



## Board of County Commissioners - Staff Report

**Meeting Date:** July 3, 2018

**Presenter:** Alyssa Watkins

**Submitting Dept:** Administration

**Subject:** Consideration of a MOU with the WY AG's Office regarding the Opioid Crisis

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**Statement / Purpose:**

Consideration of a memorandum of understanding between Teton County and the Wyoming Attorney General's Office relating to the opioid crisis.

**Background / Description (Pros & Cons):**

On May 14, 2018, the Teton County Board of County Commissioners held a workshop with the County Attorney, the Coroner, Peter Michael, the Wyoming Attorney General and several of his deputies, private legal counsel, Jason Ochs, and others regarding the opioid crisis. Teton County has an opioid prescribing rate (735 per 1,000) that is higher than both the national average (665 per 1,000) and the state of Wyoming average (711 per 1,000). According to the County Coroner, Teton County has experienced 5 deaths related to opiates since January 1, 2016, which equates to 6% of total fatalities within that same timeframe. Preliminary figures indicate that potentially hundreds more are seeking treatment for opiate addiction in our area. The workshop was intended to serve as an opportunity for meaningful dialogue on the subject as well as a chance to vet potential next steps.

The Wyoming Attorney General's Office is conducting an investigation and considering litigation against opiate drug manufacturers and distributors. Specifically, the Attorney General's Consumer Protection Unit is working with a coalition of other Attorneys General across the country to evaluate whether certain manufacturers and distributors have engaged in unlawful practices in the marketing, promoting, advertising, selling, and distributing of opioids. The Attorney General's Office may file suit to restrain and enjoin unlawful trade practices and recover civil penalties. The Attorney General's Office seeks to coordinate with Teton County on those efforts and has presented a Memorandum of Understanding by which to formalize the terms and conditions of this relationship.

**Stakeholder Analysis & Involvement:**

Stakeholders include the public, local healthcare providers, local government, and others touched by the crisis.

**Fiscal Impact:**

There may be nominal cost associated with providing documents and information to and maintaining ongoing communications with the Attorney General's Office. Should litigation be filed by the Attorney General and be successful, the citizens of the State of Wyoming and Teton County would benefit.

**Staff Impact:**

The County Attorney's Office would be responsible for providing assistance to the Attorney General's Office in seeking out, identifying, and facilitating access to documents, information, and witnesses, as well as serving as a conduit for communications and updates from the Attorney General to the Board of County Commissioners.

**Legal Review:**

Erin Weisman

**Staff Input / Recommendation:**

Staff recommends approval of this memorandum of understanding.



**Board of County Commissioners - Staff Report**

**Attachments:**

Memorandum of Understanding Between the Office of the Wyoming Attorney General and the County of Teton, Wyoming

**Suggested Motion:**

I move to approve the Memorandum of Understanding Between the Office of the Wyoming Attorney General and the County of Teton, Wyoming regarding the opioid crisis.



**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE OFFICE OF THE WYOMING ATTORNEY GENERAL  
AND THE COUNTY OF TETON, WYOMING**

**WHEREAS**, the acting Health and Human Services Secretary, Eric D. Hargan, has declared the opioid epidemic a nationwide public health emergency;

**WHEREAS**, according to the Centers for Disease Control and Prevention, opioid-related deaths have quadrupled since 1999. Each day more than 140 Americans die from drug overdoses, 91 specifically due to opioids;

**WHEREAS**, according to the 2016 National Survey on Drug Use and Health, 2.1 million people suffered from an opioid use disorder and 11.5 million people misused prescription opioids in 2016;

**WHEREAS**, the opioid crisis has destroyed lives and devastated Wyoming families. According to the Centers for Disease Control and Prevention, 109, 96, and 99 people died from drug overdose in Wyoming in 2014, 2015, and 2016 respectively;

**WHEREAS**, the opioid prescribing rate in Wyoming (711 per 1,000) is higher than the national rate (665 per 1,000);

**WHEREAS**, the County of Teton, Wyoming (“Teton County”), has a higher opioid prescribing rate (735) than the national rate;

**WHEREAS**, the Office of the Attorney General of Wyoming (“Attorney General”) is conducting an investigation into the trade practices of certain opioid manufacturers and distributors pursuant to its authority under Section 40-12-112 of the Wyoming Consumer Protection Act;

**WHEREAS**, the Attorney General’s Consumer Protection Unit is working with a coalition of a majority of Attorneys General from across the country to evaluate whether certain manufacturers and distributors have engaged in unlawful practices in the marketing, promoting, advertising, selling, and distributing of opioids;

**WHEREAS**, the Wyoming Consumer Protection Act authorizes the Attorney General to bring a civil law enforcement action in the public interest to restrain and enjoin unlawful trade practices and to recover statutory civil penalties;

**WHEREAS**, the Attorney General’s Medicaid Fraud Control Unit investigates and prosecutes Medicaid provider fraud and false claims statewide and is authorized to do so under the Social Security Act § 1903(q), 42 U.S.C. § 1396b(q), 42 C.F.R. §1007.11, Wyoming Statutes §§ 9-1-603, 9-1-618, and Executive Order 1994-10;

**WHEREAS**, through investigation, and any subsequent litigation, the Attorney General seeks to effectively address the opioid crisis in all affected areas of the State of Wyoming, including Teton County;

**WHEREAS**, the State of Wyoming, and all of its counties, should present a united front in combating the opioid crisis in the state;

**WHEREAS**, the Government of Teton County recognizes the harmful impact of the opioid crisis and wishes to contribute to the Attorney General's efforts to address the crisis; and

**WHEREAS**, the Attorney General and Government of Teton County (together, the "Parties") seek to engage in effective coordination and harmonious cooperation to combat the opioid crisis.

**NOW, THEREFORE**, in consideration of the foregoing, the Parties agree to the following terms and conditions:

1. Principles of Cooperation. To advance the effective and efficient investigation of opioid manufacturers and distributors, and to avoid the unnecessary duplication of effort and waste of public resources, the Parties agree to cooperate in the following ways:
  - A. Teton County, through its County Attorney, will assist the Attorney General by seeking out and identifying documents, information, and witnesses connected to Teton County that are relevant to the Attorney General's investigation. Furthermore, the Teton County Attorney will facilitate the Attorney General's access to such documents, information, and witnesses.
  - B. To the extent permitted by law and any order or requirement of a court of law, and as appropriate and allowed by any agreement that the Attorney General has entered into, the Attorney General will provide the Teton County Attorney with information and regular updates concerning the status of the Attorney General's investigation.
2. Common Interest. The parties recognize that it is in their individual and common interest to share documents, mental impressions, strategies, and other information, and otherwise to communicate with one another regarding investigation and litigation related to the marketing, promoting, advertising, selling, and distributing of opioids ("Shared Information").

The Parties further recognize that it is in their individual and common interest to communicate with one another on these matters of common interest while maintaining intact all applicable privileges or claims to confidentiality that may be asserted under law to protect against disclosures to anyone other than the other party ("Privileges"). These Privileges include, but are not limited to, the attorney-client privilege, the work-product doctrine, the law enforcement privilege, the deliberative process privilege, and any exemption from disclosure under the Wyoming Public Records Act. The Parties retain all such Privileges and claims to confidentiality.

3. Protection of Communications. Any communication of Shared Information from one Party to another (“Confidential Communication” or “Communication”) is not intended to waive, and shall not be deemed a waiver of, any claim of Privilege with respect to such Confidential Communication. Any Confidential Communication shall be protected by the common interest doctrine and all applicable Privileges to the fullest extent permitted by applicable law.
4. Nondisclosure. Confidential Communications and Shared Information received by a Party pursuant to this Memorandum of Understanding (“MOU”) shall only be disclosed to (1) Parties and their employees; (2) any county of the State of Wyoming that enters into a substantially similar MOU; (3) consultants or experts who have been retained by a Party and who have agreed in writing to abide by the confidentiality restrictions of the MOU; (4) government officials involved with the enforcement of consumer protection, Medicaid fraud, or false claims laws who have agreed in writing to abide by the confidentiality restrictions of the MOU; and (5) other persons, provided that both Parties consent in advance. Nothing in this MOU prevents the Attorney General from using the Shared Information for law enforcement purposes, including presentations and filings at pre-trial and trial related proceedings and confidential settlement negotiations.

If any Shared Information or Confidential Communication is subject to any form of compulsory process in any proceeding or is demanded under the Wyoming Public Records Act, the Party receiving the request shall give the other party reasonable notice of at least five (5) business days, prior to disclosing or making available any materials. The Party receiving the request shall refuse to disclose any Shared Information or Confidential Communication unless required by law, administrative order, or court order. In the event that any Party’s withholding of the Shared Information or Confidential Communication is challenged by any court, agency, or administrative body, the challenged Party shall give the other party reasonable notice of the challenge prior to any response being due.

5. Term of Agreement. This MOU shall commence on the day it is last signed and executed by the duly authorized representatives of the Parties and shall remain in full force and effect until terminated. This MOU may be terminated, without cause, by either Party on fifteen (15) days written notice. In the event that this MOU terminates, for any reason, the Parties agree that there is a continuing duty to treat Shared Information and Confidential Communications as privileged and confidential.
6. Modification. This MOU may be revised as circumstances warrant, only with the concurrence of both the Attorney General and Teton County, through its County Attorney.

**IN WITNESS WHEREOF**, the undersigned agree to this MOU and the responsibilities outlined within.

For the STATE OF WYOMING, OFFICE OF THE ATTORNEY GENERAL

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PETER K. MICHAEL, Attorney General  
State of Wyoming

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Date

For the COUNTY OF TETON, WYOMING

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MARK NEWCOMB  
Teton County Board of Commissioners

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Date

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NATALIA MACKER  
Teton County Board of Commissioners

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Date

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GREG EPSTEIN  
Teton County Board of Commissioners

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Date

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PAUL VOGELHEIM  
Teton County Board of Commissioners

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Date

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SMOKEY RHEA  
Teton County Board of Commissioners

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Date