

VERMONT AGENCY OF ADMINISTRATION AND VERMONT SECRETARY OF STATE, OFFICE OF PROFESSIONAL REGULATION

STRUCTURAL CONSIDERATIONS IN THE REGULATION OF PROFESSIONS AND OCCUPATIONS

Executive Summary

This report assesses the structural organization of the State’s professional and occupational licensing programs. Historically, licensing is proposed and implemented to address profession specific problems and to protect the public from practitioners within an occupation, profession, or trade. Case-by-case, it is somewhat rational for the Legislature to attach the resulting licensing programs to the executive agency with general jurisdiction over the subject matter or to allow independent boards to develop.

This model shifted when the Office of Professional Regulation (OPR) was created in 1989 as an umbrella agency over several then independent regulatory boards. The centralization effort has not extended to all licensing programs within the State. This report examines whether decentralized licensing activity remains good public policy and explores possible opportunities for a more collaborative and streamlined government approach that will better serve both regulated professionals and the consumers of licensed services. Approximately thirty percent of the State’s licensed or regulated workers are supervised by a licensing program outside of OPR. In some cases, decentralization is justified by exceptional characteristics of the regulated field; in others, history and status quo persist as enduring influences, and consolidation may offer benefits.

The first half of this report identifies the nine core regulatory responsibilities of occupational licensure. It finds that these regulatory responsibilities are affected, and generally improved, by centralized administration. The second half analyzes whether specific licensing programs or aspects of them might be more efficiently or effectively administered centrally.

Table of Contents:

- I. Introduction Page 3
- II. Why Licensing Requires Ongoing Attention. Page 4
- III. Existing Tools for Orderly Licensing Page 6
- IV. New Urgencies Page 9
- V. Economies of Scale and Specialization of Functions Page 10
- VI. Weighing Benefits of Restructuring Against Disruption, Transition Costs, and Separation from Expertise Page 12
- VII. Agency of Education Licensing Programs. Page 14
- VIII. Agency of Human Services Licensing Programs Page 19
- IX. Agency of Natural Resources Licensing Programs. Page 23
- X. Department of Public Safety Licensing Programs Page 25

XI. Department of Health Licensing ProgramsPage 28
XII. Conclusions and Next StepsPage 31

I. Introduction

The General Assembly has found “that multiple State agencies regulate a variety of professions and occupations, resulting in professional regulatory structures that vary throughout the State.” 2019 No. 30, Sec. 7. Consequent to this finding, the General Assembly recommended the following:

The State should review whether transferring the regulation of certain professions and occupations to a different State agency would enhance the effectiveness of those professional regulatory structures, including by improving public protection and customer service, reducing unnecessary barriers to licensure, and increasing efficiencies in the staffing, information technology, and other necessary costs associated with professional regulation.

The process of assessing Vermont’s regulatory structure began with Act 156 of 2016. That Act resulted in a 311-page *Professional Regulation Report* that compiled survey responses from across State government, describing the licensing activities and processes at each. In preparation for this report, data collected in the *Professional Regulation Report* was supplemented by an additional survey, conducted by the Office of Professional Regulation (“OPR” or the “Office”), following Act 30 of 2019. Subsequent the updated survey, agency staff involved in licensing across State government met with report authors to discuss their processes and challenges.

The Common Core Responsibilities of Licensing

Though the various professions licensed in Vermont are diverse, the elements of effective license administration are not. The task requires nine core regulatory responsibilities:

Nine Core Regulatory Responsibilities of Occupational Licensure

1. A policymaking apparatus to review recommended qualifications and standards, to ensure these recommendations are compatible with other State policy, and to assess the economic impacts of these recommendations;
2. A conspicuous point of application for those interested in obtaining a license;
3. An administrative mechanism for verifying applicant qualifications;
4. A prominent location and clear process for filing complaints;
5. An investigative and inspection mechanism to inquire into suspected violations of licensing regulations;
6. A system to adjudicate charges against licensees that ensures due process for licensees while protecting the public;
7. An appellate system;
8. A system for monitoring and enforcing sanctions, rehabilitative conditions, and practice limitations; and
9. An accessible point of public information, where the public can get information about license statuses and disciplinary action against licensees.

In principle, there is no reason that the availability, nature, or quality of these nine regulatory responsibilities should vary by licensed profession. Whether for a dentist or a teacher, a medical doctor or a physical therapist, an electrician or an engineer, a Vermonter's fundamental experience relative to each enumerated responsibility of licensing service ought to be consistent. Within OPR, Vermont's umbrella regulator of 48 distinct professions and 157 profession types, these core functions are executed through common platforms and procedures and do not vary substantially by profession. Outside of the OPR umbrella, however, wide variation is evident.

Inconsistency in licensing administration can make it more difficult for consumers to know where to turn, and it can make it more difficult for licensees, and those interested in becoming licensed, to know what the rules are.

For some regulated professions, a consumer with an internet connection can sort out how to make a complaint or look up discipline against a licensee online in seconds. For others, the same consumer, given hours could find the same tasks challenging or impossible. For some regulated professions, the legal process for challenging an agency application or disciplinary hearing decision is subject to established, standardized and accessible procedural rules. For others, no established process exists.

Where licensing programs are inconsistent or underdeveloped in one or more core functions, consistency could be achieved by connecting or transferring discordant programs to a point of common execution. Options for accomplishing this task include transferring the regulation of certain occupations and professions to an agency already equipped with the necessary expertise and infrastructure, as well as leaving programs in place while facilitating inter-agency resource sharing so that one need not construct what another already has, or investing the time and resources necessary to make improvements to the program in its current agency / location, which can be a daunting proposition.

Addressing variations in licensing programs through a collaborative approach that treats license administration as a separate executive function has the potential to benefit the sending agency, which recovers staff resources to focus on its mission; licensees and the public, who find a common and consistent approach to licensing as well as a unified point of contact; and taxpayers, who may realize savings from reduced redundancy.

II. Why Licensing Requires Ongoing Attention

A. Public Protection

Professional and occupational regulation is an essential function of government. Licensing is intended to protect the public by ensuring that practitioners of a regulated profession are qualified—based on training, education, experience, examination, or some combination of those—to provide services in a regulated field. Practice and ethics standards ensure not only that licensees are qualified upon entering the market, but also that they maintain ongoing competence and good conduct. And, importantly, when a licensee commits unprofessional conduct, the regulatory system provides the ability to restrict or remove that licensee's ability to practice.

Licensing has certain characteristics that are hazardous, however. Most forms of government regulation are self-limiting because those subject to regulation begin to chafe at and oppose new burdens that cannot be justified by a significant public benefit. Yet a peculiar dynamic appears in occupational licensing: New and more regulation often is popular with incumbent licensees because it appears to enhance the exclusivity and standing of their profession and in its worst form, may be used to restrict competition. More regulation often seems better in the absence of thought about countervailing costs. Because new licensing requirements almost always come with a protective rationale, it can be challenging to slow the impulse to protect against all risks long enough to account for the unseen costs of the new regulation.

B. Licensing for the Wrong Reasons

Organized associations of professionals, much more often than consumer-protection advocates, typically are chief proponents of professional regulation. Licensure can be a marker of official recognition, seriousness, status, and rigor. It can also be a way to keep others out of the profession. When the government needs individuals to administer professional regulatory programs, it rationally looks to practitioners of the profession who then are in the often conflicted position of controlling the restrictions to be imposed upon their own competitors.

The peculiar characteristics of occupational licensing—protective intentions, incumbent decisionmakers, and burdens diffused among non-incumbents—collide to make licensing regulations especially prone to regulatory growth that is difficult to restrain. These forces are often met with weak protest, as the individual licensee does not encounter the more stringent regulation until he or she is applying for a license, and because these individuals are not often organized or in a position to invest time and money to contest burdensome regulation.

C. Unchecked Growth of Regulatory Requirements and its Impact

Unintended consequences of licensing are a matter of national economic concern. In a landmark 2015 white paper urging states to action on licensing reform, the White House Council of Economic Advisers noted, “[T]he percentage of the workforce covered by State licensing laws grew from less than 5 percent in the early 1950s to 25 percent by 2008, meaning that the State licensing rate grew roughly five-fold during this period.”¹ Additional data suggest almost one-third of workers today must hold a license.² The Council of Economic Advisers observed that licensing is necessary and beneficial in many cases, but burdens on workers, employers, and consumers often go unappreciated in the creation of requirements that can be “inconsistent, inefficient, and arbitrary.”

In a global and national labor market, state-by-state variation in work requirements can be costly.

By one estimate, licensing restrictions cost millions of jobs nationwide and raise consumer expenses by over one hundred billion dollars ... The barriers imposed by licensing can prevent workers from succeeding in the best job for them ... These impacts may be especially harmful for certain populations. For example, military spouses, who are highly mobile and frequently have to relocate

¹ White House Council of Economic Advisers; *Occupational Licensing: A Framework for Policymakers*; March 2015, p. 17. Available at:

https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf.

² *Id.*, p. 18.

across State lines, have a difficult time obtaining a new license each time they move. Our licensure system can also prevent immigrants who have considerable training and work experience abroad from applying their skills in the U.S., since often they do not meet the relevant licensing requirements ... Current licensing requirements complicate the use of distance learning, which may rely on out-of-State providers ... [S]tudents seeking to invest in training for a new career may not be aware of the full extent of license requirements or of how these vary across States and therefore limit their ability to relocate in the future. Licensing laws also frequently do not allow providers to offer services to the full extent of their competency, and may impede access to services³

The challenge confronting the State regarding licensing is how best to provide Vermonters the numerous and necessary protective benefits of professional regulation while minimizing the inefficiencies, redundancies, inconsistencies, and unintended economic detriments that often accompany that effort. **A regulatory structure that adheres to the core responsibilities, outlined above, can influence this effort by facilitating consistency, communication, transparency, and access.**

III. Existing Tools for Orderly Licensing

Establishing a consistent, comprehensive professional licensing system is a significant task. Vermont is advantaged by two elements found together in only a small minority of states:

- (1) a clear and informed statutory policy and process for assessing regulation; and,
- (2) the administrative structure to execute that policy through an umbrella licensing agency.

A. State Policy: Sunrise and Sunset Reviews

Existing Vermont law reflects a far-sighted awareness of the need to balance public protection with the tendency of licensing programs to create a regulatory escalator. For more than forty years, it has been the express policy of our State that licensing is to do what it does well—enforce minimum qualifications and get bad actors out of regulated markets—and not much else. This policy is embodied in Title 26, chapter 57 (26 V.S.A. § 3101 *et seq.*):

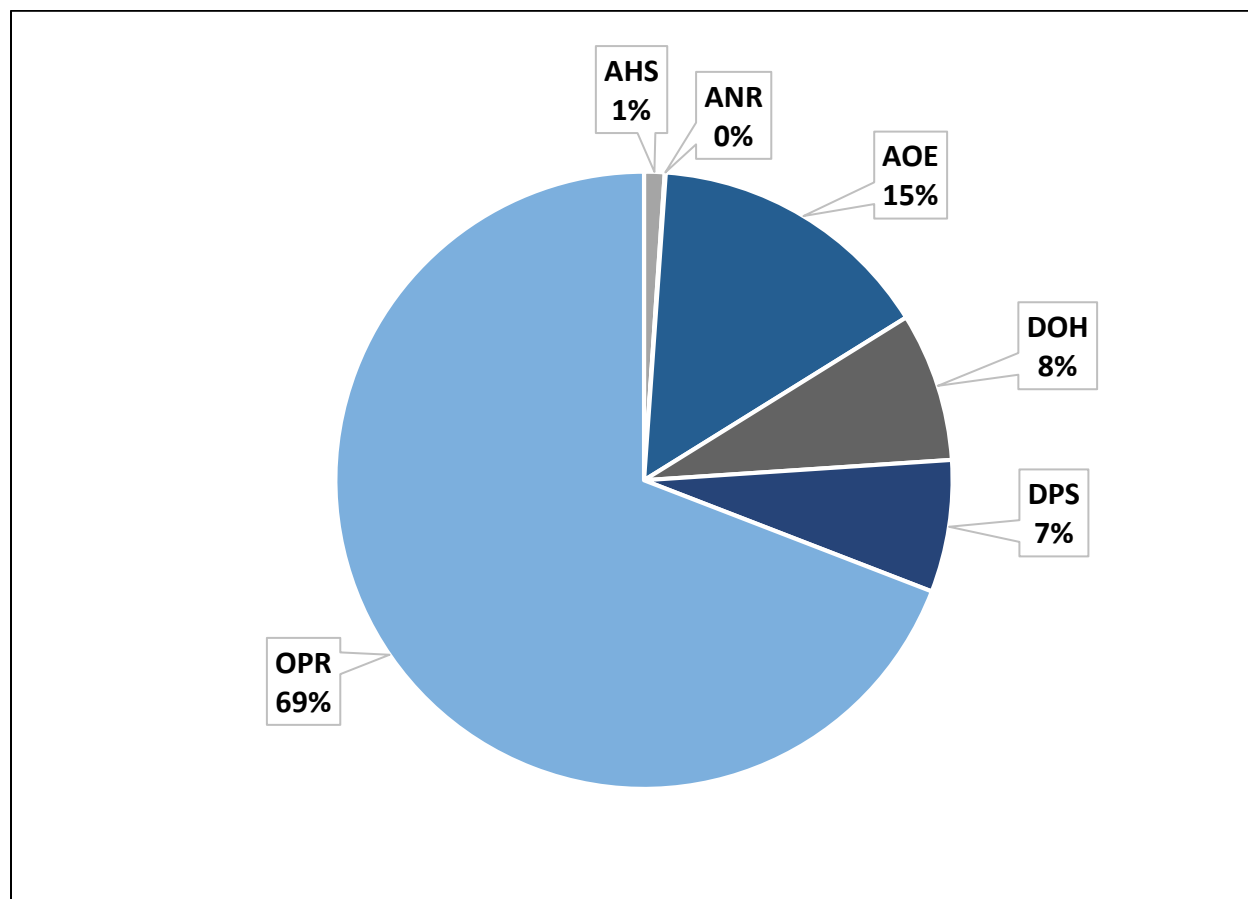
It is the policy of the State of Vermont that regulation be imposed upon a profession or occupation solely for the purpose of protecting the public. The General Assembly believes that all individuals should be permitted to enter into a profession or occupation unless there is a demonstrated need for the State to protect the interests of the public by restricting entry into the profession or occupation ... If such a need is identified, the form of regulation adopted by the State shall be the least restrictive form of regulation necessary to protect the public interest. If regulation is imposed, the profession or occupation may be subject to review by the Office of Professional Regulation and the General Assembly to ensure the continuing need for and appropriateness of such regulation.
--26 V.S.A. § 3101.

³ *Id.*, pp. 7-8.

The same chapter, at 26 V.S.A. § 3105, sets out specific criteria by which new regulatory proposals are to be evaluated prior to implementation and, if implemented, re-evaluated on an ongoing basis. These reviews, commonly called “sunrise” and “sunset” provisions, are powerful tools through which to monitor the State’s licensing efforts to ensure they avoid setting up undue barriers to entry while continuing to protect the public from harm.

B. The Umbrella Structure

In similar transformational legislation, Vermont administrators and legislators recognized that the orderly and restrained regulation of professions and occupations generally is best accomplished when regulatory programs are consolidated within a single agency. To accomplish this, the General Assembly created the Office of Professional Regulation within the Office of the Secretary of State, over time “attaching” forty-eight enumerated regulatory programs beneath the Office’s umbrella at 3 V.S.A. § 122. Today, if a new professional license is proposed it goes through the sunrise process and is typically housed within OPR. Of the approximately 120,000 licensees in the State of Vermont, OPR regulates 69% of them:



OPR has established mechanisms and structures to develop and promulgate regulations, to review applications and issue licenses, and to adjudicate and enforce disciplinary actions. These structures and mechanisms are built to enable regulatory programs small and large, whether or not related by profession type; to share common resources, processes, and procedures; to avoid duplication of effort; and to present a consistent, single-point of government contact for applicants, licensees, and persons aggrieved by the conduct of licensees. OPR is capable of implementing these structures and mechanisms for any type of professional licensure required.

Centralization is not the answer to every licensing problem. However, the OPR model provides a standard point of comparison from which to assess possible effects of consolidating heterogeneous programs.

C. A Uniform Approach: Standardization and Focus

For 75,000 licensees, the Office fulfills the nine core regulatory responsibilities of occupational licensing. The Office meets its statutory mission by:

- Receiving and processing license applications for 48 professions and 157 license types;
- Standardizing forms and processes used in licensure, while supporting complex and diverse initial and renewal applications;
- Providing active state supervision of regulatory boards and ensuring that any rules or policies they the principles set forth in 26 V.S.A. chapter 57;
- Allowing a transparent view into professional regulation through licensee look-up, professional rosters lists, and public discipline.
- Supplying administrative, investigative, and legal services to its regulatory boards;
- Contracting with administrative hearing officers to adjudicate contested cases or assist appointed bodies in adjudicating those cases;
- Ensuring that professional boards comply with the Open Meeting Law; and
- Maintaining public records and data.⁴

D. A Robust Enforcement Process

The Office has a well-developed, consistent and transparent mechanism for issuing and reviewing licensing applications, receiving public complaints, adjudicating cases, and issuing and enforcing discipline. OPR has an accessible and prominent tool for the public to file complaints against licensees believed to have engaged in unprofessional conduct. OPR directly employs prosecutors, inspectors, and investigators to look into and adjudicate these complaints. OPR also employs State prosecuting attorneys within the Office⁵ who exercise independent prosecutorial discretion in determining which

⁴ 3 V.S.A. § 123

⁵ Prosecutorial independence removes the potential for anti-competitive use of enforcement authority by peer against peer. *Id.* § 129(c)(2).

cases of unprofessional conduct Administrative Rules of Practice establish orderly procedures for contested cases in disciplinary matters, or where an applicant wishes to challenge the denial of a license application.⁶

These Rules include transparent procedures for the articulation of charges, discovery, default, and appeal, which parallel the Vermont Rules of Civil Procedure, where appropriate. Although a party may be represented by an attorney, the process for challenging agency licensing decisions and charges is purposefully accessible to unrepresented persons. OPR has been able to develop this consistency because of the volume of the thousands of applications and hundreds of complaints it receives every year.

E. Leveraging the Umbrellas Structure: Implementing Good Public Policy Quickly and Uniformly

Vermont has leveraged umbrella regulatory structure to pursue significant reforms across all license types, removing barriers for persons with relevant military training, military spouses, immigrant professionals, applicants with criminal histories, and aspiring professionals with experience-based education.

Outside of an umbrella structure, however, it can be difficult to apply coordinated policy responses to similar programs. Even in a State that is ahead of the national curve in licensing reform, we have an incomplete understanding of our own regulatory reaches. Many of the significant policy goals and state priorities have not radiated across all licensing agencies. It is also worth noting that for a consumer, our licensing systems remain so decentralized that they can be hard to understand and access.⁷

IV. New Urgencies

Although scale considerations and interest-group dynamics always have lent rational benefits to consolidated licensing administration, two contemporary developments add urgency to the task of ensuring optimal regulatory organization: Information Technology and Anti-trust liability.

A. Information Technology

Information technology (IT) has become a required element of license administration and case management for any agency to meet the core responsibilities of occupational licensing. Licensees, employers, and members of the public expect to be able to find information about licensing online, to apply for licenses online, to verify license statuses online, and to find disciplinary orders, licensee rosters, and other public information online.

Online licensing systems are complex and expensive undertakings, because they must handle sensitive personal and commercial information securely, must be customizable to match heterogeneous screening and documentation inputs, and must be able to handle high surge volume during renewals or

⁶ CVR 04-030-005 *et seq.*

⁷ When staff is onboarded at the Office of Professional Regulation, the Office give that staff person a contact list of other licensing agencies due to the frequent calls and inquiries related to licensing not with OPR.

when external events provoke sudden user demand. Consumers, the public, and licensees, are also demanding more complex online service offerings. To be robust, licensing program technology must be online, have a user-friendly interface, and be accessible.

The waste caused by multiple agencies generating parallel and inconsistent paper application forms, and collecting and managing those in separate offices, is trivial relative to the waste of multiple agencies putting out separate requests for proposal to develop parallel, inconsistent, and expensive electronic licensing and case-management systems. For example, previously both OPR and the Medical Practice Board, in separate agencies, initiated separate analysis, RFPs, contracts, and procured parallel versions of the same technology from the same vendor. This provides a pointed illustration of the duplication caused when licensing administration is scattered across state agencies and is not prompted to have conversations with each other.

OPR launched a new licensing platform called Next Generation Licensing Solution “NGLP” which went live in October of 2017. This system meets the IT demands listed above, although each licensing division would require slight modifications to the existing system. The Agency of Digital Services has recognized the potential for an enterprise solution for licensing of this licensing platform and NGLP could provide licensing and enforcement case management for licensing agencies across the state. At the very least, the state should explore sharing resources in this way rather than reinventing the wheel. This collaboration would lead us to stronger IT systems at less overall cost.

B. Anti-trust Liability

In 2015 the United States Supreme Court, in *N. Carolina State Bd. of Dental Examiners v. F.T.C.*, 574 U.S. 494, 135 S.Ct. 1101, held that public bodies composed of market participants—which most every licensing board is—as well as their individual members, may be liable for anti-trust behavior. This was a sea change. Previously, everyone assumed that a professional board member was securely protected as a state actor. To preserve state-action immunity following the holding, a regulatory body must be actively overseen by a state supervisor who is not a participant in the regulated market. “The Supervisor must review the substance of [any] anticompetitive decision, not merely the procedures followed to produce it,” and “the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy.” *Id.* at 1116-17.

In direct response to this development, the General Assembly has made the Secretary of State, not any individual public body, the adopting authority for rules developed by Boards, and it has empowered the Director of the Office of Professional Regulation to “monitor the actions of boards attached to the Office and shall ensure that all board actions pursued are lawful, consistent with State policy, reasonably calculated to protect the public, and not an undue restraint of trade.” 3 V.S.A. § 123(i). “If the Director finds a board action does not meet those standards,” a process is established through which she may stay the action, and if it cannot be brought into conformity with State policy, nullify it and prohibit its further pursuit. *Id.* These measures are necessary to avoid exposing to liability the State and the volunteer professional appointees.

However, again, these protective measures only extended to the regulatory boards attached to OPR. Parallel measures are not found elsewhere in State law, so unaddressed anti-trust risk exists where licensees are involved in the fields they regulate.

V. Economies of Scale and Specialization of Functions

Act 30, § 7 expressly asked that this report contemplate effects of reorganization on (1) public protection, (2) customer service, (3) reducing unnecessary barriers to licensure, and (4) increasing efficiencies in the staffing, information technology, and other necessary costs incurred in the State's licensing programs. With rare exceptions, these important goals will be more easily achieved at scale than by licensing programs operating in isolation. Umbrella licensing administration can improve effectiveness in all areas by freeing staff with special training in environmental analysis, curriculum development, or forestry management, for example, to focus on their agencies' core functions, rather than tending to administration of an adjunct licensing program.

A. Policy Coordination

The State of Vermont has many concrete and defined policy goals and standards. Some policy goals are long-standing, such as the accessibility to a credential of value, and some become emergent, like the opioid epidemic. Similarly, one expects certain and uniform standards for licensed individuals and from application and enforcement processes.

Profession-specific boards are given to seeing their worlds as unique, but on the ground, most of the principles of professional conduct are generalizable across fields, and most actionable disciplinary complaints concern frank misconduct, not nuanced questions of technical judgment.

Professions attached to the Office of Professional Regulation are subject to the laws of unprofessional conduct found in Title 3, ch. 5, subch. 3 (3 V.S.A. § 129a) "Exercising undue influence on or taking improper advantage of a person using professional services," for example, is just as wrong when done by a nurse as by an accountant. For these reasons, 3 V.S.A. § 129a, articulates the core forms of misconduct that are universally actionable if proven, sparing regulators in disparate fields the unproductive task of brainstorming potential bad acts to prohibit. Those forms of misconduct, however, are only applicable to programs within the umbrella; the consistent application of general rules evades isolated licensing programs elsewhere in state government.

Umbrella statutory structure extends the reach and efficacy of legislative and executive efforts to address evolving policy priorities. When the General Assembly or the Office of the Governor wishes to pursue a substantive policy goal, it can do so with a discrete amendment to subchapter 3. Examples are numerous. The General Assembly strengthened prohibitions on sexual harassment of colleagues, across all OPR professions, with a one-sentence amendment to 26 V.S.A. § 129a(a)(26). Section § 135 established a consistent and rational standard for professionals returning to practice after time away. Section § 137 substantially improved the State's openness to New Americans by empowering the Director of Professional Regulation to determine that training and experience obtained in a foreign jurisdiction can, and should, be used towards professional qualifications in Vermont. Were the licensing programs outside the agency's umbrella, as is the case in other states, the pursuit of the three simple policy goals discussed above could have required the attempted amendments of forty-eight distinct chapters of Title 26.

Agency staff who offered responses for this analysis discussed the important ties between each licensing program, its licensees, and the agency within which the program is housed. Frequently, licensing

administrators explained that licensing functions should remain within an agency because physical proximity lends itself to familiarity with policy objectives. While this could be true in certain instances, that should not be a *per se* end to licensing reform and restructuring conversations. State agencies should be expected to have strong interagency communication and policy coordination. Separation and consolidation of licensing functions from other executive duties can better allow an agency to focus on its core mission.

Within Vermont, there have been many successful transfers of licensing functions. The wastewater professions transferred from the Department of Environmental Conservation to OPR; and, the Licensed Drug and Alcohol Counselors transferred from the Department of Health to OPR. Both efforts have provided more consistency for licensees and the public while freeing agencies to focus its resources on the policy mission and away from the administrative aspects of licensing.

B. Transparency and Public Access

A persistent and ironic problem of professional discipline is that insight into a licensee’s conduct and competence is one of the most important justifications for licensing, but nobody involved in the disciplinary process has any incentive to see discipline publicized. When licensing programs are not bound to clear statutory policy on public access, there is a natural tendency toward informal resolutions, private settlements, non-public letters of warning, and various forms of removing bad actors out of the field, or out of the State. This harms not only the public’s right to know, but also the rights of the accused. If one cannot see whether and how others have been sanctioned for similar conduct, one cannot know if his treatment is fair.

The General Assembly has ensured that in the umbrella agency, disciplinary prosecutions mirror the transparency of the judicial system: the fact of a complaint and investigation is private, until the evidence exists to warrant official action and a Specification of Charges against a license. 3 V.S.A. § 131. If evidence warrants any official action, however, initial charges and every subsequent pleading and proceeding are a public record. *Id.*

No rule is perfect, but § 131, together with the inherent authority of the hearing authority to seal genuinely confidential pleading content, strike a workable balance that reflects the considered judgment of the Legislature “both to protect the reputation of licensees from public disclosure of unwarranted complaints against them, and to fulfill the public’s right to know of any action taken against a licensee when that action is based on a determination of unprofessional conduct.” *Id.*

Smaller Vermont licensing programs do not have the benefit of such a statutory policy; and some large programs that do have processes that can frustrate public access to information, generally by pursuing pre-charge settlements to avoid the public-access trigger point that occurs with charges. This can frustrate the chief benefit of licensing: improving the information about regulated professionals available to the consumer. Limited public insight into regulatory actions not only diminishes accountability, but also undermines the confidence of licensees that they will be treated fairly and consistently with others in the event of a misstep.

VI. Weighing Benefits of Restructuring Against Disruption, Transition Costs, and Separation from Expertise

Despite its benefits, administrative licensing consolidation is not universally beloved, and it is not a solution to all problems. Historically, professional regulation has been synonymous with professional *self*-regulation: oversight by one's peers or failing that, by those identified very closely with the field. As we look for savings in consolidation, it should not be forgotten that the reasons for professional self-regulation were and are beneficent and important: In technical fields, there is every reason to think that practitioners will be better suited to determine qualifications and standards than those without relevant experience. It is important that practitioners remain integrated into a healthy regulatory system, for example, by setting aside appointed positions within a regulatory program for advisors or members drawn from the regulated community.

The competence already found in the majority of Vermont's licensing programs does not mean that consolidation should not be seriously considered. Any structural reform would require a thoughtful plan, since a reorganization would alter budgets, statutes and administrative rules, physical space, IT, and employee assignments. This report evaluates broad effects of possible structural changes, asking what could be, instead of what has always been done. All changes come with short-term costs. Benefits of reorganization would be seen over the course of years, not months.

To assess whether service to the public could be improved by transferring professional licensing programs among agencies, or by sharing agency resources, we evaluate information gathered from agencies as a result of Act 156 and subsequently, asking whether restructuring could significantly affect the nine core licensing functions described in p.2.

VII. Agency of Education Licensing Programs

- ✓ **A complex licensing system for teachers and school administrators could be transferred to OPR, freeing agency staff of administrative burdens while improving the consistency and transparency of disciplinary processes.**
- ✓ **Short of transferring the entire program, IT enterprise solutions could provide efficiencies to the Agency, to licensees and to the public.**
- ✓ **Transferring license enforcement—complaint, investigation, prosecution, adjudication, and monitoring—could improve efficiency and transparency as a transitional or final measure toward rationalizing licensing functions.**
- ✓ **Removing the requirements for dual licensure between AOE and OPR would reduce confusion and expense for educators.**

a. Overview

The Agency of Education’s Education Quality Division licenses approximately 16,514 individuals as teachers or administrators. Atop the core standards for each license, each licensee must attain at least one focused certification, called an endorsement. “Except for a substitute teacher in accordance with rules adopted by the Standards Board, a person shall not be employed as a teacher or administrator in a public school without having a license then in force.” 16 V.S.A. § 1692.

The agency reports employing one program manager, three licensing specialists, one educational consultant, and four staff whose partial duties include licensing matters and answering applicant questions by phone and email. The program estimates annual expenses of license administration at \$1.2M against fee revenues of \$1.1M. These administrative costs do not include the work of local standards boards, district-level bodies of peer teachers who review colleagues’ continuing professional development work on a volunteer basis and report approvals back to the licensing authority through an online system.

Licensing requirements are adopted by a 13-member Vermont Standards Board for Professional Educators, an entity created by 16 V.S.A. § 1693 and separate from the State Board of Education. The Secretary of Education is directed to employ a director for the Standards Board, employ administrative staff, act as a custodian of Board records, and provide annual training. *Id.* § 1693(e). The Standards Board also is charged with establishing standards for “educator preparation programs in Vermont and approv[ing] those that meet the standards so that a [graduate is] eligible for a license” under Standards Board rules. *Id.* § 1694. The Standards Board additionally is to “Oversee and monitor the application and licensing process administered by the office” and “Develop a code of professional ethics and act as advisor to professional educators regarding its interpretation.” *Id.*

The Standards Board’s chief regulatory output consists of administrative rules codified at [CVR 22-000-010](#), captioned Licensing of Educators and the Preparation of Educational Professionals. The Secretary of Education is empowered to object to Standards Board rules before the State Board of Education, and with agreement of the State Board, the Standards Board’s rules would be remanded for conforming amendments. *Id.* § 1695.

Licensing and disciplinary hearings for educators are governed by 26 V.S.A. § 1700 *et seq.* Complaints and licensing appeals are referred to a hearing panel administrative officer, who in turn assigns licensee members of the Standards Board to assist a prosecuting attorney designated by the Secretary of Education. As in the OPR system, investigating members are recused from subsequent hearings. At this point, however, the disciplinary process established by the education law diverges sharply from the processes established for Vermont's other regulated professionals.

The bases for license discipline in most professions are set out in 3 V.S.A. § 129a. Those do not apply to educators, who are answerable to statute that is at once shorter and less determinant, 16 V.S.A. § 1698. The statute omits recent amendments to 3 V.S.A. § 129a respecting, for example, sexual harassment of others in the workplace, but expressly attaches to some misdemeanors that could be regarded as trivial, such as retail theft, as well as vaguely-defined non-criminal acts like “plac[ing] a student ... in meaningful ... emotional jeopardy, or conduct that evidences moral unfitness to practice as an educator.”

Once an investigation committee finishes its work, the prosecutor does not consult professional members to determine whether charges are warranted. Instead, the committee makes a recommendation to the Secretary as to whether to conduct a “formal investigation,” triggering the first notice to the educator and relevant employing superintendent. *Id.* § 1700(b)-(c). After investigating again, presumably in more depth and after educator and employing superintendent are aware, the committee makes a recommendation to the Secretary as to whether formal charges should be issued. “In its recommendation as to whether the Secretary should issue formal charges and, if so, what form they should take, the committee may consider the effect it believes its professional guidance may have in mitigating the need for and nature of licensing action.” *Id.* § 1700(e). Notably, under 16 V.S.A. § 1700(c)(2), the committee can only reach this point once it already has reason to believe an allegation of unprofessional conduct or incompetence describes a violation of 16 V.S.A. § 1698. Committee recommendations are then forwarded to the Secretary, who affirms or reverses denials of license decisions. *Id.* § 1701. In disciplinary cases, the Secretary determines whether to issue formal charges and what sanction to seek. *Id.* § 1701.

Hearings do not occur before the State Board of Education or the Standards Board. Seven teachers, four administrators, and three public members are appointed to serve on separate hearing panels pursuant to 16 V.S.A. § 1702. A hearing officer may conduct hearings and issue recommended findings, conclusions, and decisions to the hearing panel. *Id.* § 1705.

Unlike the general laws of professional regulation governing Vermont professionals, which operate on the evidentiary standard applicable to most civil matters—a preponderance of the evidence—the education law sets out a two-tiered burden: “in matters involving alleged unprofessional conduct or incompetence, including denial of a license based on alleged unprofessional conduct or incompetence” a preponderance standard applies; however, “in the case of revocation or suspension for more than one year, the proof shall be by clear and convincing evidence.” 16 V.S.A. § 1704. Consequently, a lower burden of proof as to misconduct or incompetence applies to outright denial of a license than to finite suspensions of an existing license. In contrast to the general law of professional regulation, a hearing panel in the educator-licensing system may substantiate charges but also “take no action” or “issue a private reprimand.” Appeals from hearing panel decisions go first to on-the-record review by the State Board of Education, and from the State Board to the Washington County Superior Court. 16 V.S.A. § 1707.

The “accessibility and confidentiality of disciplinary matters” is governed for OPR professions by 26 V.S.A. § 131 and for educators by 16 V.S.A. § 1708. The counterpart statutes are similar but deliver very different results in practice. Most notably, there is no public log of de-identified complaints that are investigated by an investigating committee but without proceeding to “formal investigation.” As in the general law of professional regulation, “formal charges” are public, as well as subsequent findings and dispositions. In contrast with the general law of professional regulation, which expressly makes intermediate pleadings and proceedings public, the statute is silent on those aspects of the educator discipline system.

Subtleties of the two-stage investigation process combine with the confidentiality provisions to deliver a disciplinary process that is substantially private. AOE reports annual averages of 370 complaints, 55 formal investigations, 45 cases resulting in disciplinary action, but only one prosecution and one hearing a year. Under the general professional disciplinary law, more cases settle than not, but charges precede settlement; consequently, whether or not a case is resolved without a hearing, the public is assured reasonable insight into what was first alleged, what was ultimately admitted or found, and what regulatory action followed. One can simply read those documents, which are drafted with due sensitivity to such things as personal health information and the identity of patients.

b. Transfer Options:

Possible transfer options include:

1. Transfer the educator licensing program to the Office of Professional Regulation. This would require significant statutory revision and conversion of the Standards Board for Professional Educators into a conventional regulatory body under Title 26.
2. Retain administration in place, but use OPR IT solutions on an enterprise basis to provide online licensing and case management.
3. Leave administration substantially in place, but transfer enforcement—complaint, investigation, prosecution, discipline, and monitoring to OPR—aligning the disciplinary system for educators with the general law of professional regulation.
4. Eliminate duplicative licensing requirements and fees for already-licensed professionals who incidentally work in schools.

c. Possible effects on public protection and customer service, reducing unnecessary barriers to licensure, and increasing efficiencies in staffing and information technology

Transfer of primary licensing jurisdiction from the Agency of Education to OPR would be a complex undertaking because licensing is interconnected with retirement benefits and collective bargaining. This link drives the regulatory jurisdiction of the Standards Board to encompass an irrationally broad range of professionals already credentialed elsewhere and whose duties do not involve conventional classroom teaching, such as nurses and speech-language pathologists. Participation in the established contract, compensation, benefits, and labor-relations programs that are the backbone of school employment;

specifically, the Teacher Retirement System and membership in the teachers' union. "Membership in the [State Teachers' Retirement] System shall be a condition of employment for all teachers." 16 V.S.A. § 1933.

"Teacher" shall mean any licensed teacher ... or any professional licensed by the Vermont Standards Board for professional educators regularly employed, or otherwise contracted if following retirement, for the full normal working time for his or her position in a public day school or school district within the state ...; or any licensed teacher ... or any professional licensed by the Vermont Standards Board for Professional Educators and regularly employed, or otherwise contracted if following retirement, for the full normal working time for his or her position in any nonsectarian independent school that serves as a high school for the town or city in which the same is located, provided such school is not conducted for personal profit. It shall also mean any licensed teacher employed, or otherwise contracted if following retirement, in a teaching capacity and licensed by the Vermont Standards Board for Professional Educators in certain public independent schools designated for such purposes by the board of trustees in accordance with section 1935 of this title. In all cases of doubt the Board of Trustees, herein defined, shall determine whether any person is a teacher as defined in this chapter. It shall not mean a person who is teaching with an emergency license.

--16 V.S.A. § 1931(20) (defining "teacher" for Retirement System purposes).

For labor-relations purposes, "'Teacher' means any person licensed employable as a teacher by the Vermont Standards Board for Professional Educators who is not an administrator ..." 16 V.S.A. § 1981(5). Consequently, any plan to divest the Standards Board for Professional Educators of regulatory jurisdiction over educators would have to be developed so as to avoid unintended consequences to retirement-system eligibility and union representation.

A complete transfer of educator license administration would require significant statutory revision and could be expected to result in an aggressive simplification of the licensing system. The Standards Board for Professional Educators and hearing panels could be dissolved, and the State Board of Education could assume responsibility for recommending licensing rules to an OPR-administered program. OPR could oversee a Board of Professional Educators who would assist OPR in general oversight of the profession and advise on disciplinary matters. A conventionally centralized licensing program would not require the work of local standards boards in each district. The application, verification, and discipline processes operating for nurses, dentists, engineers, appraisers, and veterinarians could be made applicable to teachers as well. If retirement-system and collective-bargaining complications were appropriately addressed, professionals already licensed by the State in fields such as nursing, speech-language pathology, and psychology could maintain a single license, with a single application, and a single fee. If necessary to verify school-specific training of individuals with other primary credentials, "specialties" could be assigned to the core, non-educator licenses to denote that training, just as is done, for example, for dentists who are specially qualified to use anesthesia.

Intermediate measures can be imagined that would improve efficiency and consistency without terminating AOE-based license administration. Specifically, the General Assembly could address the most significant area of discordance with other licensing programs simply by transferring *enforcement* jurisdiction to OPR. This would have the immediate effect of attaching a single point of complaint and cross-profession disciplinary processes to teacher licensing, making the system equivalent in procedural simplicity and substantive transparency, without the complexities of unwinding teacher licensing from the collective-bargaining and retirement.

Another intermediate measure that would likely reduce the costs for the Agency would be the sharing of IT between AOE and OPR.

VIII. Agency of Human Services Licensing Programs

- ✓ Rules governing child-care centers control the minimum training, education, and experience of individual employees who may fill child-care roles, creating a type of quasi-licensing.
- ✓ Professional licensing functions could be legally severed from a program regulating child-care centers and transferred to OPR, extending the features of a full professional-licensing system where they are now absent.

a. Overview

The Agency of Human Services, Department for Children and Families (DCF), Child Development Division (CDD), regulates child care center workers and child care home providers. Unless exempt, “a person shall not operate a child care facility without a license or operate a family child care home without registration from the Department.” 26 V.S.A. 3502(a). CDD reports licensing 522 center-based child care centers, 728 child-care homes, and 151 afterschool programs. It observes that in those programs are 3,988 child care center workers, 925 child care home providers, and 704 afterschool program employees.

Because its mission and statutory authority are oriented toward business licensing and registration, CDD does not conceive of itself as engaging in occupational or professional licensing. The program does not issue individual licenses, so it does not have any disciplinary process for child-care workers accused of misconduct. Relevant administrative regulations are the Child Care Licensing Regulations: Registered and Licensed Family Child Care Homes, CVR 12-171-005; the Child Care Licensing Regulations: Center Based Child Care and Preschool Programs, CVR 13-171-004; and the Licensing Regulations for Afterschool Child Care Programs, CVR 13-171-003.

Legislative guidance on regulations related to child care centers is oriented to maximizing the protection of children:

Regulations pertaining to child care facilities and family child care homes shall be designed to ensure that children in child care facilities and family child care homes are provided with wholesome growth and educational experiences, and are not subjected to neglect, mistreatment, or immoral surroundings. ... A licensed child care facility shall ensure that all individuals working at the facility receive orientation, based on materials recommended by the Agency of Human Services and the Agency of Education, on the prevention, identification, and mandatory reporting of child abuse, including child sexual abuse, signs and symptoms of sexual abuse, sexual violence, grooming processes, recognizing the dangers of child sexual abuse in and close to the home, and other predatory behaviors of sex offenders ... At least each three years, the Department shall review the regulations for licensure and registration for revision or updating.

--33 V.S.A. 3502(d)-(e).

Further to the goal of protecting children, the State adopted rules ordaining who may be a teacher at a daycare center that serves the children of more than two families:

*A teacher is at least twenty (20) years of age and meets one of the following qualifications:
-At least a Vermont Early Childhood Career Ladder Level Four (4) A or B Certificate; or*

- At least a bachelor degree from an accredited college with a major or concentration in Early Childhood, Child or Human Development, Elementary Education, Special Education with a birth to eight (8) years of age focus, or Child and Family Services and at least twenty-four (24) months experience working with groups of children from grade three (3) or younger; or
 - At least a bachelor degree from an accredited college with at least successful completion of thirty (30) college credits with an early childhood or school age focus and at least twenty-four (24) months experience working with groups of children from grade three (3) or younger; or
 - Hold at least a current Vermont Agency of Education teaching license with an endorsement in Early Childhood, Early Childhood Special Education, or Elementary Education.
- CVR 13-171-004 § 7.3.2.1.

Similar specificity applies to other child-care roles: teacher associate, teacher assistant, and trainee. Each occupational role within a facility is defined with considerable specificity as to age, education, child-care experience, and training. For example, a care center that serves more than thirteen children is not required to have a business manager, but if it would like the assistance of one, he or she must “ha[ve] at least an associate degree in Business.” *Id.* § 7.6. Among the information CDD collects in its web-based information management system are “qualifications of individuals working in [a] program.” Vermonters who provide care in their own homes are subject to different rules than those working in centers, but they as well are required each to have an “Individual Professional Development Plan” described as “a current personalized plan for increasing one’s knowledge and improving skills in the field of child care and education ... with a timeline that identifies specific areas for improvement, develop strategies, resources and a timeline when the goal will be met.” CVR 13-171-005 § 2.2.23. Home-care operators must have certain combinations of certifications or college credit. *Id.* § 7.3.1.

For purposes of 26 V.S.A., Ch. 57, a “Regulatory law” means any law in this State that requires a person engaged in a profession or occupation to be registered, certified, or licensed *or that otherwise regulates the operation of that profession or occupation.*” 26 V.S.A. § 3101a(9) (emphasis added). The State’s child-care regulatory system has the practical effect of requiring minimum qualifications of individuals who wish to occupy certain professional and occupational roles, and it governs the operation of child-care very closely, but it grew up outside of Title 26.

The unusual structure of child-care regulation affects policy. Laws and rules governing child-care centers were conceived by the General Assembly and the implementing agency as something other than a form of professional regulation; consequently, new regulatory laws, governing 5,700 workers across the marketplace commercial child-care, were not fully scrutinized for unintended consequences or less-burdensome alternatives, as would occur with a proposal for new, Title-26 regulation.

Though complex, the CDD regulatory system is clearly presented online. Relevant information is conspicuous. Parents and consumers with complaints about a center quickly can easily find relevant information. A Child Care Consumer Line exists to take complaints. It is well and clearly publicized online and in brochures. Complaints also may be made by email or through an online portal.

Applications and facility license verifications are easily found, and “licensors” are employed to shepherd prospective care providers through the application process. Because individuals are closely regulated as to qualifications, but not issued personal licenses, individual regulated workers are difficult to track. Notably, the agency reports one-month to six-month issuance windows for business licenses, contingent upon the organization and thoroughness of an applicant. Long licensing windows may be an artifact of requiring care centers and agency licensors to vet and document employee bona fides rather than

encapsulating those in a personal certification or license. Child-care workers do not receive licenses, but they may create online credential portfolios to preserve documentation relevant to their satisfaction of work requirements.

Facilities are inspected at least yearly. CDD has investigative authority and may inspect facilities on demand. Because child-care centers are assigned licenses and individuals are not, it is unclear how an allegation of individual misconduct or unfitness would be addressed, other than by citing the employing center. Regulations call for conspicuous posting of site visit reports, notices of violations, and notices of regulatory action. Serious violations may result in individually-mailed notices to client families.

b. Transfer Options

In this case, professional regulation susceptible to transfer grows out of business-centered regulation of child care centers to which the originating agency is uniquely suited by robust investigative capacity and expertise in the prevention and detection of child abuse. A transfer of the full program is not possible. A transfer of licensing functions to OPR is possible and could have some benefits, but it would require legally severing regulations pertaining to the operation of child-care facilities from regulations governing the minimum training, education, experience, and certifications required for a person lawfully to work in child-care roles.

Professional regulation of child-care workers could be established by the addition of a Title-26 chapter governing those workers. Administrative rules requiring child-care centers to monitor employee qualifications role-by-role could be stricken and replaced with a requirement that centers employ only licensed or certified workers.

c. Possible effects on public protection and customer service, reducing unnecessary barriers to licensure, and increasing efficiencies in staffing and information technology

It is difficult to estimate the costs and benefits of re-conceiving the regulation of child-care providers as professional licensing. Public protection could be enhanced by granting individual child-care workers discrete, portable, visible personal credentials. This could reduce administrative burdens on child-care businesses by relieving them of the paperwork and delay associated with vetting the legal qualifications of employees and potential hires.

The CDD child-care program is integrated with workforce-development efforts. User-friendly guidance is carefully packaged for prospective child-care providers and available online. CDD administers grants and offers training related to the program. There is a significant risk that establishing an individual licensing system to distinguish regulatory functions will disrupt the ecosystem built to recruit and support interested providers. On the other hand, assigning conspicuous and recognized Title-26 professional credentials to child-care workers, based on training tiers, could enhance the real and perceived utility of pursuing training in the field. The same license that authorizes a person to work in a regulated child-care center would perform a certifying function in the broader marketplace for child-care services, demonstrating to consumers seeking professional care in unregulated realms, such as care in one's own home, that the bearer meets minimum qualifications and is accountable to defined professional standards. The public would be able to verify individual license status and disciplinary history, and complaints about individuals could be managed as such.

The likely policy benefits to be had from formalizing and transferring individual licensing of child-care workers would come from reducing barriers to entry and streamlining requirements. A Title-26 regulatory program would be subject to sunrise-review analysis and least-restrictive-means testing. Aspects of the existing program, such as degree-requirements for business managers, would not survive. State regulation of individual qualifications likely would more closely resemble a registration system or a system with a fixed number of certification tiers. In this way, it would be possible to make basic, individual certification attainable, personal, portable, and subject to the administrative and legal mechanisms that apply to other forms of individual credentialing.

A clear detriment of individual credentialing is that it comes with individual fees, calibrated to support the program. Compliance burdens in the status quo, business-centered regulatory program are borne by child care centers. On one hand, lower barriers to entry and formal, personal credentials could appeal to needed child-care workers. On the other, these workforce benefits could be offset by the deterrent effect of new, individual credentialing costs.

IX. Agency of Natural Resources Licensing Programs

- ✓ **A small licensing program could be transferred to OPR, providing modest administrative relief to agency staff while slightly lowering costs to licensees and extending online licensing services to licensees.**

a. Overview

The Agency of Natural Resources (ANR) Department of Environmental Conservation (DEC) Groundwater Protection Division runs a small licensing program for well drillers. Approximately 60 individuals are so licensed. Two employees collaborate in the administration of the licensing program, though both have full-time technical duties and neither dedicates full-time attention to licensing administration. The function itself occupies a fraction of their working time, only 0.1 FTE. The profession is regulated for the purpose of protecting the public by ensuring that groundwater is drawn competently for use and monitoring and in conformity with environmental regulations. A 3-year license costs \$420 (\$140/yr). Expenses slightly exceed fee revenue, at \$10,816 versus \$8,540 annually. A common cause for agency-licensee interaction is the need to ensure that required well completion reports are timely filed with environmental regulators. The Agency administers required examinations.

The Well Driller Licensing Rule, CVR 12-037-004, implements authority found at 10 V.S.A. § 1395a. A clear statement of purpose in subsection (c) thereof provides:

Rules relating to licensing standards shall be fair and reasonable and shall be designed and implemented to ensure that all applicants are granted licensure if they demonstrate that they possess the minimal occupational qualifications necessary for the purposes of groundwater protection. They shall not be designed or implemented for the purpose of limiting the number of licensees. All other rules to implement the provisions of this subchapter shall be rationally related to the purposes of this chapter, and shall be designed to achieve a reasonable balance between the expected governmental, societal, and occupational costs and the expected benefits.

The Vermont Water Well Advisory Committee created by 10 V.S.A. § 1395b was dissolved by 2017 (Adj. Spec. Sess.), No. 2, § 2 and its duties reassigned to the groundwater coordinating committee created by *id.* § 1392(c)(1).

A license application package is easily found online in PDF format.⁸ Requirements are clearly stated and consistent with statute and rule. The agency reports that applications typically take three hours to process. Verification of credentials and experience is accomplished by paper submission to agency staff. However, the staff member who performs this function is an environmental analyst with primary training in hydrogeology and technical job duties unrelated to license administration. The public can access a pdf spreadsheet online to find all the current licensees. Existing law vests ANR General Counsel or the Attorney General with authority to pursue licensing actions, including a complaint, investigation and disciplinary action, but this has never been necessary.

b. Transfer Options

⁸ See <https://dec.vermont.gov/sites/dec/files/dwgwp/welldriller/pdf/welldrillernewapp.pdf>.

The well-driller licensing program could be transferred to the Office of Professional Regulation by legislative action as early as the 2020 session. Such a transfer would resemble past transfers of small ANR licensing programs, such as occurred in the fields of wastewater and water-system design, which was accomplished by [2016, No. 156, §§ 8-12](#).

c. Possible effects on public protection and customer service, reducing unnecessary barriers to licensure, and increasing efficiencies in the staffing and information technology

The operational consequences of a transfer would be minimal. The regulatory program in question is small, orderly, and historically has not required formal investigative or prosecutorial activity. Barriers to licensure are minimal and would remain substantially unchanged. The Drinking Water & Groundwater Protection Division would continue to manage examinations. OPR would look to DWGPD staff for the necessary guidance on technical aspects of practice and rule maintenance, and advisor positions could be established by statute to ensure the regulatory program remains appropriately connected to practitioners.

Benefits would be realized through the specialization of functions and extension of OPR information technology. A DWGPD staff member with technical training and responsibilities would be freed from distracting administrative tasks. Annual costs of license maintenance would drop slightly, from \$140 in the status quo to \$120. Licensed well-drillers would be connected with the existing suite of online services available to all OPR professions, including web-based application and renewal and real-time status verification. In the unlikely event of a conduct complaint, whether from DWGPD staff in relation to filings or from a client, receipt, processing, investigation, prosecution, and monitoring would be performed as those functions are performed for all OPR professions.

d. Programs not considered

The agency of Natural Resources, Department of Environmental Conservation, Drinking Water and Groundwater Protection Division Reports certifying approximately 1,200 **public water operators in multiple classes**. Although some public-system operators are salaried, many classes of licensees do not use the certification in relation to their primary means of livelihood. The State's compliance with EPA regulations and eligibility to receive federal funding is closely tied to the program.

X. Department of Public Safety Licensing Programs

- ✓ **Inter-agency IT sharing could extend the benefits of online licensing to six-thousand licensed tradespeople, avoid duplication of work, and allow the public to look up licensees and register licensing complaints at a conspicuous, common online point.**
- ✓ **It is possible that a transfer of the licensing responsibilities for electricians and plumbers would not disrupt the code and permit process and would lead to efficiencies for licensees and the public.**

a. Overview

The Department of Public Safety reports regulating approximately 3850 electricians, 2135 plumbers, 38 elevator inspectors, 143 elevator mechanics, 7 licensed elevator lift mechanics, 84 commissioned boiler inspectors, 382 chemical suppression system installers, 42 chimney sweeps, 480 fire alarm inspectors, 41 fire sprinkler system designers, 153 fire sprinkler system installers, 667 oil burner installers, 1291 propane gas installers, 667 natural gas installers, 65 emergency generator installers, 36 precious metal dealers, and 185 explosive blasters. Most programs are overseen by the Division of Fire Safety (DFS), but the latter two are administered by the Vermont State Police.

Smaller DPS licensing programs, such as those for explosive blasters, relate to safety-sensitive or skill-sensitive job functions that are not themselves full-time, discrete occupations easily fitted to a professional-regulatory model. The programs where the transfer of licensing functions would have the most impact in the delivery of licensing services to the public are those for classically-regulated tradespeople: the State's approximately 6,000 licensed electricians and plumbers.

Applicable statutes date to the late 1950s and establish traditional trade-licensing programs, closely tied in with code development and permitting. Plumbers are regulated pursuant to 26 V.S.A., Ch. 59, which vests most regulatory authority over the program in a five-member Plumber's Examining Board, on which is designated one seat for a designee of the Commissioner of Public Safety. Bases for license denial or discipline are narrower than those in the general law of professional regulation: "(1) fraud or deceit in obtaining a license; (2) gross negligence, incompetency, misrepresentation, or misconduct ... ; (3) violation by a licensee of the rules of the Department of Health, the Department of Public Safety, or the Board; (4) failure to comply with a written [work notice]." 26 V.S.A. § 2181(c).

Regulation of electricians is accomplished by 26 V.S.A., Ch. 39, which vests most regulatory authority over the program in a five-member Electricians' Licensing Board. Structurally, the program is a mirror image of the plumber licensing program.

Although the separation of plumbers and electricians from the professions and occupations attached to OPR pursuant to 3 V.S.A. § 122 creates the structural risk that the professions might be left out of legislative reform efforts, they have been included in important recent policy efforts. For example, 2017, No. 119 (Adj. Sess.), § 3 created a path to journeyman-plumber licensing for applicants with defined U.S. Armed Forces training in the trade. Act 119 made similar provisions for military-trained electricians.

DPS offers fillable PDF application forms for download, and the Department receives some documents by electronic mail. There is no public-facing online licensing interface. A spreadsheet-style roster of active licensees is easily found online. Disciplinary information is not. For programs with 6,000 licensees working in customers' property, plumbers and electricians draw remarkably few complaints, with discipline in each program occurring against a licensee approximately once a year. Administrative rules for each program specify that an Assistant Attorney General heads complaint investigations and exercises prosecutorial discretion in bringing disciplinary cases to the relevant board. Administrative rules set out simple hearing procedures in an orderly manner. An appeal goes to the Vermont Supreme Court.

b. Transfer Options

Possible transfer options include:

1. Wholesale transfer of license administration for plumbers and electricians to OPR; or
2. Retaining administration and primary regulatory authority at DFS, disturbing the existing statutory structure minimally, and offering enterprise IT solutions that would extend the benefits of online licensing services to plumbers, electricians, and the public.

c. Possible effects on public protection and customer service, reducing unnecessary barriers to licensure, and increasing efficiencies in staffing and information technology

A wholesale transfer of plumber and electrician licensing probably would do little for public protection. The plumber and electrician regulatory systems closely intertwine code and standards development, training, credentialing, inspection, and work permits. Licensees are seen from training through their fieldwork years later, where the Department is responsible for the physical inspection of premises and the issuance of permits, work notices, and the like. The permitting function in some cases may provide a regulatory substitute for license discipline. This may explain why discipline is extremely rare: Tradespeople's work and code compliance, not their conduct, is the primary focus of regulation, and deficiencies in that work can be detected and rectified by the withholding of a permit or other work-site measures. This report does not recommend the transfer of the permitting or code compliance work currently done by the Department.

Licensing requirements are substantially determined by statute, so a structural change in and of itself would be unlikely to generate different substantive requirements. Reduction of barriers through reform efforts can succeed as long as legislative efforts aimed at the OPR professions in 3 V.S.A. § 122 are applied as well to DFS-licensed tradespeople. DFS staffing is not unduly complex.

Transfer has the most to offer with respect to internet technology. Transfer of specific licensing functions, or sharing of resources, could materially improve customer service by leveraging OPR information technology to bring the benefits of online license management to DFS's 6,000 tradesperson licensees and the clients they serve. A relatively obscure complaint avenue, based on mailed letters, could be modernizing by joining the point of complaint receipt with the single, online point for the OPR professions. The Legislature could explore with the Office of the Attorney General whether vesting OPR State Prosecuting Attorneys with prosecutorial authority over DFS cases would relieve demands on the

OAG. Licensee lookup and disciplinary information could be held at a common online point with the OPR professions.

Benefits of wholesale transfer of licensing from DFS to OPR are debatable, and severing DFS inspection from licensing may unintentionally complicate a simple and time-tested regulatory system; there is much to recommend inter-agency IT sharing, and there could be benefits to using OPR prosecutors to relieve the OAG of administrative enforcement work. In this way, it may be possible to retain the benefits of common, DFS regulation of plumbers, electricians, and their substantive field work, while delivering licensing services that look and feel, to licensees and the public, like those applicable to engineers, home inspectors, and most other licensed professions.

d. Programs not considered

DPS programs for installers, mechanics, and inspectors of certain high-risk mechanical systems, identified in subsection (a.), above, generally do not govern full professional fields suitable for regulation under the general law of professional regulation.

XI. Department of Health Licensing Programs

- ✓ **Duplicative licensing programs for allopathic and osteopathic physicians could be merged at either of two agencies**
- ✓ **Programs could be administered separately with the sharing of IT and enforcement resources to achieve efficiency and consistency.**

a. Overview

Vermont is among approximately fifteen states with separate medical boards governing osteopathic (DOs) and allopathic physicians (MDs). Distinctions in training, philosophy, and practice scope have faded with time, calling into question whether that separation remains rational. Osteopathic physicians are regulated pursuant to 26 V.S.A., Ch. 33 by the 5-member Board of Osteopathic Physicians and Surgeons at OPR. Allopathic physicians are regulated pursuant to 26 V.S.A., Ch. 23. by the State Board of Medical Practice, a 17-member regulatory body “established as an office within the Department of Health. *Id.* § 1351(c). The Board is served by an executive director and an investigator appointed by the Commissioner of Health. Just as OPR regulatory boards develop rules that are ultimately controlled and adopted by the Secretary of State, the Board of Medical Practice develops rules that are controlled and adopted by the Commissioner of Health. *Id.* § 1351(e). This structure may mitigate antitrust liability discussed in the introductory sections of this report. The Rules of the Board of Medical Practice are found at CVR 13-141-001.

In addition to regulating approximately 3732 licensed medical doctors, The Board of Medical Practice oversees licensure of 38 podiatrists, two radiologist assistants, 14 anesthesiologist assistants, and 365 physician assistants. The Board is supported by 6 FTEs: one Executive Director, two investigators, a medical licensing specialist, an operations administrator, an administrative assistant, and an assigned full-time AAG. It is also served by a temporary clerk and a part-time AAG. The fee for an initial application for physicians is \$650, and biennial renewal fees are \$525. Fees are lower for anesthesiologist assistants and physician assistants. Annual expenses reported in the Act 30 data collection were \$911,196, supported by revenue of \$1,005,178 for the regulation of medical doctors.

Statutory bases for license discipline are set out at 26 V.S.A. § 1354. These are substantially similar to bases for discipline applicable to the OPR professions, including osteopathic physicians set out at 26 V.S.A. § 129a. Consequently, the two groups of physicians are subject to slightly different conduct requirements.

The “accessibility and confidentiality of disciplinary matters” before the Medical Practice Board is controlled by 26 V.S.A. § 1318. For OPR-regulated professions, including osteopathic physicians and surgeons, the same topic is addressed by a substantially similar but inconsistent statute, 3 V.S.A. § 131. Disciplinary procedures between the boards are markedly different. The smaller Board of Osteopathic Physicians and Surgeons hears cases as a full board, and cases are prosecuted by an independent OPR prosecutor, assisted by one investigative-team member assigned from the Board, who is recused from adjudication. The larger Medical Practice Board assigns hearing panels pursuant to 26 V.S.A. § 1355(b), and an Assistant Attorney General prosecutes cases. In both systems, an administrative law officer is contracted to preside for the board or committee. Statutes pertaining to the Medical Practice Board provide for interim suspension of licenses in case of a criminal conviction or out-of-state discipline. *Id.*

§§ 1365-66. OPR statutes do not; instead, summary suspension would be sought if a conviction or out-of-state disciplinary event were seen to signal an imminent threat to the public. Appeals from decisions of the Medical Practice Board are directed to the Vermont Supreme Court. *Id.* § 1367. OPR discipline is subject to intermediate appeal, at no fee, before an OPR appellate officer, and then to the Supreme Court. The Department of Health maintains provider profiles for Medical Practice Board licensees, pursuant to 26 V.S.A. § 1368. Similar profiles are not created by any branch of government relative to OPR health-science licensees.

Investigations found to warrant charges in the OPR system typically result in immediate filing of a Specification of Charges by the OPR prosecutor, and such charges are public pursuant to 3 V.S.A. § 131. In the Medical Practice Board system, if “[the investigating] committee and the Office of the Attorney General determine that the facts established by the investigation present cause for pursuing charges of unprofessional conduct, the committee shall explore the possibility of stipulated settlements and consent orders, as established in a Stipulation” CVR 13-141-001 § 38.1.2. The Medical Practice Board maintains an orderly website with clear, reader-friendly information about the disciplinary process, as well as a ten-year archive of disciplinary orders.

b. Transfer Options

Possible transfer options include:

1. Transferring the Medical Practice Board to OPR and merging its functions with those of the Board of Osteopathic Physicians and Surgeons; or
2. Transferring the Board of Osteopathic Physicians and Surgeons to VDH and merging its functions with those of the Medical Practice Board; or
3. Preserving status-quo administrative and regulatory structures, and sharing IT solutions to avoid redundant procurement; or
4. Doing (3), above, and attaching Medical Practice Board complaint, investigation, and disciplinary processes to OPR.

c. Possible effects on public protection and customer service, reducing unnecessary barriers to licensure, and increasing efficiencies in staffing and information technology

Public protection, and particularly the quality of inter-professional policy development and coordination, could see improvements from uniting health-science regulatory programs under one roof at OPR. Among other professions attached to OPR by 3 V.S.A. § 122 are many related to the medical sciences, including audiologists, chiropractors, dentists, dietitians, midwives, naturopaths, nurses, nursing home administrators, optometrists, pharmacists, physical therapists, radiologic technologists, mental health counselors, and veterinarians. Applicable law requires the appointment of physician advisor members to support programs in audiology, midwifery, and radiologic technology. The State has two medical boards. In net, this structure demands an extraordinary number of scarce physician-appointees, yet does little to provoke inter-professional dialog on matters of public health policy. It is possible to conceive of a system that does more while imposing fewer burdens on scarce volunteer appointees.

With the larger Medical Practice Board separated from the OPR-regulated health-science professions, physician-appointees have limited opportunities to participate in or contribute to regulatory programs related to health-science practitioners with whom physicians work every day. Culturally, uniting the regulated health sciences in one place may tend to combat parochialism in individual programs and encourage systems-based, evidence-based approaches to regulation. Administratively, uniting the regulated health sciences in one place would allow the State to call upon half as many volunteer physician appointees; this while making their participation in regulatory policy more effective and far-reaching than is possible from the position of a Board physically and administratively separated from its peer boards. Subcommittees and designees of a merged Medical Practice Board could provide consultation with regulatory programs that are now provided by isolated physician-appointees.

Transfer of the Medical Practice Board to OPR would be an opportunity to harmonize disciplinary processes with those applicable to the other regulated health-science professions. If the OPR Enforcement Unit were to assume responsibility for investigation and prosecution of complaints in OPR's cross-profession adjudicative system, Assistant Attorneys General now serving the Board could be freed to focus on non-licensing matters, conserving AGO resources. Public access to disciplinary information could be made consistent with the relatively simple and open principles in 3 V.S.A. § 131, in order that accessibility and confidentiality of disciplinary information would operate by the same rules for all regulated health-science professions.

Transfer would not result in substantial changes in customer service vis-à-vis licensees. The Board of Medical Practice has a clear and robust web presence and offers a full suite of online licensing services. Effective January 1, 2020, the Board of Medical Practice and the Board of Osteopathic Physicians and Surgeons are operating members of the Interstate Medical Licensing Compact, an interstate agreement that facilitates expedited licensing of physicians among member states. Many physicians coming to Vermont from member states will see their interactions with licensing authorities mediated by a third-party Compact Administrator which maintains its own website. Physicians with primary residence in Vermont likely would encounter similar requirements and interfaces regardless of transfer, as osteopathic and allopathic physicians do today.

Transfer choices would not affect barriers to entry. Physician licensing requirements are standardized, and State-specific idiosyncrasies are few. The Compact applies to allopathic and osteopathic physicians alike, though systems to interact with the Compact must exist in duplicate for so long as the State has two medical boards.

The State's regulation of osteopathic and allopathic physicians is defined by duplication. Transfer of functions, whether from OPR to VDH or from VDH to OPR, could not but reduce duplication. The benefits in transferring would come most significantly by transfer from VDH to OPR in the areas of IT expenditures, staffing, and improved inter-professional communications. If the Medical Practice Board's connection to the Department of Health were held to warrant retaining the Board in place there, a unified Board could avail itself of enterprise licensing technology developed at OPR to achieve purchasing efficiency.

d. Programs not suited to transfer

The Department of Health reports licensing 687 individuals and 77 entities involved in **asbestos abatement** and 202 individuals and 39 entities involved in **lead abatement**. The Department reports that this regulation is inseparable from its lead and asbestos control work and the subject of a major rulemaking undertaking related to handing off regulation from U.S. EPA to VDH.

The Department of Health, Division of Emergency Preparedness, Response, and Injury Prevention, EMS Office reports licensing approximately 2,600 **emergency medical personnel**. Federal funding supports the program. Most EMS personnel in Vermont are volunteers who do not provide emergency medical services as a primary means of livelihood; consequently, the regulatory system is not funded by fees. Fitting the system into a professional-regulatory model would impose unacceptable new costs on licensees and would offer few benefits.

XII. Conclusions and Next Steps

Single-point administration and enforcement of occupational and professional licensing offers efficiency and consistency that is difficult to achieve within isolated programs. In Vermont, centralized administration prevails generally, but a significant minority of licensing programs remain decentralized.

Major decentralized programs are those for: **professional educators** at the Agency of Education; **plumbers and electricians** at the Department of Public Safety; and **medical doctors and physician assistants** at the Department of Health. Additionally, thousands of child-care workers are closely regulated under the Agency of Human Services in a manner very similar to licensing, but without individual State credentialing. This report has offered ranges of possible choices in each category where those appear, and it has identified programs where reorganization appears to be clearly unwarranted.

Though organizational options are many, and identifying the best of those options for each agency would require considerable additional analysis. However, the following core goals appear warranted:

(1) **Professional educators**, wherever licensed, should be subject to disciplinary procedures consistent with those applicable to the majority of licensed professionals. The Administration, the Secretary of State and the Agency of Education should discuss if transfer of licensing functions would benefit the public, the licensees and/or the Agency.

(2) **Plumbers and electricians**, wherever licensed, should benefit from a common online point for consumer complaint and license verification, available through existing OPR online services.

(3) **Medical doctors and physician assistants** should be united with osteopathic physicians under one regulatory authority at OPR, where a unified Medical Practice Board would be co-located with those governing the other regulated health-science professions.

(4) **Well drillers** should be licensed by the Office of Professional Regulation, freeing specialist staff.

(5) **Requirements for child-care workers** should be assessed by the Agency of Administration with the assistance of the Office of Professional Regulation and the Department of Children and Families to explore potential efficiencies of state registration of child care centers and workers.

This analysis was conducted under significant time and resource constraints, so it relies heavily on the generosity of agencies in sharing self-reported information. This conceptual analysis is a first step a long conversation regarding the shared administration of licensing functions affecting the complex tasks of multiple agencies. We offer these observations with humility, acknowledging that relevant detail and nuance may have evaded analysis.

Respectfully submitted to the Senate and House Committees on Government Operations, the Senate Committee on Economic Development, Housing and General Affairs, and the House Committee on Commerce and Economic Development.
Administration

STATE OF VERMONT
AGENCY OF ADMINISTRATION & SECRETARY OF STATE, OFFICE OF PROFESSIONAL REGULATION

SUBMITTED BY: January 22, 2020

James Condos, Secretary of State
Susanne Young, Secretary, Agency of Administration

PREPARED BY:

Gabriel M. Gilman, General Counsel, Office of Professional Regulation
S. Lauren Hibbert, Director, Office of Professional Regulation