigned an assistant attorney general, to focus on these high-priority heroin cases to the US Attorney’s Office in the Eastern District of Virginia. In the last year and a half we have worked with our local and federal partners to prosecute more than 28 cases against dealers and traffickers involving more than 95 kilograms of heroin with an estimated street value of more than $19 million. That’s about 238,500 daily doses. And the majority of those cases were in Hampton Roads with the Attorney General’s Office and the US Attorney working hand-in-hand.

Additionally, regional prosecutors from the Office of Attorney General in Northern Virginia, Central Virginia, and Western Virginia have been instructed to prioritize heroin and prescription abuse cases. Prosecutors can either assist local Commonwealth's Attorneys with complex cases, take them to one of Virginia's twelve multi-jurisdictional grand juries, or work with the U.S. Attorney's Office to prosecute cases federally, as appropriate.

**Looking Ahead**

Felony Homicide

Currently, there is a loophole within the Virginia Felony Homicide statute that makes it nearly impossible to bring charges against drug dealers when their drugs lead to a fatal overdose. A Court of Appeals decision clarified the scope of the felony homicide statute in a prosecution for distribution of narcotics that resulted in the death of a user. The court’s opinion exposed a gap in the felony homicide statute that many prosecutors and members of the General Assembly did not believe existed. In the case Woodard v. Commonwealth, the defendant sold ten to fifteen ecstasy pills in a parking lot but they were not ingested by the victim until hours later at a friend’s apartment where they died of an overdose. The defendant was convicted of felony homicide. On appeal, the court noted that the felony homicide statue only applies to killings that occur “while in the prosecution” of the underlying felony, and thus, a death must be “so closely related to the felony in time, place, and causal connection as to make it part of the same criminal enterprise.” The court found that the Commonwealth failed to establish the time element because the victim did not ingest the narcotics until more than two hours after the sale was complete.

For the last two years, unsuccessful attempts have been made to fix this loophole within the felony homicide statute through legislation. Without enactment of this legislation, the felony homicide statute punishes some distributions of narcotics resulting in death while allowing other drug dealers to escape prosecution.

OTC Naloxone

Virginia has made great strides with making naloxone more accessible to those who need it and to first responders. Although we have a standing order for prescriptions, pharmacists still have the ability to opt out of the standing order and for some localities, especially those that are rural, it is hard to find a pharmacy that has naloxone available. Because time and access to naloxone can literally be the difference between life and death for someone who is overdosing it is critical to have this lifesaving drug as widely available as possible. While some states have adopted their own standing order prescription, it operates more like an over the counter drug than one that needs a prescription. Virginia state officials need to continue to work with health care partners and pharmacists to make sure that naloxone is in every pharmacy across the Commonwealth.

Mandatory PMP

The prescription monitoring program collects prescription data for Schedule II-IV drugs into a central database which can then be used by limited authorized users to assist in deterring the illegitimate use of prescription drugs. Currently, Virginia requires physicians to register for the program but only 9% of providers actually use it which compares to states that have no mandatory usage. From April to June last year, the 451 practitioners who wrote more than 1,000 prescriptions for drugs covered by the PMP database checked it only 14 percent of the time. More than 8,600 practitioners have written prescriptions for covered drugs but never queried the database. And 121 practitioners who wrote more than 1,000 covered prescriptions never checked the database. States that require mandatory use of the PMP by providers and pharmacists have seen a decline in overdose deaths as well as fraudulent prescription seizures. Other states have moved to electronic prescribing and completely done away with pen and pad prescriptions. While there are some draw backs to this approach it allows to doctors to communicate directly with the pharmacy and eliminates potential misuse of prescription pads and alternations to prescriptions that are written.