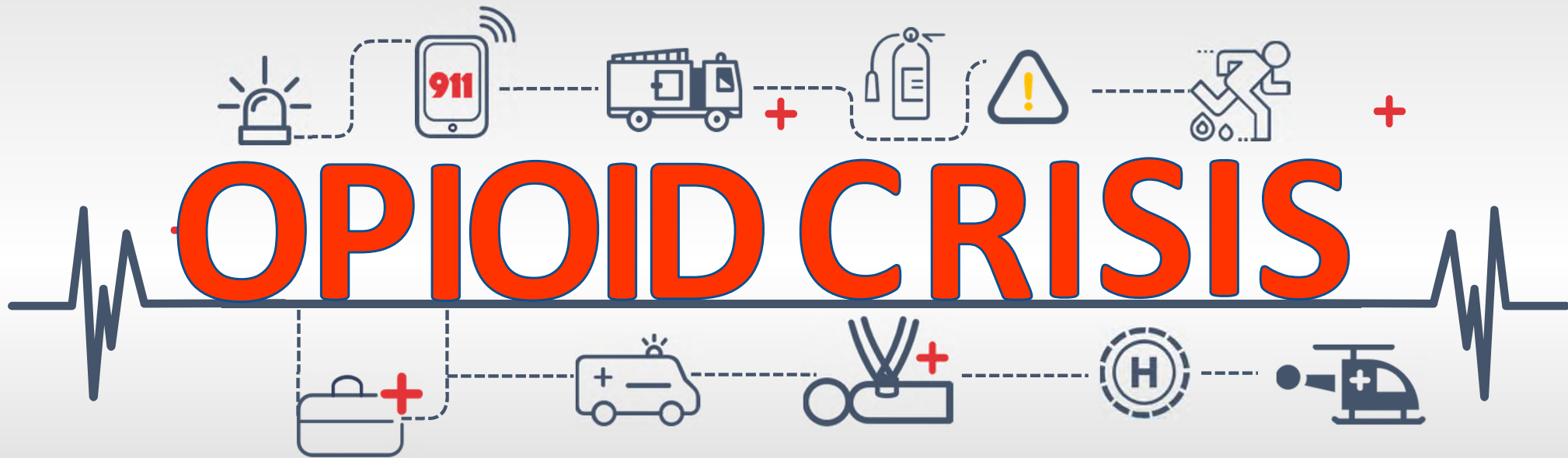


# Responding to the



West Virginia School Board Association  
February 17, 2018  
9:00 – 10:30 a.m.  
Rick Boothby, Esq.  
**Bowles Rice LLP**

# Bowles Rice Education Law Group



Rick Boothby



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Canon Hill



Howard Seufer



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Top Ranked in Education Law



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**Aaron Boone – Civil Litigation**

**Michael Cardi – Title IX**

**Mike Caryl – Taxes; PILOTs**

**Kayla Cook – Title IX**

**Josh Cottle – ESCs; Grievances and Appeals**

**Mark D'Antoni – Acquisition & Disposition of Real Estate**

**Roger Hanshaw – Parliamentary Procedure; ESCs**

**Ashley Hardesty O'Dell – Civil Litigation**

**Roger Hunter – Bond Issues; Excess Levies; Lease Purchase**

**Bob Kent – Civil Litigation**

**Robert S. Kiss – PILOTs and Tax**

**Tom Percy – Bond Issues; Excess Levies; Lease Purchase**

**Steve Prunty - Easements**

**Marion Ray - Workers Compensation**

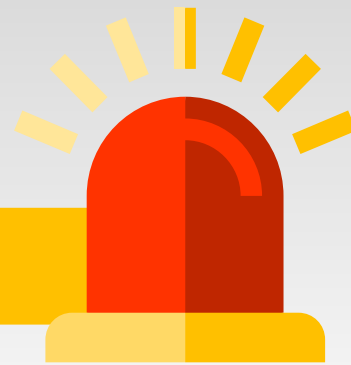
**Cam Siegrist – Bond Issues; Excess Levies; Lease Purchase**

**Ken Webb - Construction Issues and Litigation**

# A Word About This Presentation

- We speak in general terms today. The specific facts of each situation can make a difference in the legal principles that apply
- This presentation must not be treated as legal advice about any specific situation
- Due to the rapidly changing nature of the law, information in this presentation may become outdated
- When in doubt, don't act or rely upon the information contained in this presentation without seeking legal advice





## What can school boards do?



Focus your energy on matters over which your Board has some degree of control.



Adopt Board policies that provide the Board and the Administration with clearly-defined powers.



Partner with outside agencies and providers who can offer meaningful help to your students when they need it.

# Today



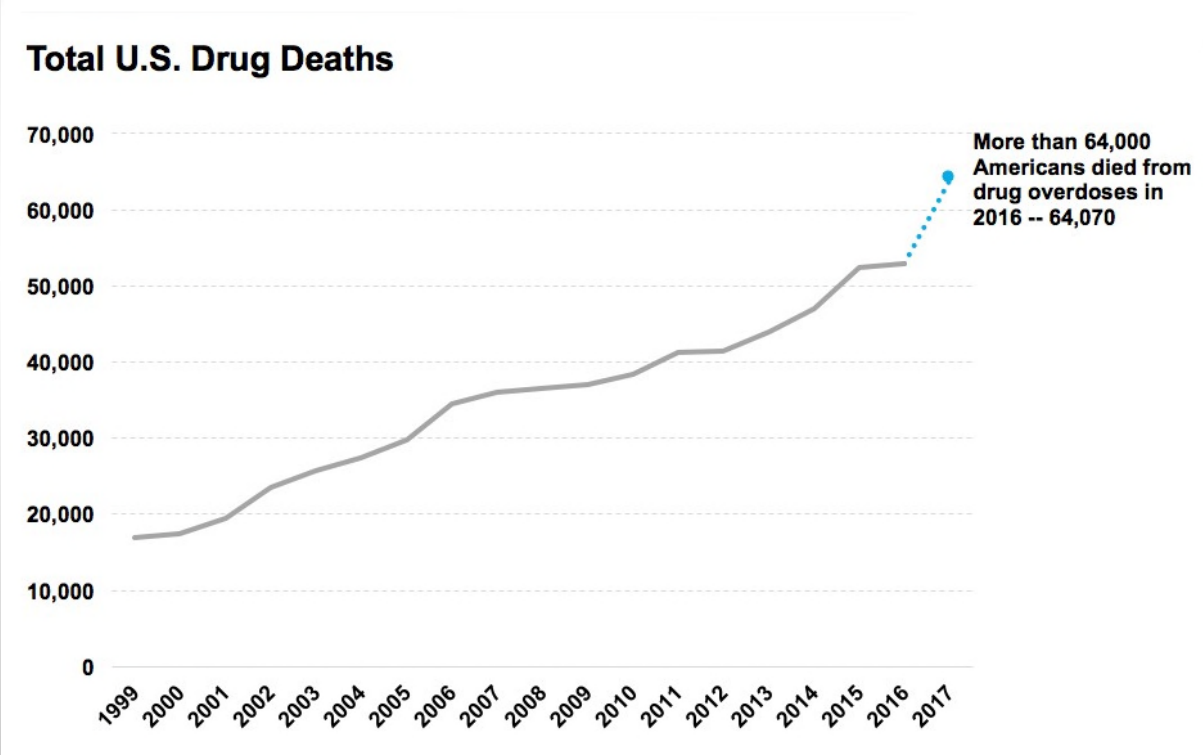
- Overview of the problem and the State's response
- Use of opioid antagonist at school
- On-campus medical and mental health facilities
- Addressing employees with substance/alcohol/addiction issues
- Abuse & neglect reporting
- Your questions



# Drug Abuse in the United States

- Getting worse
- Deaths from drug overdoses are trending much higher than 20 years ago
- Greater losses and higher costs to employers

# 2016: 64,070 Americans died from drug overdoses

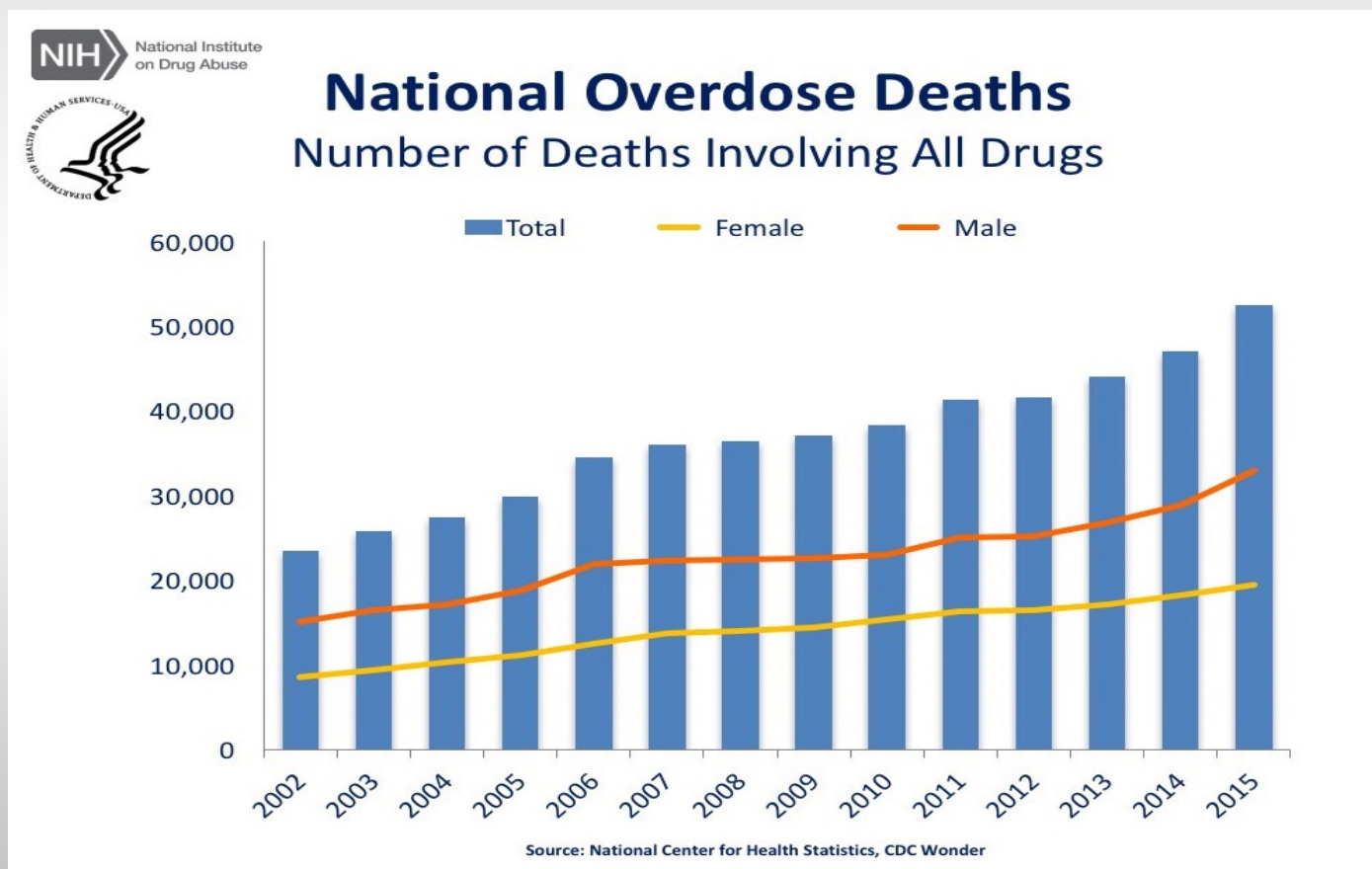




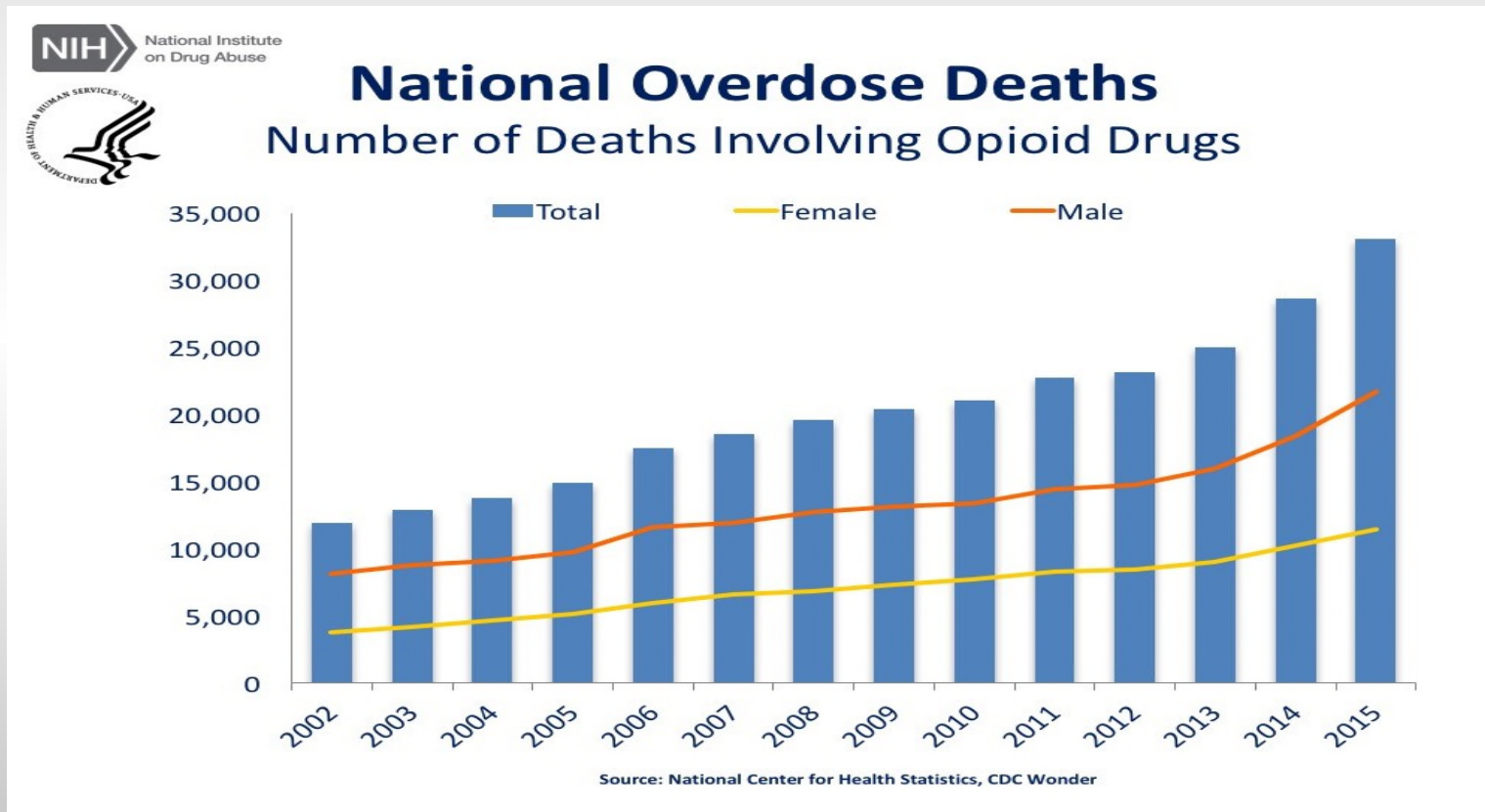
## For comparison

- 58,220 Americans died during the entire Vietnam War
  - From Nov 1, 1955 – Apr 30, 1975 (nearly 20 years)
- 64,070 Americans died from drug overdoses in 2016 alone

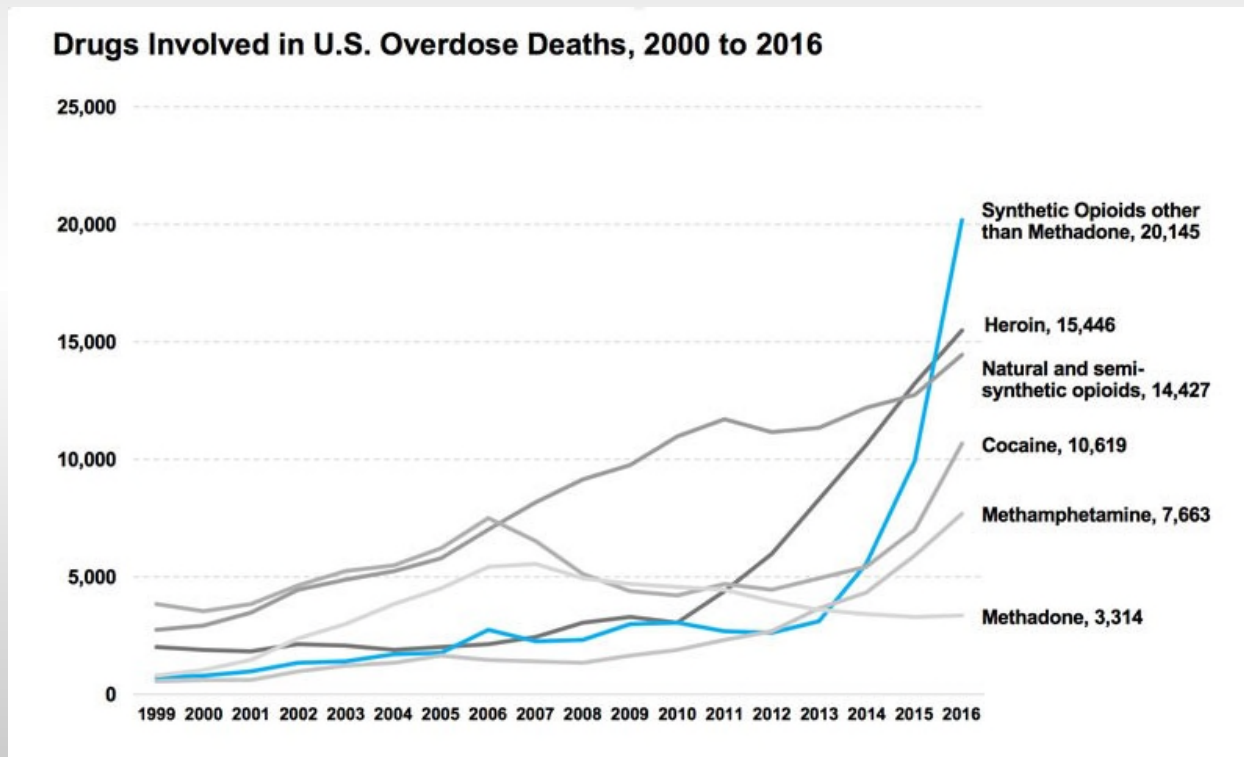
# Overdose deaths from ALL drugs



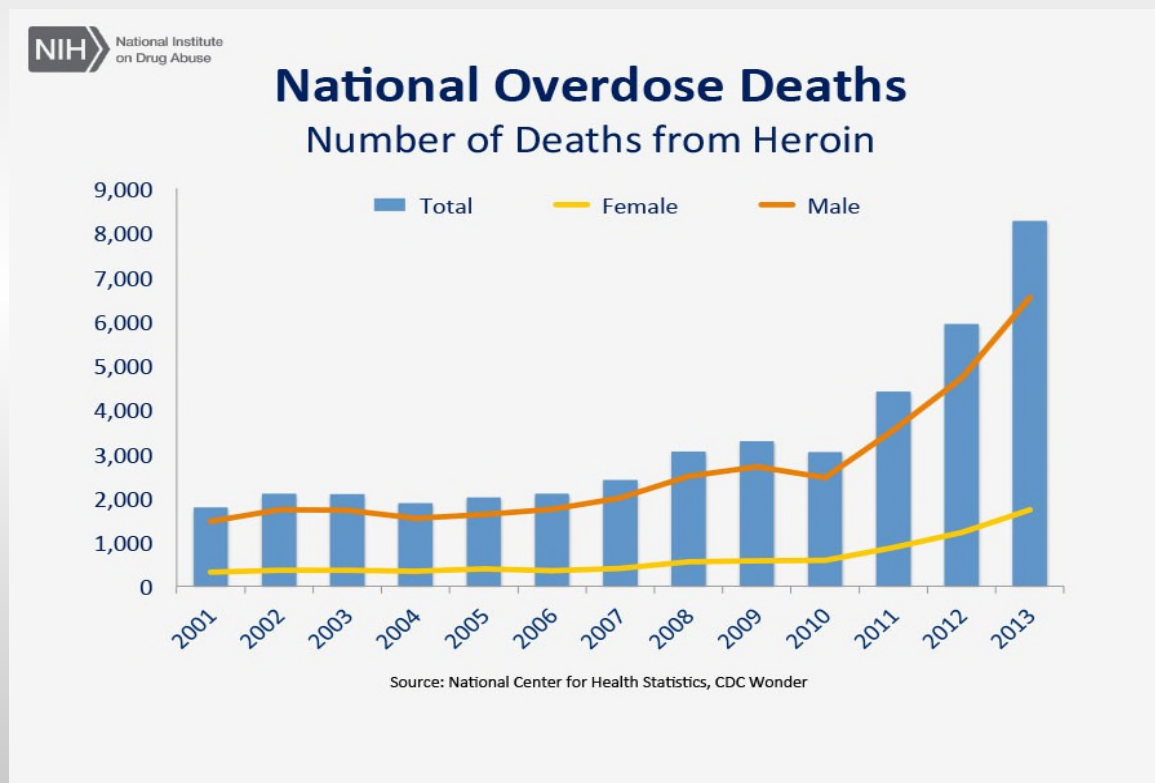
# Overdose death from Opioids



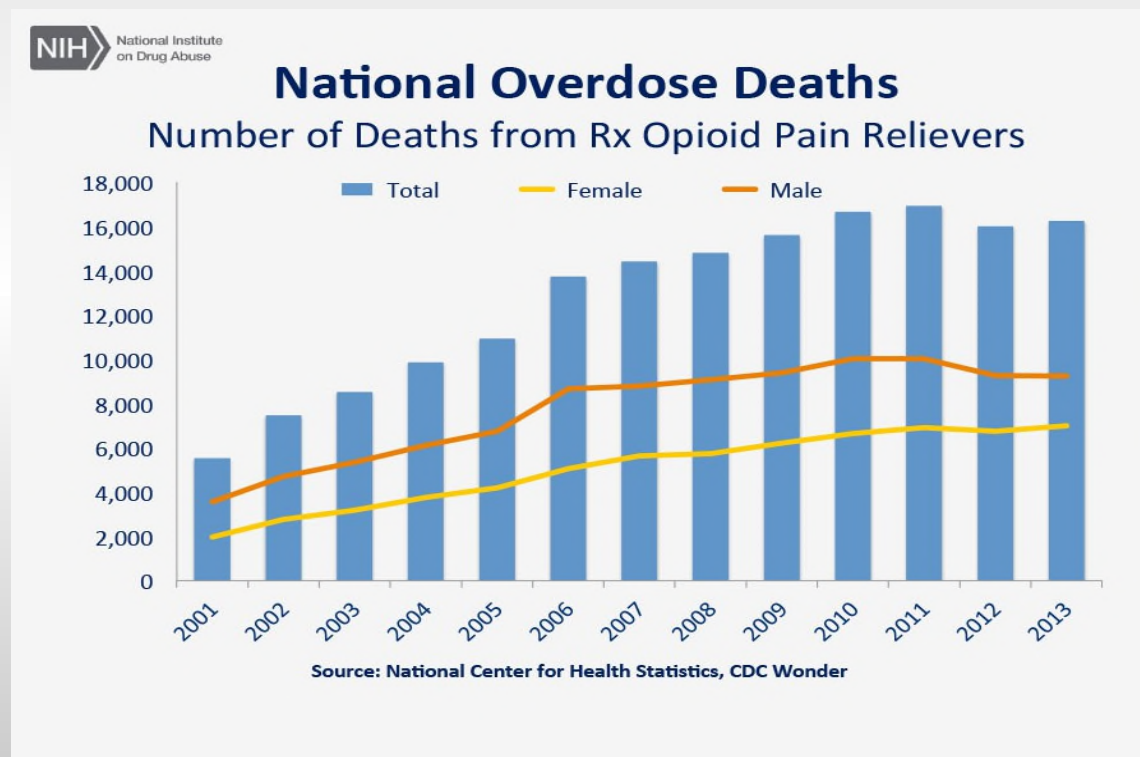
# 2000 to 2016: the rise of synthetic opioids



# Until 2013, Heroin was the main culprit



# Prescription drug overdose deaths



## Drug Abuse in West Virginia

If you think it is getting worse, you are right.

# Drug Abuse in West Virginia



- Much much worse
- **2016:** WV had the worst drug overdose death rate in the nation
  - 52 deaths from drug overdose per 100,000 inhabitants
  - 2<sup>nd</sup> highest was Ohio with 39.1 deaths per 100,000
    - Much lower percentage than West Virginia
  - Lowest rate was Nebraska with 6.4 deaths from drug overdose per 100,000 inhabitants
- **2015:** WV had the worst drug overdose death rate in the nation
  - 41.5 deaths per 100,000
- **2014:** WV had the worst drug overdose death rate in the nation
  - 35.5 deaths per 100,000



# Drug Abuse in West Virginia

- What do you think the data will show for 2017?



# What is happening?

- Opioids and synthetic opioids are getting cheaper
  - Cheaper than a pack of cigarettes in most states
- US healthcare system is not well-equipped to combat drug problems, especially for the poor

# WV DHHR Opioid Response Plan

- As of January 11, 2018
- 6 high-priority short-term recommendations
- “This crisis has plagued our state for too long,” said Bill J. Crouch, DHHR Cabinet Secretary.
- “Governor Jim Justice has asked that we utilize all resources at our disposal to combat this epidemic. The effects of the drug problem are impacting all parts of DHHR including – Behavioral Health, Children and Families, Medical Services, and Public Health. Beginning today, our primary focus is to fight this problem on all fronts, and this plan is a crucial step in meeting that goal. Governor Justice has pledged his full support to DHHR to battle this ever-growing issue.”

# WV DHHR Opioid Response Plan

- **Prevention:**
- West Virginia should expand the authority of medical professional boards and public health officials to **stop inappropriate prescribing of pain medications.**
- West Virginia should **limit the duration of initial opioid prescriptions.**

# WV DHHR Opioid Response Plan

- **Early Intervention:**

- West Virginia should expand **awareness of addiction as a treatable disease** by developing a public education campaign to address misinformation and associated stigma.
- West Virginia should expand promising **law-enforcement diversion programs**, such as the LEAD model, to **help people experiencing a drug problem access treatment** and achieve sustained recovery.
- West Virginia should strengthen support for lifesaving comprehensive harm reduction policies by removing legal barriers to programs that are based on scientific evidence and by adding resources.

# WV DHHR Opioid Response Plan

- **Treatment:**

- Reflecting the need for all patients to have access to multiple options for treatment, West Virginia should require a statewide quality **strategy for opioid use disorder treatment** and **remove regulatory barriers** to the expansion of effective treatment.
- West Virginia should **expand access to effective substance use disorder treatment** in hospital emergency departments and the criminal justice system in order to reach people at key moments of opportunity.

# WV DHHR Opioid Response Plan

- **Overdose Reversal:**

- West Virginia should require all first responders to carry **naloxone** and be trained in its use, support community-based **naloxone programs**, and authorize a standing order for naloxone prescriptions to improve insurance coverage.
- West Virginia should require hospital emergency departments and Emergency Medical Services to **notify DHHR's Bureau of Public Health of nonfatal overdoses** for the purpose of arranging for outreach and services.

# WV DHHR Opioid Response Plan

- **Supporting Families with Substance Use Disorder:**
  - West Virginia should expand effective programs that serve families, including Drug Free Moms and Babies, home visitation programs, and comprehensive services for the families of children born with Neonatal Abstinence Syndrome such as Lily's Place.
  - West Virginia should expand access to long-acting reversible contraception and other contraceptive services for men and women with substance use disorders in multiple settings.



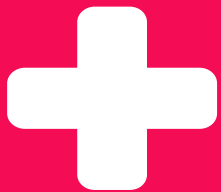
# WV DHHR Opioid Response Plan

- **Recovery:**

- West Virginia should continue pursuing a broad expansion of peer-based supports.

# Opioid Antagonists in schools

WV Code §18-5-22d



**P**

**Permitted not required**

to keep a supply of Narcan/Naloxone at school to respond to opioid event

**A**

**Administered to anyone on campus having opioid event**

Students, staff, visitors, anyone on campus

**S**

**School Nurse**

administers the Narcan, if she/he “**medically** believes” ...

**S**

**School personnel who have had Narcan training**

administers the Narcan, if she/he “**reasonably** believes” ...

# Opioid Antagonists

- If used on a student:
  - prior notice to parents/guardian NOT required
  - notice after-the-fact IS required immediately following administration
- Data collection & reporting
- Liability:
  - Reasonable use by school nurse and trained staff based on good faith belief
  - Decision of a school board NOT to maintain supply of opioid antagonists
- State Board Policy developed with State Health Officer:
  - New policy not on the State Board's website yet
  - Policy 2422.8 mentions Narcan but is based on older law
    - Licensed persons only, not trained lay people

WV Code §18-5-22d



WV Code §18-5-22d



# Narcan/Naloxone

- A video worth 8 minutes of your time



- Two Simultaneous Steps:
  - Designated employee administers Narcan
  - Other employee calls 911 immediately

# **School-based health centers in West Virginia**

including mental health/counseling services

# On-campus medical and mental health facilities

- Standards and guidelines for school-based health centers in West Virginia (from Marshall Univ.)
  - [https://livewell.marshall.edu/.../2-sbhc\\_standards\\_guidelines\\_final\\_nov\\_2009.pdf](https://livewell.marshall.edu/.../2-sbhc_standards_guidelines_final_nov_2009.pdf)
- There is a LOT of work to do before this can happen
- Memorandum of Understanding
  - Many issues, including privacy of student records, insurance coverage, limits on services, etc.
- Talk with other board members from around the State to learn from their experiences

- Applicability of Standards & Guidelines for School-Based Health Centers in WV
- Purpose of a School-Based Health Center
- Community Participation
- Sponsoring Agency
- Operating Policies and Procedures
- Parental Consent
- Confidentiality
- Services
- **Medical Services**
- **Behavioral Health Services**
- Staffing
- Staff Development
- Staffing Ratio
- Evaluation and Performance Improvement
- Practice Management Including Fiscal Policies
- Facility Requirements

# **Employees with substance abuse problems**



# Employees with substance abuse problems

- Does your board have an employee assistance program? (EIP)
- Who is in charge of it?
- Who is eligible for an EIP?
- Do we offer access to an EIP after an incident at work?
- Does PEIA cover rehab?

# Detecting and responding to employee drug use at school (or a school-sponsored activity)

- Can you answer the following questions with confidence?
  - Does your county's Drug-Free Workplace Policy need to be revised?
    - It probably does
    - Drug-Free Workplace Act
  - **Has the DFW policy been provided to all employees? What proof do we have of this?**
    - Employees are required to acknowledge the DFW policy in writing
  - Have all your administrators received training on the DFW policy, and on documenting their reasonable suspicion that an employee is intoxicated/under the influence of drugs? Do they know where the drug-testing center is?
  - **Have all employees received training on the policy?**

# WV Drug Testing Statutes?

- None
- But we have two West Virginia Supreme Court of Appeals Decisions regarding drug testing of non-public employees (i.e., employees of private companies)
- Then why would we drug-test our public employees?
  - Only way to enforce the DFW policy is with medical proof that employee violated the policy
  - Government employers must have reasonable suspicion under the Fourth Amendment to conduct a search
    - A drug screening is a search

## Jeopardy (if we have time)

- Testing your knowledge about addressing employee drug/alcohol use on school grounds

# Abuse and Neglect Reporting

# Abuse or Neglect Reporting

- When you suspect abuse or neglect you should report your concerns to the county office of the Department of Health and Human Resources where you live.
- Reports can also be made to the Abuse and Neglect Hotline ( 1-800-352-6513 ) 7 days a week, 24 hours a day.
- School employees are mandatory reporters
- Having an addict for a parent/guardian frequently results in children being neglected and abused

## WV Code §49-2-803 basics

- Persons mandated to report suspected abuse and neglect; requirements.
- Any . . . school teacher or other school personnel, . . . who has reasonable cause to suspect that:
  - a child is neglected or abused
  - or observes the child being subjected to conditions that are likely to result in abuse or neglect
  - shall immediately, and not more than forty-eight hours after suspecting this abuse or neglect, report the circumstances or cause a report to be made to the Department of Health and Human Resources.
- Serious physical abuse or sexual abuse or sexual assault, the reporter shall also immediately report, or cause a report to be made, to:
  - the State Police and any law-enforcement agency having jurisdiction to investigate the complaint.
  - Any person required to report under this article who is a member of the staff [of a] school, . . . shall also immediately notify the person in charge of the ... school . . . who may supplement the report or cause an additional report to be made.

# Your Questions