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June 28, 2024

Dear Colleagues,

For more than a year, I have repeatedly expressed serious concerns about the stewardship of Delaware's prescription opioid settlement funds. And now, after I referred a specific recipient to the State Auditor, her response (enclosed) has raised even more serious concerns.

Attorneys general across the country — including two Delaware AGs — worked for the better part of a decade, in multiple jurisdictions and against staunch opposition, to secure the lifesaving dollars that are now entrusted to us. Delaware stands to receive roughly a quarter-billion dollars in one-time funds from these settlements — and with the opioid epidemic raging as violently as ever, it is critically important not to squander this opportunity on ineffective, wasteful spending. That is the charge of this Commission; it is in the terms of the settlement agreements themselves; and, most importantly, it is what we owe to the people of this state.

Since the inception of the Commission's grant program in November 2022, I and others have repeatedly asked to develop a thoughtful plan of action to spend these precious dollars. While I understand and share a sense of urgency in this work, I have repeatedly asked the Commission to develop a thoughtful plan of action — including a plan for auditing and accountability — before awarding more dollars:

- On February 27, 2023, I asked that the Commission's March meeting be postponed in order to give the Commission time to review applications more thoroughly. In multiple instances, in both Phase 1a and Phase 1b, DOJ staff have had to advocate for Commission staff to remove clearly inadequate, incomplete, or unmerited applications from its grant recommendations.
- At the May 31, 2023 meeting, the Governance Committee discussed oversight, including auditing and assessing grants according to measurable goals. Opioid Fund Program Director Susan Holloway stated that she had created a dashboard to track services provided and individuals served; I also understand that she indicated the Office of Management & Budget (OMB) was playing a role in grant oversight. The Committee asked for clarity on these statements — specifically, information on what data Ms. Holloway and the Behavioral Health Commission (BHC) were collecting, and how it was measuring compliance and success. Those questions were tabled.
- On June 7, 2023, Kenneth McLaughlin noted to the Local Governments Committee that "in this first year, the committee should do its best to monitor effectiveness for

reporting after this initial year with the goal of identifying programs that have successful impacts.” At this same meeting, Ms. Holloway indicated she was “looking at a process to measure the effectiveness of grant distributions.”^[1]

- On July 10, members of the Governance Committee extensively discussed oversight issues, including the role that OMB and BHC are playing with respect to grant monitoring and outcome assessment, and what role, if any, the Governance Committee would play in that respect. The Committee received few answers, and voted to decide specifically on the role it would play in grant oversight at its meeting in October. The motion specifically required that the issue be listed as an agenda item at that meeting. In spite of that, the issue was *not* placed on the October meeting agenda.
- At the October 9 meeting, of the Governance Committee, Chairman Humes and another member expressed their concern that the agenda did not include grant oversight. Chairman Hume stated that he was going to ask the Commission co-chairs to include the topic as an agenda item for the upcoming full Commission meeting; I asked for grant oversight to be added to the meeting agenda for October 30.^[2]
- At the October 30 meeting, we were assured that Ms. Holloway and her team would be conducting all grant oversight, using Bonfire and Salesforce to collect data. No plan for measuring program efficacy was ever addressed or proposed, nor was any plan for monitoring compliance or auditing grantees.
- My staff and I have repeatedly asked for POSDC’s administrative spending — even such basic matters of transparency as the staff’s salary — to be detailed in our annual report. To date, the Commission has failed to issue an annual report for 2022.

I have also been concerned about the Commission’s quiescence in adopting a strategic plan that would help ensure we base grants on impact, rather than rubber-stamping spending on a first come, first served basis:

- At the January 26, 2023 meeting of the Commission, Dr. Keith Pettiford reported that the Behavioral Health Resource Committee of this Commission was asking for an assessment of “treatment resources for gaps across the state by reviewing reports completed by other government agencies and academia. Also discussed was an option to bring in a subcontractor to help with gap analysis.”^[3] At the time, I echoed that request — and still do.
- Since last September, I have advocated for POSDC to adopt a strategic plan to help identify gaps and to map out spending. On September 21, the Lt. Governor, Ms. Holloway, and I met with Dr. Richard Frank and others about the most effective methods used across the country to combat Substance Use Disorder. That meeting reaffirmed that we needed a more comprehensive approach.
- On October 23, the same group and our staff met with Social Contract to determine if that group would be able to support strategic planning of funding a grant program, anticipating we would need mapping of federal and state funding sources to prevent overlap when spending Commission funds. I discussed that outreach at the Commission’s October 30 meeting.

- In November, Social Contract presented a proposal for establishing an agile grant disbursement process that will facilitate the solicitation, review, and allocation of funds to organizations and groups committed to combating the opioid crisis in Delaware.
- On March 4, we met with Social Contract to begin the project, agreeing that they would review the landscape of services available to Delawareans and make strategic recommendations on how POSDC can maximize the effectiveness of opioid spending statewide. Social Contract does not expect to complete this report until September; despite that, the Commission attempted to release another \$15 million in grant funding before it was reduced to the current \$1.9 million in recommended funding. None of these applications were reviewed by the Commission.

I share everyone's sense of urgency in getting these funds where they are needed, but we still have no satisfactory answer as to where those targets are. I have repeatedly stressed that even this seemingly large pot of money is finite and that not all spending is created equal. And I continue to urge restraint; it has been 20 months since the Commission began awarding grants, and we still do not have know where these funds will be most useful, how we will measure their impact, or even whether our grantees are compliant.

This project is rife with potential for fraud, waste, and abuse — and correspondence with the State Auditor has left me gravely concerned that at least one grantee appears to have engaged in wrongdoing with significant State and/or federal funds, including its Commission grant. While that grantee is entitled to a presumption of innocence, this severely exacerbates my already serious misgivings that our Commission has woefully inadequate guardrails in place to protect the public's best interests. **I am therefore strongly recommending an immediate and complete freeze on new grants by the Commission until Social Contract completes the recommendations it was hired to produce.**

I realize that this step may go against some of our reflexes; DOJ fought for years to secure these funds precisely because they are so important, and I know how deeply personal the epidemic feels to all of us. That is exactly why the public's trust in this Commission is so vitally important — and why we must be unconditionally insistent that these funds are used wisely.

Respectfully,



Attorney General Kathy Jennings
Co-chair, Prescription Opioid Settlement Distribution Commission

Enclosure: Letter from State Auditor Lydia York



**State of Delaware
Office of Auditor of Accounts**

**Lydia E. York
State Auditor**

June 12, 2024

The Hon. Kathy Jennings
Delaware Department of Justice
820 N. French St.
Wilmington, DE 19801

Dear Attorney General Jennings,

I am writing to you in your capacity as the Attorney General and co-chair of the Prescription Opioid Settlement Distribution Commission to bring a matter of urgent concern to your attention regarding the non-profit organization Code Purple Kent County (CPKC).

Our office was engaged to conduct a performance audit of the grant moneys distributed to CPKC from the Opioid Abatement and Remediation Grant Program. Due to our audit team's inability to obtain sufficient appropriate audit evidence to provide a reasonable basis for our conclusions, we have decided to formally withdraw from the performance audit engagement. Despite our best efforts, we have encountered significant challenges in establishing trust regarding the accuracy and authenticity of the documents provided by CPKC. Our preliminary analysis suggests potential waste, fraud, and abuse of state resources, including indications of fraudulent grant submissions.

The attached advisory contains our preliminary findings, including the professional analysis of our auditors, who are qualified to detect fraud. It is important to note that while our performance audit was limited to the grant awarded to CPKC through the Opioid Abatement and Remediation Grant Program, this organization has received nearly \$1 million in additional state disbursements over the last two years. Due to the discrepancies we have discovered, there is reason to believe that these moneys were secured with fraudulent documentation. For this reason, we are alerting the Delaware Controller General in her capacity of overseeing Grant-In-Aid disbursements, as well as the Lieutenant Governor in her capacity as Prescription Opioid Distribution Commission co-chair.

We understand the importance of maintaining the highest standards of accountability and transparency, especially when it comes to the allocation and use of public funds. We are committed to assisting in your investigation in any way possible, and ensuring that all responsible parties are held accountable.

Thank you for your attention to this critical issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Lydia E. York".

Lydia E. York

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^[1] Minutes of the June 7, 2023 meeting of the POSDC Local Governments Committee Meeting.

^[2] Prior to that meeting, Ms. Holloway indicated that OMB would be conducting grant oversight; we contacted OMB, who said that was not case. On October 18, 2023, we e-mailed Ms. Holloway, Ms. Holloway's administrative assistant, and the Lt. Governor's Chief of Staff to inform them that OMB would not be performing grant oversight, and asked that the Lt. Governor's staff present a plan for oversight at the October 30, 2023 meeting.

^[3] Minutes of the January 26, 2023 meeting of the POSDC.