

Office of Professional Regulation

FY2023 ANNUAL REPORT

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Director's Note

Starting in fiscal year 2020, the Office of Professional Regulation (OPR) began working in tandem with other state agencies on a series of COVID-19 emergency response efforts. These temporary rule changes helped to drastically reduce Vermont's potential harm from the pandemic. While COVID-19 continues to mutate into new variants and remains a constant concern for OPR, we have settled into our "new normal" mode of operations: hybrid work models, remote board meetings, and remote public hearings. Ultimately, fiscal year 2023 was a busy period during which some COVID-19 emergency rules came to an end, and other emergency rules were made permanent.

Specifically, the Office of Professional Regulation is now issuing provisional and telehealth credentials for certain healthcare professions as standard procedure. The goal is to maximize Vermonters' access to important services by minimizing obstacles for professional practice. Likewise, in fiscal year 2023, OPR implemented the Nursing Licensure Compact (eNLC) which allows nurses from participating compact states to practice in Vermont without a Vermont-specific license.

Generally speaking, professional licensure compact participation is a good policy for Vermont: inter-jurisdictional compacts allow a much larger pool of non-resident professionals to help provide necessary services in Vermont, the demand for which our own resident professional population is struggling to satisfy. In other words, professional license compacts may help to reduce wait times and other barriers to services Vermonters are experiencing. Accordingly, during the 2022-2023 session, the Vermont Legislature authorized OPR to join the *Interstate Counseling Compact*, the *Physical Therapy Licensure Compact*, the *Audiology and Speech-Language Pathology Interstate Compact*, and the *Psychology Interjurisdictional Compact*. After this session, OPR will be a member of six compacts in total.

However, compact participation is costly for OPR. Because non-resident professionals in compact states no longer require a Vermont license, OPR loses significant licensure fee revenue with the addition of each compact we join. Moreover, because these professionals are still practicing in Vermont, the total professional conduct enforcement costs remain the same as if they were licensed in Vermont.

Notably, OPR is a special fund agency: the revenue from license fees remain at OPR and fund its operation. This financial model is paramount in ensuring that license revenues are earmarked for professional regulation and not used as a subsidy for general state operations. Increasing access to healthcare often means increasing operational costs. For example, much like licensing compacts, OPR's COVID-19 policies to waive certain licensure requirements achieved the goal of increasing access to health care, but also increased the cost of operations while forfeiting revenue. While OPR supports the state's initiatives to reduce licensing barriers and increase access to health care, certain decisions can significantly imbalance licensing board budgets and push costs onto licensees. In the coming years we will continue to work with the General Assembly to examine the impact of new health access innovations to ensure the increasing regulatory burdens are not inequitably shouldered by Vermont's professional populations.

Respectfully submitted,



Kevin A. Rushing

Organization

The Office of Professional Regulation, commonly known as "OPR," is a division of the Secretary of State's Office responsible for supporting the regulatory programs for 51 professions and occupations -- everything from Accountants and Acupuncturists to Tattooists and Veterinarians. Within those 51 professions and occupations, there are 167 different profession types and almost 80,000 licensees. The Legislature created OPR as an umbrella agency to oversee both advisor and board professions where public protection is achieved through a system of licensure and enforcement. OPR provides its varied and diverse groups three distinct services:

- 1) the administrative services including initial licensure and renewal, public meetings, and regulation and statutory reform;
- 2) enforcement services including investigation and prosecutor staff necessary to receive complaints from the public and protect the public from incompetent, unethical, or otherwise unprofessional licensees in the regulated professions; and,
- 3) tribunal services which act in a quasi-judicial capacity for unprofessional conduct or pre-denial of applications.

OPR is headed by a Director who oversees a staff of 41 people including licensing administrators, a deputy director, a general counsel, staff attorneys, policy and system staff, executive officers, case managers, investigators, inspectors, and prosecutors.

Regulation of a profession, occupation, or professional service assures that practitioners meet minimum standards for initial licensure or registration, continue to meet minimum competency requirements on renewal, and if there is a complaint filed, practitioners are held responsible for their conduct.

Licensing Trends, Policies, and Administrative Rule Changes

The following graph (Figure 1) demonstrates how the number of licenses issued by OPR has increased substantially over the last several years, growing by approximately 38% since 2015. This growth is attributed to the addition of newly regulated professions, expansion in certain professions, and the transfer of licensure operations from other agencies to OPR. For example, in FY21 the regulation of Well Drillers was transferred to OPR from the Department of Environmental Conservation.

Likewise, in FY23 OPR began regulation of two new professions: Residential Contractors and Mixed Martial Arts. Despite these additions, licensure trends show a significant decrease from the previous year. Notably, staggered growth cycles are common in professional licensure, and OPR usually observes a dip in active license numbers each odd year given the biennial renewal cycle of some of the largest profession groups. However, the implementation of the Nurse Licensure Compact (NLC) is likely responsible for the extraordinary reduction in total licensure during FY23.

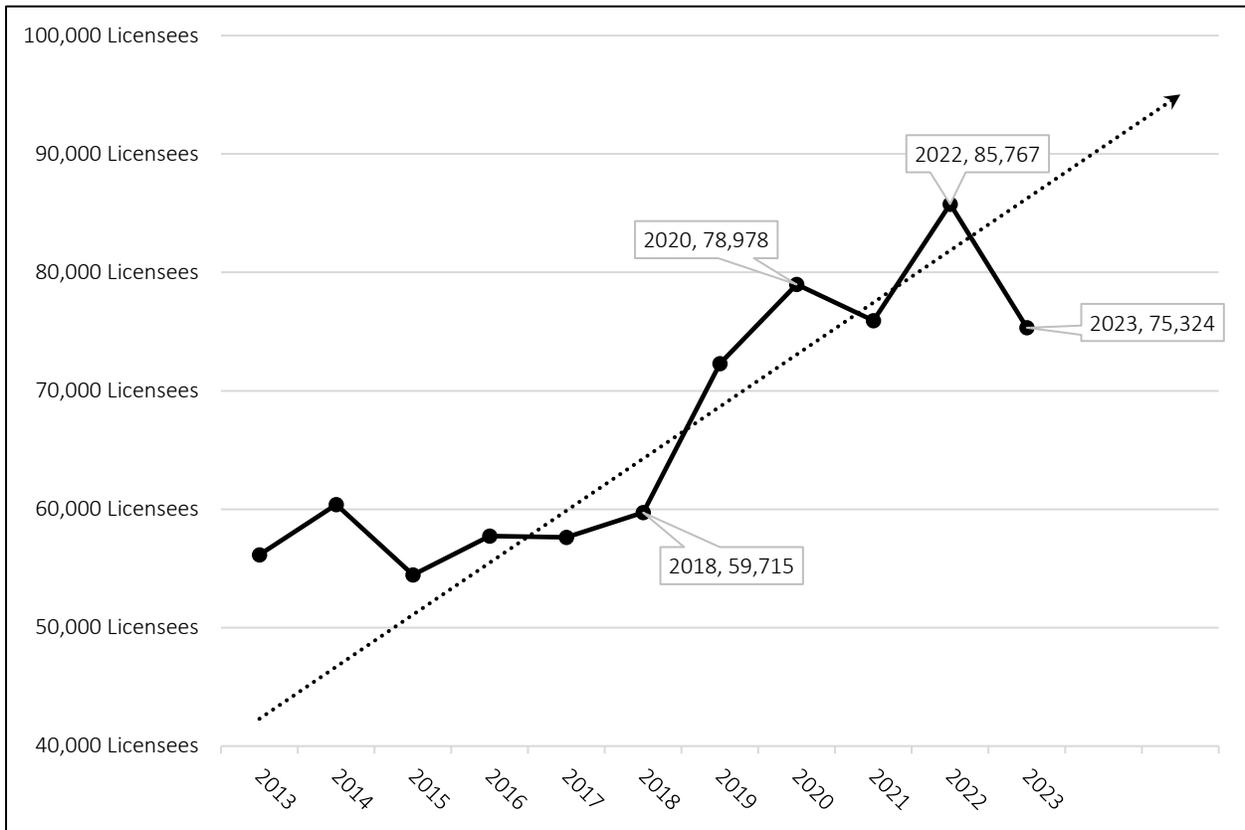


Figure 1: Annual Licensure Data from Fiscal Years 2013 - 2023

The NLC allows nurses who hold compact licenses from other jurisdictions to work in Vermont without a Vermont nursing license. Consequently, a large portion of Vermont’s RN and LPN populations were no longer required to hold a license in Vermont and allowed their licenses to expire at the time of renewal. Additionally, new nurses coming to Vermont with an active compact license do not need a Vermont license to practice in the state. The decision to adopt the NLC was based on the benefit to both Vermont residents and employers, as RNs and LPNs with compact licenses are able to practice in Vermont without delay.

COVID-19 Response & Administrative Rule Changes

In response to the Vermont state of emergency and subsequent barriers to licensure that occurred as a result of the COVID-19 pandemic, OPR, with the support of the Secretary of State and the General Assembly waived certain licensure requirements and established emergency, temporary and retiree license types for all health care professionals for the duration of the state of emergency. These efforts were highly effective in expediting licensure for healthcare professionals, enabling them to enter the workforce quickly and provide needed care and services to Vermonters. When the state of emergency ended, licensees who held temporary licenses were required to obtain full Vermont licenses or a compact license where applicable.

The benefits of expedited licensure experienced by Vermont citizen's, employers, and licensee's without compromising public protection, prompted OPR leadership to identify long-term licensure approaches that would sustain rapid entry into the Vermont workforce for license applicants. As the state of emergency was drawing to an end, OPR again working with the Secretary of State and General Assembly, established two new licensure types: provisional and telehealth license types. Provisional licenses sustain the rapid issuance of initial licenses for professionals new to Vermont who meet all licensure requirements and are only waiting for a criminal background check or verification of licensure from another jurisdiction.

Telehealth licensure enables the continuation of telehealth services to Vermont patients from providers licensed outside of the state without requiring full Vermont licensure. The new legislation extended the Interim Telehealth Registration initiated during the pandemic until the new Telehealth Registration and Telehealth licenses are operationalized. Once Administrative Rules for the affected healthcare professions are approved, the new Telehealth Registration and Telehealth License will establish standardization of applicable rules for healthcare professionals practicing in Vermont regardless of the jurisdiction they are practicing from.

However, unlike provisional and telehealth licensing which expanded professional practice in Vermont, the nursing practice hour requirements posed a significant obstacle for nursing licensure. Nurses who could not or chose not to practice during the COVID-19 pandemic were unable to renew their licenses during this year's renewal phase, because they did not have the required practice hours. Recognizing this pattern, OPR and the Vermont Board of Nursing included in the revised Administrative Rules of Nursing additional pathways for renewal. The Rule implementation in May of 2023 now enables RNs and LPN to renew their license using continuing education or national nursing certification if they don't have the minimum practice hours.

Professional Regulation Enforcement Division

The Enforcement Division of OPR has two Units working together to meet its public protection mandate: the Investigation Unit and the Prosecution Unit. The purpose of OPR's enforcement process is to protect the public. The Enforcement Division strives to conduct fair and impartial investigations seeking only to determine the truth of what happened in each circumstance that gave rise to a complaint and to prosecute only when there is a risk to the public health, safety or welfare. The focus of prosecution and discipline against a licensee is remediation to ensure safety and fitness to practice in their profession.

Enforcement Unit FY23 Summary

During FY23, the Enforcement Division received approximately 840 complaints and resolved over 1,000 complaint cases, including the following:

- Approximately 300 complaints were screened out and/or referred to other agencies for reasons such as: the individual complained about was not a licensee; the complaint was anonymous and did not provide adequate information; the profession is not regulated by OPR; or the complaint did not allege facts that would constitute unprofessional conduct;
- Investigators completed approximately 580 investigations;
- Prosecutors closed approximately 500 complaint cases after investigation and I-Team review;
- Prosecutors filed charges in approximately 170 cases; and
- Disciplinary sanctions were ordered in approximately 140 cases.

Investigation Unit

The Investigation Unit now consists of five full-time law enforcement investigators, as well as three full-time civil investigators. The role of the Investigation Unit is to conduct thorough, impartial investigations to assist the Prosecution Unit with determining if a licensee engaged in unprofessional conduct. The majority of complaints handled by the Enforcement Division are regulatory (civil) in nature; however, some investigations are criminal and result in the arrest and criminal prosecution of licensees in State and federal court. Approximately ten percent of OPR complaints have a criminal conduct component. In FY23, seven individuals licensed by OPR were arrested and criminally charged in State court as the result of OPR investigations.

OPR Investigators often travel throughout the State to: conduct in-person interviews of licensees and witnesses; collect necessary documents; and locate and review physical evidence. Investigators use a variety of methods to gather sufficient information for the determination of whether a licensee engaged in unprofessional conduct.

The onboarding of Residential Contractors as a newly regulated profession has presented challenges for the investigation unit due to statutory regulations that prevent the charge of unauthorized practice until April 1, 2024. OPR received a few complaints filed against residential contractors but in most of the complaints, the respondent is not yet licensed, leaving limited options available for resolution of the complaint. During this phase of regulation, OPR is responding to complaints when possible, collecting data and preparing for the Home Contractors report to the legislature.

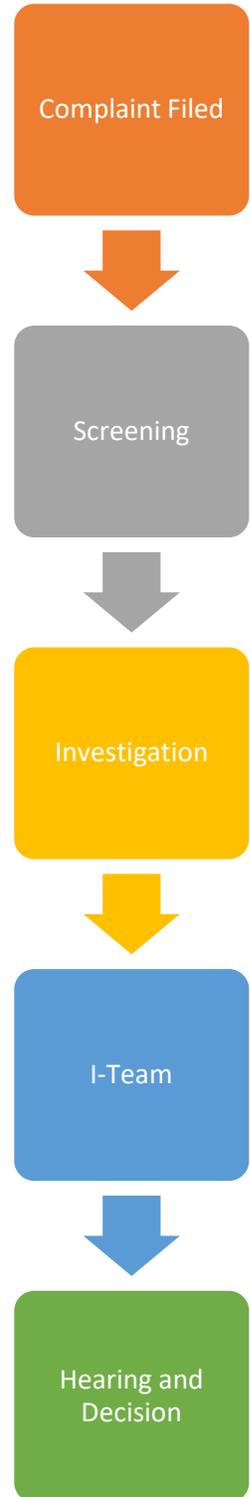
In FY23, the Investigation Unit continued to see an increase in the seriousness of the violations alleged in complaints. Case complexity has increased due in part to societal factors such as increased incidences of drug abuse and the burnout of health care and mental health professionals. In the last year, the work of the Investigation Unit has included: several large-scale drug diversion investigations; numerous cases involving unwanted sexual contact by licensed professionals against their clients; practitioners who financially exploited vulnerable patients or clients; as well as a variety of other complex investigations requiring multiple investigators along with assistance from outside agencies including the Food and Drug Administration, Drug Enforcement Administration, Vermont Adult Protective Services, Vermont State Police, Local Police Departments, and others.

Prosecution Unit

The Prosecution Unit has four State prosecuting attorneys, two case managers, and one paralegal. When the investigator completes each investigation, an Investigative Team (or “I-Team”), consisting of the investigator, prosecutor, case manager, and a Board Member/Advisor, reviews the investigation and evidence. The I-Team then meets or communicates to discuss whether the evidence gathered establishes that the licensee engaged in unprofessional conduct, and, if so, whether the licensee should be subject to public prosecution and discipline. If the investigation does not reveal evidence that supports public prosecution for unprofessional conduct, the complaint is then closed with no further action, and the complainant and licensee are notified of the outcome.

If the prosecutor determines the complaint warrants public prosecution based upon the investigation, the prosecutor files a Specification of Charges identifying the alleged conduct of the licensee and the alleged violations of law. If the licensee contests the Charges and files an Answer, a hearing before the Hearing Authority, either a Board of professionals or an Administrative Law Officer, is scheduled. Before the hearing, the parties exchange documents and exhibits and may take depositions. The parties also have the opportunity to negotiate a mutually acceptable resolution, which must be approved by the hearing authority. If the case is not settled and proceeds to a final hearing, the parties present evidence and witness testimony to the Hearing Authority. After hearing, the Hearing Authority issues a written decision which includes factual findings and either a dismissal of the Charges or a determination of unprofessional conduct. If the Board or Administrative Law Officer determines the licensee engaged in unprofessional conduct, the final order sets forth discipline against the licensee, which is published on OPR’s website and is a matter of public record. The sanctions resulting from the disciplinary process can range from: a warning, reprimand, suspension, revocation, monetary administrative penalty, coursework, and/or a conditioned license for a period of time with requirements such as supervision, limited practice setting, random drug testing, and employer reports. Upon issuance of the final order, a licensee may appeal the decision. The intermediate appeal is heard by an Administrative Law Officer within OPR. If the licensee appeals the intermediate decision, the final appeal is heard by the Vermont Supreme Court. If the licensee is subject to conditions as the result of the final order, the case manager monitors compliance to ensure requirements are met.

In prior years, the Prosecution Unit has had a significant backlog of cases. In FY22 and FY23, the Unit resolved the backlog and decreased the average lifespan of disciplinary cases.



Legislative Updates

During Vermont's 2023 session, the legislature passed several bills which impact OPR:

- Act 77 ([H.305](#)) - This bill includes several modifications to OPR's authority and processes, including:
 1. A change in the preliminary denial processes for denials based on the qualifications of applicants;
 2. Authority to appoint hearing panels;
 3. Permission for licensees to complete continuing education through participation in virtual synchronous courses;
 4. Authority for State correctional facilities to offer instruction in cosmetology;
 5. Authority for public health dental hygienists to perform SMART procedures subject to Board rules;
 6. Permitting osteopathic physicians to fulfill the continuing medical education requirement with general continuing medical education courses rather than osteopathic-specific courses;
 7. Expansion of pharmacist and pharmacy technician authority to administer certain immunizations and tests, subject to specific requirements;
 8. Exempting from licensing requirements hearing aid dispensers who dispense only over-the-counter hearing aids, subject to federal law; and
 9. Increasing licensing fees for almost every profession, with a few exceptions, based on inflation since the last time the profession's fee was updated.
- Act 15 ([S.37](#)) This bill addresses protections for access to, and protections from disciplinary action for, providing or assisting in the provision of legally protected healthcare activities. These include but are not limited to gender-affirming health care services and reproductive health care services. This bill also directs Vermont compact delegates to support protections for health care providers in license compacts from professional discipline when providing legal services in Vermont.
- Act 4 ([H. 411](#)) This bill extends some COVID regulatory protections and modifies others, specifically:
 1. Until March 31, 2024, if there is no provisional license option for an OPR-regulated profession, a health care professional who holds a valid license in good standing in another U.S. jurisdiction can provide healthcare services for up to six months as a volunteer with the Medical Reserve Corps or as part of the staff of a licensed facility or FQHC, subject to certain requirements and limitations;
 2. Health care professionals licensed in another state may continue to provide telehealth services in Vermont after registering with OPR until the telehealth licensure and registration system is available.
- Act 16 ([H.178](#)) This bill exempts Department of Corrections personnel from notaries public commission laws.
- Act 34 ([H.62](#)) This bill authorizes adoption of the Interstate Counseling Compact.

- Act 35 ([H.77](#)) This bill authorizes adoption of the Physical Therapy Licensure Compact.
- Act 36 ([H. 86](#)) This bill authorizes adoption of the Audiology and Speech-Language Pathology Interstate Compact.
- Act 37 ([H.282](#)) This bill authorizes adoption of the Psychology Interjurisdictional Compact.
- Act 69 ([H. 493](#)) This bill modifies safety standards for race tracks and requires OPR to conduct a regulatory review of motor vehicle regulation.

Next Generation Licensing Platform – “NGLP”

OPR’s licensing software, NGLP, is designed to serve the office’s dual role in terms of license administration and conduct enforcement. The purpose of this proprietary platform is to facilitate efficient operations: professional licensing as simple and fast as possible for the public applicants, as well as streamlining OPR’s business process management and data storage.

During the last fiscal year, OPR has invested in the construction of the software’s “configurator” functionality which allows OPR’s licensing administration to build new applications and renewals without the need for costly software developers. Likewise, OPR invested in the development of a production support feature which allows OPR administrators to update software workflows without additional and expensive developer time.

Lastly, NGLP recently underwent an extensive UI/UX upgrade on the external user’s dashboard to improve user experiences, including board and advisor member portals. This work is ongoing and will continue to make the NGLP platform mobile-compatible and even more accessible for the public.

Appendix A: End of Fiscal Year 2023 Credential Counts

Board Name	Total Credential Count
Accountancy	1,539
Acupuncturists	229
Alcohol & Drug Abuse Counselors	561
Allied Mental Health Practitioners	3,714
Architects	1,338
Athletic Trainers	216
Auctioneers	145
Audiologists	91
Barbers & Cosmetologists	4,550
Behavior Analysts	273
Boxing	1
Chiropractic	250
Dental Examiners	2,438
Dietitians	384
Electrology	49
Engineering	5,874
Foresters	248
Funeral Service	507
Hearing Aid Dispensers	55
Land Surveyors	220
Landscape Architects	128
Massage Therapy, Bodyworkers, and Touch Professionals	885
Midwifery	37
Mixed Martial Arts	139
Motor Vehicle Racing	13
Naturopathic Physicians	404
Notaries Public	8,384
Nursing	20,063
Nursing Home Administrators	112
Occupational Therapy	685
Opticianry	138
Optometry	163
Osteopathic Physicians & Surgeons	650
Pharmacy	6,516
Physical Therapy	1,555
PI & Security Services	830
Pollution Abatement Facility Operators	453
Property Inspectors	119
Psychoanalysts	46

Psychological Examiners	1,202
Radiologic Technology	900
Real Estate Appraisers	447
Real Estate Commission	3,072
Residential Contractors	715
Respiratory Care	594
Social Work	2,422
Speech-Language Pathologists	740
Tattoo & Body Piercing	377
Veterinary Medicine	670
Wastewater / Water System Designers	138
Well Drillers	45
Total	75,324

Appendix B: End of Fiscal Year 2023 Enforcement Data

Jurisdiction	New Complaints	Total Closed
Accountancy	9	8
Acupuncturists	2	3
Alcohol & Drug Abuse Counselors	17	22
Allied Mental Health Practitioners	47	56
Barbers & Cosmetologists	31	41
Behavior Analysts	4	1
Chiropractic	2	9
Dental Examiners	44	44
Engineering	10	11
Foresters	2	2
Funeral Service	8	22
Hearing Aid Dispensers	2	
Land Surveyors	5	2
Massage Therapy, Bodyworkers, and Touch Professionals	8	9
Midwifery	10	16
Mixed Martial Arts	1	
Motor Vehicle Racing	5	7
Naturopathic Physicians	4	10
Notaries Public	12	17
Nursing	263	301
Nursing Home Administrators	1	2
Occupational Therapy	2	3
Optometry	4	15
Osteopathic Physicians & Surgeons	15	17
Other	62	62
Pharmacy	105	134
Physical Therapy	7	13
PI & Security Services	12	8
Pollution Abatement Facility Operators	1	1
Property Inspectors	2	6
Psychological Examiners	13	21
Radiologic Technology	2	
Real Estate Appraisers	4	16
Real Estate Commission	39	50
Residential Contractors	6	5
Respiratory Care	2	3
Social Work	20	30
Speech-Language Pathologists	3	3

Tattoo & Body Piercing	26	29
unknown	3	3
Veterinary Medicine	20	27
Wastewater / Water System Designers	1	2
Well Drillers	1	1
TOTAL	837	1032

Appendix C: End of Fiscal Year 2023 Inspection Counts

Profession	Count
Tattoo & Body Piercing	21
Pharmacy	96
Barbers & Cosmetologists	73
Funeral Service	30
Mixed Martial Arts	3
Motor Vehicle Racing	15
Electrology	1
TOTAL	239