

State of Alaska  
Board of Optometry  
Teleconference  
Friday, October 11, 2019

Join Zoom Meeting  
<https://zoom.us/j/746049058>  
Meeting ID: 746 049 058

Or Call: 408-638-0968

669-900-6833

Meeting originating: 333 Willoughby Ave., Conf. Room A, Juneau, AK

Meeting Name: 10/11 Optometry Board Meeting

Meeting Start Time: 9:00 AM Alaskan Daylight Time

Meeting Start Date: 10/11/2019

Meeting End Time: 2:00 PM Alaskan Daylight Time

Meeting End Date: 10/11/2019

Meeting Location: Juneau, State Office Building, 333 Willoughby Avenue, 9th Floor,  
Conference Room A

Remote Meeting Details: <https://zoom.us/j/746049058> or Call 408-638-0968, 746 049 058

Agenda:

1. 9:00am - Call to Order/Ethics Disclosures
2. 9:05am - Review/Approve Agenda and Meeting Minutes
3. 9:10am - Investigative Report
4. 9:30am - Division Update (Presenter: Sharon Walsh)  
Is It Government's Responsibility?
5. 10:30 - 15-minute Break
6. 10:45am - Division Update
7. 12:00pm - Break for Lunch
8. 1:00pm - Salzman Nodule / Scope of Practice
9. 2:00pm - Adjourn

State of Alaska  
DEPARTMENT OF LAW

# ETHICS ACT PROCEDURES FOR BOARDS & COMMISSIONS

All board and commission members and staff should be familiar with the Executive Branch Ethics Act procedures outlined below.

## Who Is My Designated Ethics Supervisor (DES)?

Every board or commission subject to the Ethics Act<sup>1</sup> has several ethics supervisors designated by statute.

- The chair serves as DES for board or commission members.
- The chair serves as DES for the executive director.
- The executive director serves as DES for the staff.
- The governor is the DES for a chair.<sup>2</sup>

## What Do I Have To Disclose?

The Ethics Act requires members of boards and commissions to disclose:

- Any matter that is a potential conflict of interest with actions that the member may take when serving on the board or commission.
- Any circumstance that may result in a violation of the Ethics Act.
- Any personal or financial interest (or that of an immediate family member) in a state grant, contract, lease or loan that is awarded or administered by the member's board or commission.
- The receipt of certain gifts.

The executive director of the board or commission and its staff, as state employees, must also disclose:

- Compensated outside employment or services.
- Volunteer service, if any compensation, including travel and meals, is paid or there is a potential conflict with state duties.

- For more information regarding the types of matters that may result in violations of the Ethics Act, board or commission members should refer to the guide, *“Ethics Information for Members of Boards and Commissions.”* The executive director and staff should refer to the guide, *Ethics Information for Public Employees.* Both guides and disclosure forms may be found on the [Department of Law’s ethics website](#).

## How Do I Avoid Violations of the Ethics Act?

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- Make timely disclosures!
- Follow required procedures!
- Provide all information necessary to a correct evaluation of the matter!<sup>3</sup>
- When in doubt, disclose and seek advice!
- Follow the advice of your DES!

## What Are The Disclosure Procedures for Board and Commission Members?

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The procedural requirements for disclosures by members are set out in AS 39.52.220 and 9 AAC 52.120. One goal of these provisions is to help members avoid violations of the Ethics Act. The procedures provide the opportunity for members to seek review of matters in advance of taking action to ensure that actions taken will be consistent with the Act.

### Procedure for declaring actual or potential conflicts.

Members must declare potential conflicts and other matters that may violate the Ethics Act **on the public record and in writing to the chair**.

*Disclosure on the public record.* Members must identify actual and potential conflicts orally at the board or commission’s public meeting **in advance** of participating in deliberations or taking any official action on the matter.

- A member must always declare a conflict and may choose to refrain from voting, deliberations or other participation regarding a matter.<sup>4</sup>
- If a member is uncertain whether participation would result in a violation of the Act, the member should disclose the circumstances and seek a determination from the chair.

*Disclosure in writing at a public meeting.* In addition to an oral disclosure at a board or commission meeting, members’ disclosures must be made in writing.

- If the meeting is recorded, a tape or transcript of the meeting is preserved **and** there is a method for identifying the declaration in the record, an oral disclosure may serve as the written disclosure.
- Alternatively, the member must note the disclosure on the Notice of Potential Violation disclosure form and the chair must record the determination.

*Confidential disclosure in advance of public meeting.* Potential conflicts may be partially addressed in advance of a board or commission's public meeting based on the published meeting agenda or other board or commission activity.

- A member identifying a conflict or potential conflict submits a Notice of Potential Violation to the chair, as DES, in advance of the public meeting.
- This written disclosure is considered confidential.
- The chair may seek advice from the Attorney General.
- The chair makes a written determination, also confidential, whether the disclosed matter represents a conflict that will result in a violation of the Ethics Act if the member participates in official action addressing the matter.<sup>5</sup>
- If so, the chair directs the member to refrain from participating in the matter that is the subject of the disclosure.
- An oral report of the notice of potential violation and the determination that the member must refrain from participating is put on the record at a public meeting.<sup>6</sup>

*Determinations at the public meeting.* When a potential conflict is declared by a member for the public record, the following procedure must be followed:

- The chair states his or her determination regarding whether the member may participate.
- Any member may then object to the chair's determination.
- If an objection is made, the members present, excluding the member who made the disclosure, vote on the matter.
- *Exception:* A chair's determination that is made consistent with advice provided by the Attorney General may not be overruled.
- If the chair, or the members by majority vote, determines that a violation will exist if the disclosing member continues to participate, the member must refrain from voting, deliberating or participating in the matter.<sup>7</sup>

*If the chair identifies a potential conflict,* the same procedures are followed. If possible, the chair should forward a confidential written notice of potential violation to the Office of the Governor for a determination in advance of the board or commission meeting. If the declaration is first

made at the public meeting during which the matter will be addressed, the members present, except for the chair, vote on the matter. If a majority determines that a violation of the Ethics Act will occur if the chair continues to participate, the chair shall refrain from voting, deliberating or participating in the matter. A written disclosure or copy of the public record regarding the oral disclosure should be forwarded to the Office of the Governor for review by the chair's DES.

## Procedures for Other Member Disclosures

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A member's interest in a state grant, contract, lease or loan and receipt of gifts are disclosed by filling out the appropriate disclosure form and submitting the form to the chair for approval. The disclosure forms are found on the [Department of Law's ethics website](#).

## What Are The Disclosure Procedures for Executive Directors and Staff?

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Ethics disclosures of the executive director or staff are made in writing to the appropriate DES (chair for the executive director and the executive director for staff).

- Disclosure forms are found on the ethics website, noted above.

*Notices of Potential Violations.* Following receipt of a written notice of potential violation, the DES investigates, if necessary, and makes a written determination whether a violation of the Ethics Act could exist or will occur. A DES may seek advice from the Attorney General. If feasible, the DES shall reassign duties to cure a potential violation or direct divestiture or removal by the employee of the personal or financial interests giving rise to the potential violation.

- These disclosures are not required to be made part of the public record.
- A copy of a determination is provided to the employee.
- Both the notice and determination are confidential.

*Other Disclosures.* The DES also reviews other ethics disclosures and either approves them or determines what action must be taken to avoid a violation of the Act. In addition to the disclosures of certain gifts and interests in the listed state matters, state employees must disclose all outside employment or services for compensation.

- The DES must provide a copy of an approved disclosure or other determination the employee.

## How Are Third Party Reports of Potential Violations or Complaints Handled?

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Any person may report a potential violation of the Ethics Act by a board or commission member or its staff to the appropriate DES or file a complaint alleging actual violations with the Attorney General.

- Notices of potential violations and complaints must be submitted **in writing** and **under oath**.
- Notices of potential violations are investigated by the appropriate DES who makes a written determination whether a violation may exist.<sup>8</sup>
- Complaints are addressed by the Attorney General under separate procedures outlined in the Ethics Act.
- **These matters are confidential**, unless the subject waives confidentiality or the matter results in a public accusation.

## What Are The Procedures for Quarterly Reports?

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Designated ethics supervisors must submit copies of notices of potential violations received and the corresponding determinations to the Attorney General for review by the state ethics attorney as part of the quarterly report required by the Ethics Act.

- Reports are due in April, July, October and January for the preceding quarter.
- A sample report may be found on the Department of Law's ethics website.
- An executive director may file a quarterly report on behalf of the chair and combine it with his or her own report.
- If a board or commission does not meet during a quarter and there is no other reportable activity, the DES advises the Department of Law Ethics Attorney by e-mail at [ethicsreporting@alaska.gov](mailto:ethicsreporting@alaska.gov) and no other report is required.

If the state ethics attorney disagrees with a reported determination, the attorney will advise the DES of that finding. If the ethics attorney finds that there was a violation, the member who committed the violation is not liable if he or she fully disclosed all relevant facts reasonably necessary to the ethics supervisor's or commission's determination and acted consistent with the determination.

## How Does A DES or Board or Commission Get Ethics Advice?

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A DES or board or commission may make a **written request** to the Attorney General for an opinion regarding the application of the Ethics Act. In practice, the Attorney General, through the state ethics attorney, also provides **advice by phone or e-mail** to designated ethics supervisors, especially when time constraints prevent the preparation of timely written opinions.

- A request for advice and the advisory opinion are confidential.
- The ethics attorney endeavors to provide prompt assistance, although that may not always be possible.
- The DES must make his or her determination addressing the potential violation based on the opinion provided.

It is the obligation of each board or commission member, as well as the staff, to ensure that the public's business is conducted in a manner that is consistent with the standards set out in the Ethics Act. We hope this summary assists you in ensuring that your obligations are met.

<sup>1</sup> The Act covers a board, commission, authority, or board of directors of a public or quasi-public corporation, established by statute in the executive branch of state government.

<sup>2</sup> The governor has delegated the DES responsibility to Guy Bell, Administrative Director of the Office of the Governor.

<sup>3</sup> You may supplement the disclosure form with other written explanation as necessary. Your signature on a disclosure certifies that, to the best of your knowledge, the statements made are true, correct and complete. False statements are punishable.

<sup>4</sup> In most, but not all, situations, refraining from participation ensures that a violation of the Ethics Act does not occur. Abstention does not cure a conflict with respect to a significant direct personal or financial interest in a state grant, contract, lease or loan because the Ethics Act prohibition applies whether or not the public officer actually takes official action.

<sup>5</sup> The chair must give a copy of the written determination to the disclosing member. There is a determination form available on the Department of Law's ethics web page. The ethics supervisor may also write a separate memorandum.

<sup>6</sup> In this manner, a member's detailed personal and financial information may be protected from public disclosure.

<sup>7</sup> When a matter of particular sensitivity is raised and the ramifications of continuing without an advisory opinion from the Attorney General may affect the validity of the board or commission's action, the members should consider tabling the matter so that an opinion may be obtained.

<sup>8</sup> The DES provides a copy of the notice to the employee who is the subject of the notice and may seek input from the employee, his or her supervisor and others. The DES may seek advice from the Attorney General. A copy of the DES' written determination is provided to the subject employee and the complaining party. The DES submits a copy of both the notice and the determination to the Attorney General for review as part of the DES' quarterly report. If feasible,

the DES shall reassign duties to cure a potential violation or direct divestiture or removal by the employee of the personal or financial interests giving rise to the potential violation.

6/14

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The Attorney General and Department of Law staff may not provide legal advice to private citizens or organizations. Please contact an attorney if you need legal advice. The [Alaska Lawyer Referral Service](#) or your local bar association may be able to assist you in locating a lawyer.

Alaska Department of Law

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## Ethics Disclosure Form

<p style="text-align: center;"><b>CONFIDENTIAL</b> <b>REQUEST FOR ETHICS DETERMINATION</b></p>
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TO: \_\_\_\_\_, Designated Ethics Supervisor

\_\_\_\_\_  
*(Identify Your Department, Agency, Public Corporation, Board, Commission)*

I request advice regarding the application of the Executive Branch Ethics Act (AS 39.52.010 - .960) to my situation. The situation involves the following:

I have provided additional information in the attached document(s).

I believe the following provisions of the Ethics Act may apply to my situation:

- AS 39.52.120, Misuse of Official Position
- AS 39.52.130, Improper Gifts
- AS 39.52.140, Improper Use or Disclosure of Information
- AS 39.52.150, Improper Influence in State Grants, Contracts, Leases or Loans
- AS 39.52.160, Improper Representation
- AS 39.52.170, Outside Employment Restricted
- AS 39.52.180, Restrictions on Employment after Leaving State Service
- AS 39.52.190, Aiding a Violation Prohibited

**I understand that I should refrain from taking any official action relating to this matter until I receive your advice.** If the circumstances I described above may result in a violation of AS 39.52.110 - .190, I intend that this request serve as my disclosure of the matter in accordance with AS 39.52.210 or AS 39.52.220.

I certify to the best of my knowledge that my statement is true, correct, and complete. In addition to any other penalty or punishment that may apply, the submission of a false statement is punishable under AS 11.56.200 - AS 11.56.240.

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Date)*

\_\_\_\_\_  
*(Printed Name)*

\_\_\_\_\_  
*(Division, Board, Commission)*

\_\_\_\_\_  
*(Position Title)*

\_\_\_\_\_  
*(Location)*

*Designated Ethics Supervisor: Provide a copy of your written determination to the employee advising whether action is necessary under AS 39.52.210 or AS 39.52.220, and send a copy of the determination and disclosure to the attorney general with your quarterly report.*

**Ethics Disclosure Form**

**Receipt of Gift**

TO: \_\_\_\_\_, Designated Ethics Supervisor, \_\_\_\_\_  
*(Agency, Public Corporation, Board, Commission or Council)*

This disclosure reports receipt of a gift with value in excess of \$150.00 by me or my immediate family member, as required by AS 39.52.130(b) or (f).

- 1. Is the gift connected to my position as a state officer, employee or member of a state board or commission?  
 Yes    No
- 2. Can I take or withhold official action that may affect the person or entity that gave me the gift?  
 Yes    No

*(If you answer "No" to both questions, you do not need to report this gift. If the answer to either question is "Yes," or if you are not sure, you must complete this form and provide it to your designated ethics supervisor.)*

The gift is \_\_\_\_\_

Identify gift giver by full name, title, and organization or relationship, if any:

\_\_\_\_\_

Describe event or occasion when gift was received or other circumstance explaining the reason for the gift:

\_\_\_\_\_

My estimate of its value is \$ \_\_\_\_\_ The date of receipt was \_\_\_\_\_

The gift was received by a member of my family. Who? \_\_\_\_\_

*If you checked "Yes" to question 2 above, explain the official action you may take that affects the giver (attach additional page, if necessary):*

\_\_\_\_\_

I certify to the best of my knowledge that my statement is true, correct, and complete. In addition to any other penalty or punishment that may apply, the submission of a false statement is punishable under AS 11.56.200 - AS 11.56.240.

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Date)*

\_\_\_\_\_  
*(Printed Name)*

\_\_\_\_\_  
*(Division)*

\_\_\_\_\_  
*(Position Title)*

\_\_\_\_\_  
*(Location)*

Ethics Supervisor Determination:  Approve    Disapproved

\_\_\_\_\_  
Designated Ethics Supervisor\*

\_\_\_\_\_  
*(Date)*

*\*Designated Ethics Supervisor: Provide a copy of the approval or disapproval to the employee. If action is necessary under AS 39.52.210 or AS 39.52.220, attach a determination stating the reasons and send a copy of the determination and disclosure to the attorney general with your quarterly report.*

1 STATE OF ALASKA  
2 DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT  
3 DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING  
4 BOARD OF EXAMINERS IN OPTOMETRY

5  
6 TELECONFERENCE

7 August 5, 2019  
8

9 *The staff of the Division of Corporations, Business and Professional Licensing prepared these*  
10 *draft minutes. They have not been reviewed or approved by the Board.*  
11

12 By authority of AS 08.01.070(2) and in compliance with the provision of AS 44.62,  
13 Article 6, a scheduled teleconference of the Board of Examiners in Optometry was held on  
14 August 5, 2019, at 333 Willoughby Avenue, 9<sup>th</sup> Floor, Juneau AK  
15  
16

17 **Agenda Item 1 – Call Meeting to Order / Roll Call**  
18

19 **Dr. Damien Delzer calls the meeting to order at 12:05pm**  
20

21 Roll call:

22 Dr. Pam Steffes, Sitka – Present  
23 Dr. Bradley Cross, Soldotna – Present  
24 Mr. Eric Lingle, Juneau – Present  
25 Dr. Damien Delzer, Fairbanks – Present  
26 Dr. Erik Christianson, Ketchikan – Absent  
27

28 Juneau staff:

29 Renee Hoffard – Present  
30 Emily Mesch – Present  
31

32 Dr. Michael Vernon and Dr. Jaqueline Lamigo are present as members of the public.  
33

34 **Agenda Item 2 – Approve Meeting Agenda**  
35

36 Dr. Cross asks if ongoing investigation should be added to agenda. Dr. Delzer clarifies that the  
37 investigations department is solely responsible for the investigation at this point.  
38

39 **Dr. Steffes moves to approve the agenda. Dr. Cross seconds.**  
40  
41  
42

Board Member	Approve	Deny	Recuse
Dr. Pam Steffes	X		
Dr. Bradley Cross	X		
Mr. Eric Lingle	X		
Dr. Damien Delzer	X		

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**The agenda is approved unanimously**

Dr. Steffes proposes changing the order post-vote, withdraws proposal after clarification from Renee.

Dr. Christianson joins meeting at 12:08

**Agenda Item 3 – Regulations Project**

Dr. Delzer confirms that everyone has reviewed the public comments, and opens floor for discussion.

Dr. Delzer cites input given by Dr. Karpik that suggested adding the word “known” to regulations, asks if that change would require a separate review. Renee says that only substantial changes require further review, leaves at 12:12pm to determine if the cited addition is considered substantial.

Dr. Cross supports keeping the current wording.

Dr. Steffes supports keeping the current wording.

Dr. Christianson agrees. It is determined not to adopt Dr. Karpik’s suggestions.

Mr. Lingle cites several comments from non-optometry medical professionals who oppose the new regulations, asks that those concerns be addressed.

Dr. Delzer cites examples of concerns that are already addressed

Renee returns at 12:17

Dr. Cross states that this regulation follows precedent for all expansion of scope laws.

Renee reports that addition of the word “known” would be considered clarifying what is already there, and not a change in the regulation.

Dr. Steffes re-emphasizes places where the commentary appears to criticize issues addressed elsewhere.

**Dr. Steffes makes a motion to move the proposed regulation 12 AAC 48.040 forward after consideration of public comment and expense to the private individual and resident of Alaska. Dr. Christianson seconds.**

Board Member	Approve	Deny	Recuse
Dr. Pam Steffes	X		
Dr. Bradley Cross	X		
Mr. Eric Lingle	X		
Dr. Damien Delzer	X		
Dr. Erik Christianson	X		

84

85 **The board adopts the regulations with no changes. Dr. Delzer signs certification order.**

86

87 **Agenda Item 4 – Tabled Applications**

88

89 Dr. Delzer asks how best to proceed with discussion on tabled applications in order to preserve  
 90 confidentiality. Renee suggests an executive session followed by addressing each applicant if necessary,  
 91 clarifies general procedures on how that would work.

92

93 **Dr. Cross moves to enter executive session. Dr. Steffes seconds.**

94

95

Board Member	Approve	Deny	Recuse
Dr. Pam Steffes	X		
Dr. Bradley Cross	X		
Mr. Eric Lingle	X		
Dr. Damien Delzer	X		
Dr. Erik Christianson	X		

96

97 **Board enters executive session, is off the record at 12:30pm**

98

99 **Board exits executive session at 1:05pm**

100

101 **Dr. Steffes moves that M. Vernon’s application be tabled pending an updated verification of clinical  
 102 practice hours to include the correct dates, starting three years prior to application date, along with  
 103 clarification on how clinical practice hours in Washington can be verified by someone primarily  
 104 practicing in Tennessee. Dr. Christianson seconds**

105

Board Member	Approve	Deny	Recuse
Dr. Pam Steffes	X		
Dr. Bradley Cross	X		
Mr. Eric Lingle	X		
Dr. Damien Delzer	X		
Dr. Erik Christianson	X		

106

107 **Motion passes unanimously.**

108

109 **Dr. Steffes moves that J. Lamigo’s application be tabled pending one of two actions: 1) pass the ISE, 2)  
 110 amend the application to be by credentials and complete the verification of clinical hours  
 111 requirement. Mr. Lingle seconds.**

112  
113

Board Member	Approve	Deny	Recuse
Dr. Pam Steffes	X		
Dr. Bradley Cross	X		
Mr. Eric Lingle	X		
Dr. Damien Delzer	X		
Dr. Erik Christianson	X		

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**Motion passes unanimously.**

Mr. Lingle suggests inviting public members back into session. Renee states that there is no public commentary on the agenda, and that putting something in writing is preferable. Renee commits to emailing both candidates after meeting adjourns.

**Dr. Christianson moves to adjourn meeting, Mr. Lingle seconds.**

Board Member	Approve	Deny	Recuse
Dr. Pam Steffes	X		
Dr. Bradley Cross	X		
Mr. Eric Lingle	X		
Dr. Damien Delzer	X		
Dr. Erik Christianson	X		

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**Meeting adjourns at 1:08pm.**

Respectfully Submitted:

\_\_\_\_\_  
Emily Mesch, Licensing Examiner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Dr. Damien Delzer, Chairperson  
Alaska Board of Optometry

\_\_\_\_\_  
Date



**MEMORANDUM**

DATE: October 10, 2019  
TO: Board of Optometry  
THRU: Greg Francois, Chief Investigator *GF*  
FROM: Jasmin Bautista, Investigator *JB*  
RE: Investigative Report for the October 11, 2019 Meeting

The following information was compiled as an investigative report to the Board for the period of April 02, 2019 thru October 10, 2019; this report includes cases, complaints, and intake matters handled since the last report.

Matters opened by the Paralegal in Juneau, regarding continuing education audits and license action resulting from those matters are not covered in this report.

**OPEN - 0**

<u>Case Number</u>	<u>Violation Type</u>	<u>Case Status</u>	<u>Status Date</u>
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**Closed - 0**

<u>Case #</u>	<u>Violation Type</u>	<u>Case Status</u>	<u>Closed</u>	<u>Closure</u>
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**END OF REPORT**

# Is it government's responsibility?

## EVALUATING OCCUPATIONAL LICENSING REGULATION

Department: \_\_\_\_\_ Division \_\_\_\_\_

Rater: \_\_\_\_\_ Role: \_\_\_\_\_ Date: \_\_\_\_\_

Sector/activity/program under review: \_\_\_\_\_

This evaluation tool is based on the principles of **right-touch regulation**, which does not prescribe an outcome but leads the thoughtful regulator to explore what characteristics of oversight will properly limit or address any problems with the activity in question.

The principles state that regulation should aim to be:

<b>Proportionate</b>	Regulators should <b>only intervene when necessary</b> . Remedies should be appropriate to the risk posed, and costs identified and minimized
<b>Consistent</b>	Rules and standards must be <b>aligned and implemented fairly</b>
<b>Targeted</b>	Regulation should be <b>focused on the problem, and minimize side effects</b>
<b>Transparent</b>	Regulators should be <b>open, and keep regulations simple and user friendly</b>
<b>Accountable</b>	Regulators must be able to <b>justify decisions, and be subject to public scrutiny</b>
<b>Agile</b>	Regulation must <b>look forward</b> and be able to <b>adapt to anticipate change</b>

These principles provide the foundation for thinking on policy in all sectors of society. The concept of right-touch regulation emerges naturally from these six principles: bringing together commonly agreed-upon principles of good regulation with understanding of a sector and a quantified and qualified assessment of risk of harm. It is intended for those making decisions about the design of a regulatory framework.

### What this exercise WILL do:

- prompt you to consider new ideas to solve problems
- encourage deep dives into alternatives to regulation
- provide justification and reinforcement of management decisions
- expose you to fresh perspectives
- provide a framework for further discussion

### What this exercise WILL NOT do:

- tell you how to solve the problem
- make you feel comfortable
- force you to change

This workbook is intended to accompany an explanatory presentation with the same title. If you have received the workbook without access to the presentation or materials, please contact Sara Chambers at [sara.chambers@alaska.gov](mailto:sara.chambers@alaska.gov).

## Identify the Problems

We need to identify the problem before we can determine whether any policy is the right one. Often in policy development the need for regulatory change, as a solution, is identified before the problem is properly described and understood. This can lead to inefficiencies as resources are spent developing a regulatory solution when the problem may be better dealt with in other ways.



### *Examples from various professions:*

- An improperly built structure could collapse.
- A person could overdose on prescribed medication.
- Wildlife could be wantonly wasted.

**A. Describe the problems with this profession. List each problem on a separate line.**


## Quantify and Qualify the Risks

Once the problem has been identified, we need to understand it fully and quantify and qualify the risks associated with it. Quantifying risks means gauging the likelihood of harm occurring and its severity. Qualifying risks means looking closely at the nature of the harm, and understanding how and why it occurs. Without this two-fold evaluation, which must be based on evidence, it is impossible to judge whether regulatory action is necessary, what type of regulatory response might be needed, or whether it would be better to use other means of managing the issues. Regulation should only be chosen when it clearly provides the best solution. Simply identifying a real or potential risk is not sufficient.

## B. Create a *hazard profile* for each problem

Intrinsic Hazards		Extrinsic Hazards	
<p><b>Complexity</b></p> <p>The complexity and inherent hazards of the activity</p>	<p>Potential for harm caused by essential features of practice; for example: prescribing, surgical and psychological interventions</p>	<p><b>Scale</b></p> <ul style="list-style-type: none"> <li>• Size of service user group</li> <li>• Size of practitioner or licensee group</li> </ul>	<p>This criterion helps to ascertain the dimensions of harm. If the number of practitioners or service users is small, then this may suggest an alternative method of assurance would be appropriate. Conversely, support workers might pose a small risk volume in terms of complexity but are high in numbers.</p>
<p><b>Context</b></p> <p>The environments in which the intervention takes place</p>	<p>Environments with varying levels of oversight (hospitals, private practice, homes) may indicate greater or lesser opportunity for hazards—or the ability to proactively or reactively manage hazards.</p>	<p><b>Perception</b></p> <p>Need for:</p> <ul style="list-style-type: none"> <li>• Public confidence in the occupation</li> <li>• Assurance for employers or other stakeholders</li> </ul>	<p>This criterion enables consideration of probable effects on public confidence in the occupation or needs of employers or other agencies using the services of the occupational group.</p> <p>Take care not to allow false perceptions influence your answers.</p>
<p><b>Agency</b></p> <p>Service user vulnerability or autonomy</p>	<p>Contact with service users who may have less ability to exercise control over their care and circumstances may indicate a greater opportunity for hazards.</p>	<p><b>Impact of regulation</b></p> <ul style="list-style-type: none"> <li>• Market</li> <li>• Workforce</li> <li>• Quality</li> <li>• Cost</li> <li>• Innovation</li> </ul>	<p>This criterion considers the impact of assurance mechanisms on the cost and supply of the occupation.</p> <p>Market impact might include market size, prices, trading conditions, labor supply, employer needs, cost to licensee.</p>
		<p><b>Unintended Consequences</b></p>	<p>Any identifiable unintended consequences of the proposed forms of assurance are considered so that any implications can be addressed.</p>

<b>Problem</b>	<b>Intrinsic Hazards</b>	<b>Extrinsic Hazards</b>
	1.  2.  3.	1.  2.  3.

### C. What is the possibility for the hazard(s) to lead to creation of a harm?

<b>1-2</b>	<b>No harm to person or property</b> is associated with this profession.
<b>3-4</b>	<b>Minimal possibility of harm:</b> Unlikely to occur because conditions for hazards are unusual or infrequent.
<b>5-6</b>	<b>Moderate possibility of harm:</b> Possible to occur because conditions for hazards may be present.
<b>7-8</b>	<b>Significant possibility of harm:</b> Likely to occur because hazards are frequently present.
<b>9-10</b>	<b>Significant possibility of harm:</b> Certain to occur because hazards are always present.

<b>Hazard</b>	<b>Possibility Rating</b>	<b>Explanation of the possibility of harm:</b> What is the likelihood for something to go wrong? What conditions must be triggered?
1.		
2.		
3.		
4.		

5.		
6.		
7.		
8.		
9.		
10.		

## D. What is the significance of the harm?

<b>1-2</b>	<b>No harm to person or property</b> is associated with this profession.		
<b>3-4</b>	<b>Minimal harm to property:</b> Items of low dollar value or low quantity could be damaged or destroyed.		
<b>5-6</b>	<b>Moderate harm to property</b> Multiple structural systems or components or a single system/component of moderate value or investment could be damaged or destroyed.	<b>OR</b>	<b>Minimal harm to life, health, or safety</b> <ul style="list-style-type: none"> <li>Physical/emotional/mental harm to a person could be limited and minor, no treatment required</li> <li>Small number of people possibly affected</li> </ul>
<b>7-8</b>	<b>Significant harm to property</b> Total loss of significant structure or investment	<b>OR</b>	<b>Moderate harm to life, health, or safety</b> to a person <ul style="list-style-type: none"> <li>Temporary, treatable physical/emotional/mental injury could occur</li> <li>Larger number of people possibly affected</li> </ul>
<b>9-10</b>	<b>Significant harm to life, health, or safety:</b> Permanent physical/emotional/mental injury or death could occur. Wide audience of potential victims.		

Hazard	Significance Rating	Explanation of the significance of the harm
1.		
2.		
3.		
4.		
5.		
6.		
7.		

8.		
9.		
10.		

**Total your ratings regarding *harm*:**

Hazard	Harm Possibility Rating	Harm Significance Rating	<b>TOTAL</b>
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

**Write down any observations regarding your rating totals:**

## Get as Close to the Problem as Possible

Once we have identified the problem and fully understood the risks, we must look for a solution that is as close to the problem as possible. Regulation is distant and removed from the point of care and problems are best solved near to where they occur. Targeted regulation needs to understand both the range of hazards and the factors that increase or decrease the risk of them resulting in harm. This means understanding the context in which the problem arises and the different tools that may be available to tackle the issues. We may need to work with organizations and individuals that are closer to the problem to bring about change. Some problems may be best tackled by regulatory measures applying to a whole profession, while others may require more targeted regulation or a non-regulatory approach.

## Focus on the Outcome

Adopting a “right-touch” approach means staying focused on the outcome that we are looking to achieve, rather than being concerned about process, or prioritizing interests other than public safety. The outcome should be both tangible and measurable, and it must be directed towards the reduction of harm. Staying focused on the outcome helps identify the most appropriate solution. Having a clearly defined and measurable outcome also makes it easier to measure effectiveness.

## Use Regulation Only When Necessary

Once the problem has been considered, we may begin to examine whether a regulatory change is the right proposal, evaluating this against the options of doing nothing and the risks and benefits of intervening. Making changes to regulation, especially statutory regulation, can be a slow process, so regulation should only be used as a solution when other actions are unable to deliver the desired results. A right-touch regulatory solution must keep to the six principles of good regulation and should build on existing approaches where possible. This will often involve looking for solutions other than regulation and may require regulators to work with other organizations and people to bring about change.

**E. How can the hazards be managed without state regulation?** Total harm ratings under 14 *may best be managed through non-governmental strategies*. If they can't, explain why.

<b>0</b>	<b>Market competition</b>	Yelp, Angie's List, Facebook, word of mouth
<b>0</b>	<b>Quality service self-disclosure</b>	Written specific warranty or money-back guarantee
<b>0</b>	<b>Voluntary third-party certification</b>	Better Business Bureau, national accreditation
<b>1</b>	<b>Partnership with stakeholders</b>	Employer/facility oversight, such as training, qualifications, codes of conduct, supervision, and evaluation
<b>1</b>	<b>Voluntary bonding/insurance</b>	Proof of insurance or bond is available
<b>2</b>	<b>Local/municipal ordinance</b>	Regulated or managed at the local level
Assign numbers	<b>Other ideas:</b>	

<b>Hazard</b>	<b>Non-State Management Rating</b>	<b>Explanation of your suggested management <i>solution</i> in section E</b>
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

## Keep it Simple

For regulation to work, it must be clear to those who are regulated, clear to the public, clear to employers, and clear to the regulator. If each cannot explain to the other what the purpose of a regulation is and why it will work, it is not simple. This is as true in health and social care, with such a wide variety of agencies and individuals involved, as it is in other sectors. Avoiding complexity will lead to a greater impact. A regulatory response should be as simple as it can be while achieving the desired outcome.

## Check for Unintended Consequences

Assessing the probable impact of a particular solution is an essential step to help us avoid unintended consequences. In a system as interconnected and complex as health and social care, for example, it is inevitable that proposing a change in policy and practice will have consequences for other parts of the system. If regulations are not workable, people will work around them and in doing so create new risks. Regulating to remove one risk without a proper analysis of the consequences may create new risks or merely move the risk to a different place.

**F. How can the risk of hazards be managed through government regulation?** List the potential unintended consequences or new risks created by government intervention.

**Do these consequences outweigh the benefits of regulation? Why is state intervention the only solution?** Validate your answer; you may find that you change your mind.

<b>2</b>	<b>Legal recourse/consumer protection acts</b>	Legal grounds for court action, may enjoin the state
<b>3</b>	<b>Mandatory bonding/insurance</b>	Law requires proof of insurance or bonding
<b>5</b>	<b>State Inspection</b>	Periodic safety or compliance reviews by state agency
<b>6</b>	<b>State Registration</b>	Must be on an approved state list; minimal entry criteria required
<b>8</b>	<b>State Certification</b>	Must meet state criteria, no discipline is applicable
<b>10</b>	<b>State Licensure</b>	Must meet state criteria, may be disciplined for violations

<b>Hazard</b>	<b>State Management Rating</b>	<b>Explanation of your suggested management <i>solution</i> in section F</b>
1.		

2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

**G. Rate the level of restriction on market participants or restriction of access to services created by the management of each hazard.**

<b>1-2</b>	<b>Not restrictive:</b> No solution is necessary.
<b>3-4</b>	<b>Minimally restrictive:</b> A voluntary market solution like self-certification or bonding was selected. Most people can easily meet these criteria, and the service is widely available.
<b>5-6</b>	<b>Moderately restrictive:</b> A low-impact regulatory solution like registration, bonding, or insurance was selected. Most people seeking to enter the profession can meet these criteria, and the service is available in most markets.
<b>7-8</b>	<b>Very restrictive:</b> National certification/examination or another universal industry standard was selected. Many people seeking to enter the profession can meet these criteria, and the service is usually available in medium-to-large markets.
<b>9-10</b>	<b>Extremely restrictive:</b> Full licensure with criteria like restricted education, supervision, and examination was selected. Some people seeking to enter the profession can meet these criteria, and the service is usually only available in large markets.

Hazard	Restrictiveness Rating	Explanation of the restrictions created by your suggested <i>management</i> solutions in sections E and F.
1.		
2.		
3.		

4.		
5.		
6.		
7.		
8.		
9.		
10.		

## Review and Respond to Change

We should build flexibility into regulatory strategy to enable regulation to respond to change. All sectors evolve over time, as a result of a range of different influences. Regulators must not be left managing the crises of the past, while ignoring or being unable to react to new evidence that calls for change. This is what we mean by agility. A program of regular reviews, evaluation, and sunset audits can all help here.

### H. Rate the level of flexibility of the management strategy as determined above.

<b>1</b>	<b>Extremely flexible:</b> No solution is necessary.	
<b>3</b>	<b>Moderately flexible:</b> Solution is managed by the participant or employer.	
<b>7</b>	<b>Minimally flexible:</b> Management of the problem requires state regulation change.	
<b>10</b>	<b>Not flexible:</b> Management of the problem requires state statute change.	
Hazard	Flexibility Rating	Provide method and frequency of evaluation to determine whether the solution is relevant and effective and—if not—how changes can be made
1.		
2.		
3.		
4.		

5.		
6.		
7.		
8.		
9.		
10.		

## I. Total all your *management* ratings:

Below your ratings, write down your observations. Are you surprised that a particular hazard has a higher number—and therefore a more regulatory management response—than others? Reconsider any changes. If you are doing this exercise in a small group, discuss your ratings and answers with colleagues.

Hazard	Non-State Management Rating	State Management Rating	Restrictiveness Rating	Flexibility Rating	TOTAL
1.					
2.					
3.					
4.					
5.					

6.					
7.					
8.					
9.					
10.					

## J. Determining next steps

What must happen to adjust the climate of regulation of the profession you are reviewing? Review the documentation you have created in the previous exercises.

<b>Hazard</b>	<b>Changes needed to implement new management strategies</b>	<b>Current inhibitors to improvement in management of relevant hazards</b>
1.		
2.		
3.		
4.		
5.		

6.		
7.		
8.		
9.		
10.		



# IS IT GOVERNMENT'S RESPONSIBILITY?

RETHINKING REGULATION, RISK, AND  
RESPONSIBILITY  
IN STATE GOVERNMENT

*The best government is that which governs least.*

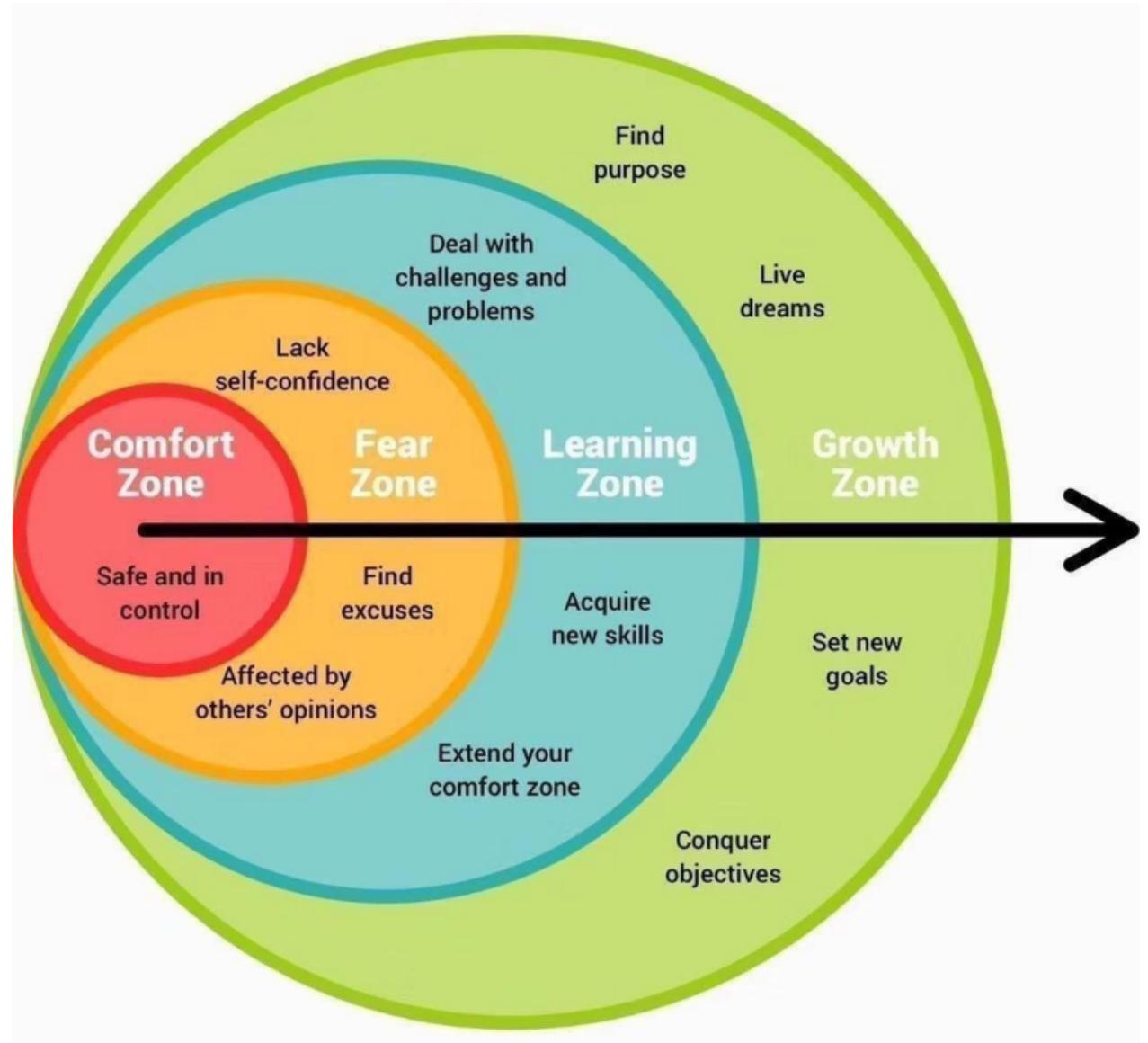
*John L. O'Sullivan, The United States Magazine and Democratic Review, Vol. 1 (1837)*

# LEARNING OBJECTIVES

- Rethink options to manage risk
- Break out of comfort zone
- Hear different perspectives
- Enable you to:
  - Evaluate current and proposed management strategies
  - Propose statute, regulation, or administrative changes to the existing regulatory landscape

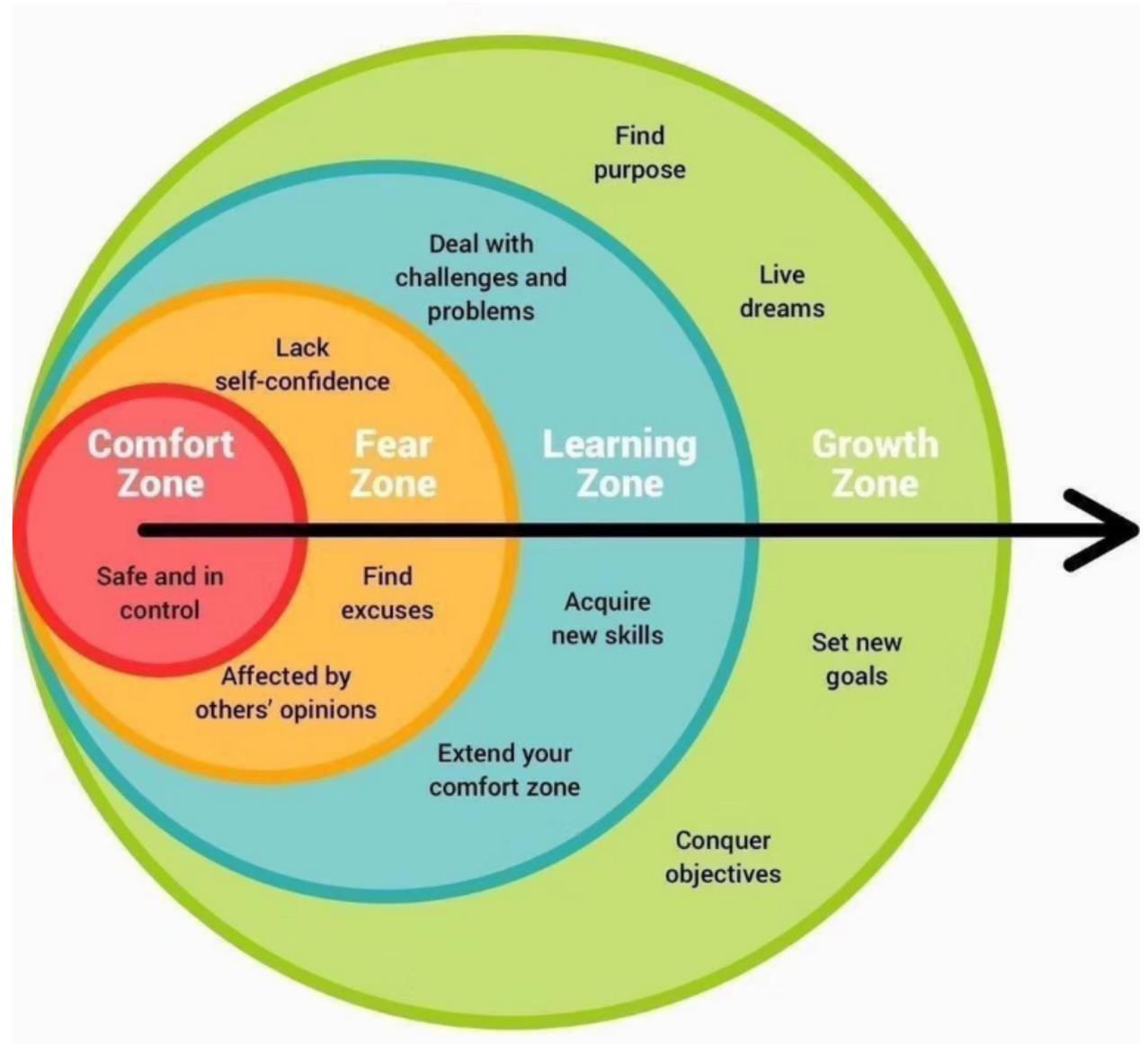
# THIS EXERCISE WILL:

- prompt you to consider new ideas to solve problems
- expose you to fresh perspectives
- encourage deep dives into alternatives to regulation
- provide a framework for further discussion
- provide justification and reinforcement of management decisions



# THIS EXERCISE WILL NOT:

- tell you how to solve the problem
- make you feel comfortable
- force you to change



# WHAT IS THE ROLE OF GOVERNMENT?

- Form a more perfect union
- Establish justice
- Insure domestic tranquility
- Provide for the common defense
- Promote the general welfare
- Secure the blessings of liberty
- Secure and transmit to succeeding generations our heritage of political, civil, and religious liberty within the union of states

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**Preamble to the Constitution  
of the United States of  
America**

**Preamble to the Alaska  
Constitution**

# SO, WHY DO WE DO WHAT WE DO?

- Limit risk before it happens
- Provide remedy & redress of wrongs
- Gather, disseminate, and analyze data
- Ensure public process
- Create a revenue stream to pay for services
- Ensure transparency
- Provide public services
- Create stability and maintain order
- Set forth common boundaries, rights, and systems for governance
- Other reasons?

# IS IT *REALLY* GOVERNMENT'S RESPONSIBILITY?

Is it a **proper activity** of government?

Does it **duplicate work** performed in the private sector?

Does it **require a monopoly**, or can multiple entities do it?

Is it **mandated by the federal government**?

For the purpose of this exercise, include any activity performed by your agency.

# IS IT *REALLY* GOVERNMENT'S RESPONSIBILITY?

Or, do we ask government to perform our activity because:

**We have always done it that way?**

**We can't think of another way to do it?**

**We feel ownership over the activity?**

**We don't have the resources to do explore options?**

**We don't have the resources to do manage the change?**

**Statutory change is too volatile and cumbersome?**

**Stakeholders want us to do it / no alternatives?**

**The public is complacent?**

Other legitimate reasons, weak excuses, unexposed biases?

# ARE WE DOING IT WELL?

Is the way we perform our activity:

The most { **effective**  
**cost-efficient**  
**time-efficient**  
**customer-friendly**  
**inclusive** } way to do it?

# **RIGHT-TOUCH REGULATION**

**A RISK-MANAGEMENT APPROACH TO EVALUATING  
REGULATORY ACTIVITY**

*Time to use your workbook!*

# SECTION A: IDENTIFY THE PROBLEMS

The following bad things could happen when this activity is performed:

- 1.
- 2.
- 3.
- 4.
- 5.

# SECTION B: CREATE A *HAZARD PROFILE*

What are the inherent (intrinsic) hazards present when the problem occurs?

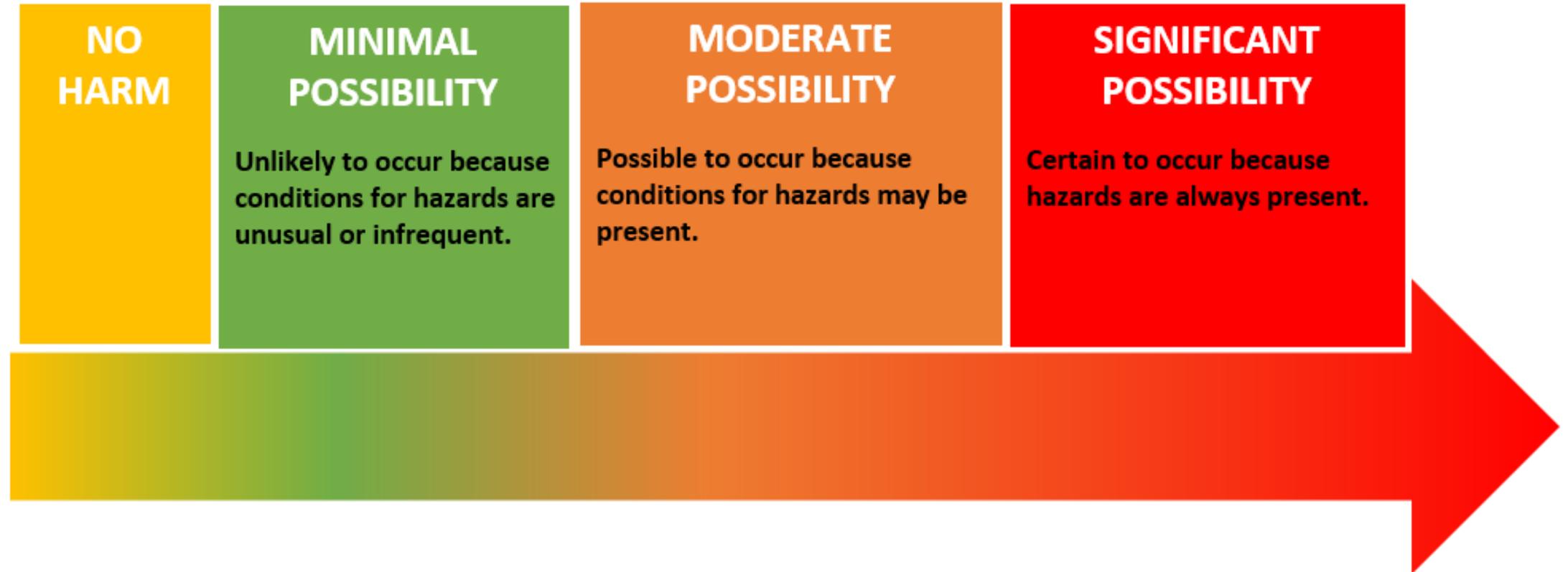
- Complexity
- Context
- Agency

What are the external (extrinsic) hazards present when the problem occurs?

- Scale
- Perception
- Impact of regulation
- Unintended consequences

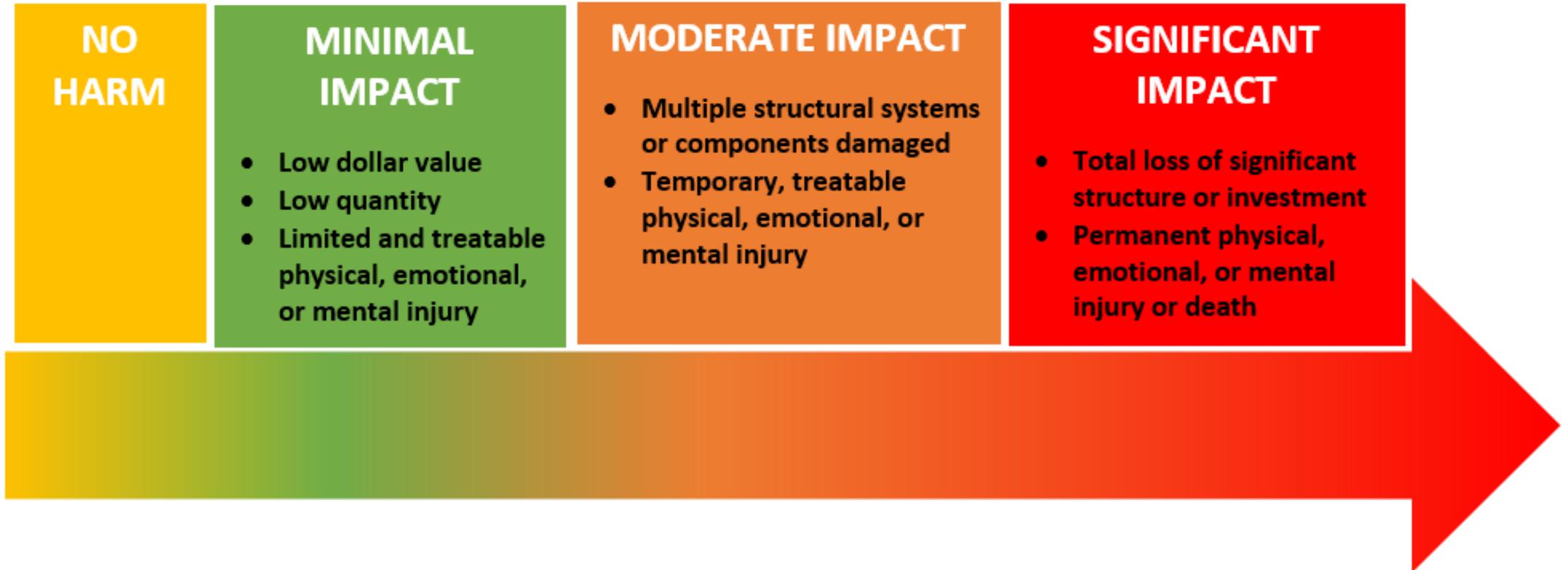
# SECTION C: HARM POSSIBILITY

What is the *possibility* for the hazard to lead to creation of a harm?



# SECTION D: HARM SIGNIFICANCE

If a harm occurs, what is its significance?



# SECTION D: HARM RATINGS

**Harm Possibility + Harm Significance = Total Harm Rating**

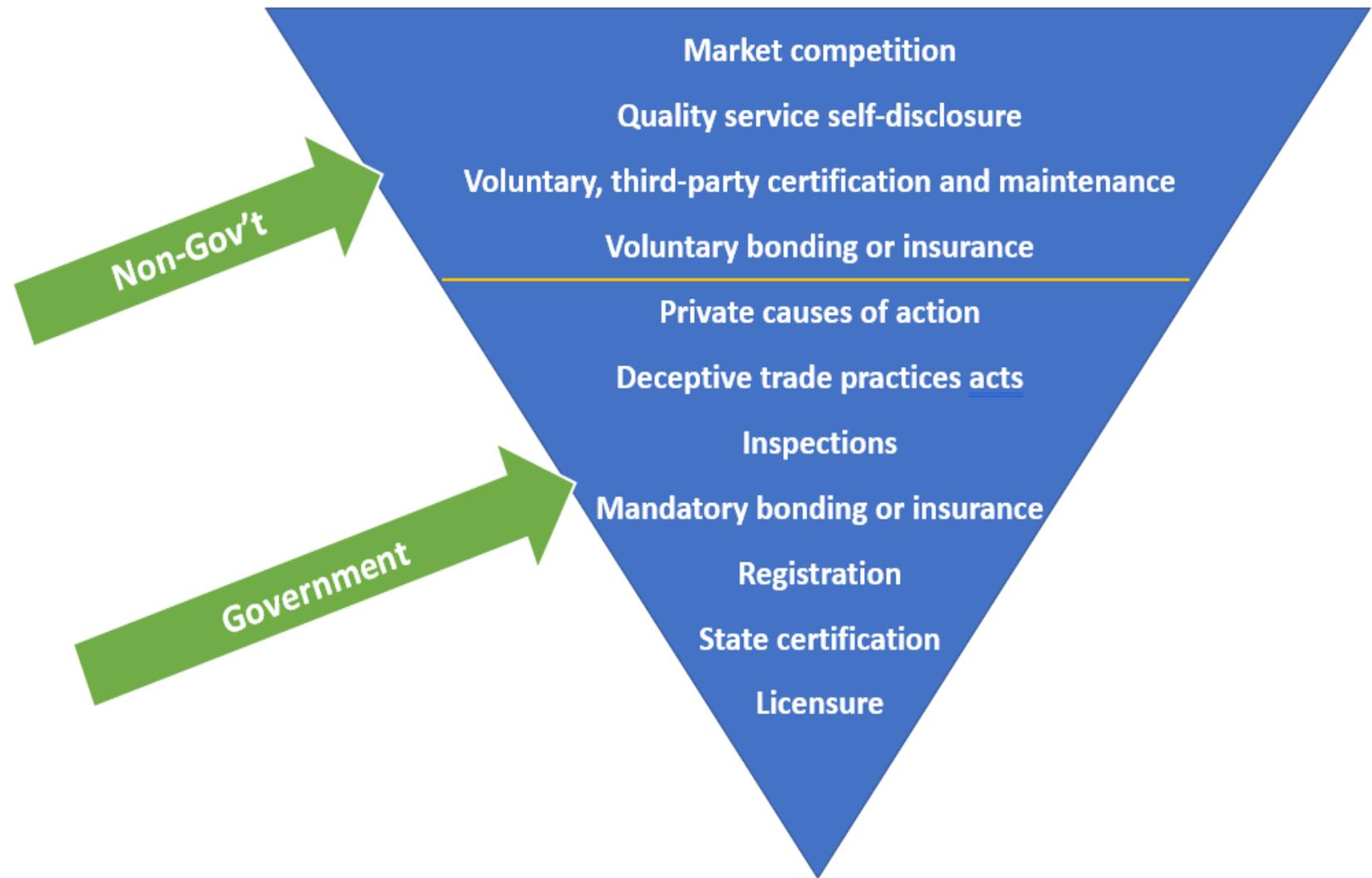
There is no scientific “high” or “low” harm rating for any particular regulated program or activity.

Compare your score with others:

- Did you have similar ratings?
- If not, what data is missing?
- What opinions or biases exist?
- Note any observations and make appropriate changes.

# SECTIONS E & F: HAZARD MANAGEMENT

Examples from the world of professional licensure



# SECTIONS E & F: HAZARD MANAGEMENT

The good, the bad, and the ugly: What is an acceptable level of risk? Oversight? Expense? Flexibility?

## MARKET

- Yelp, Angie's List, Facebook
- Written warranty or money-back guarantee
- Better Business Bureau, Good Housekeeping Seal, national accreditation
- Employer/facility oversight
- Voluntary proof of insurance or bond

## PALLIATIVE REGULATION

- Law requires proof of insurance or bonding
- Legal grounds for court action, may enjoin the state
- May be disciplined for violations

## PREVENTATIVE REGULATION

- Must appear on an approved state list
- Periodic safety or compliance reviews by state agency
- Must meet state criteria



# SECTIONS G & H: HAZARD MANAGEMENT

The good, the bad, and the ugly: What is an acceptable level of risk? Oversight? Expense? Flexibility?

Non-governmental regulation	Governmental regulation
Many options available	Fewer options available
Assumes an element of risk	Presumed safe
Less predictable, more agile	Predictable, slow to change
Less transparent, public process is optional	More transparent, public process is mandatory
Based on policy and practice	Based on statute and regulation
Accountable to the market/consumer	Accountable to state processes and agencies
Recourse through litigation, social media campaigns	Recourse through Administrative Procedures Act
May be unclear who is controlling quality, safety	Identity of the regulator is usually obvious
Cost depends on situation, funding can be fluid	Cost is set in state budget, statute, or regulation

# SECTION I: MANAGEMENT RATINGS

Type of Management + Restrictiveness + Flexibility

**= Total Management Rating**

There is no scientific “high” or “low” management rating for any particular regulated program or activity.

Compare your score with others:

- Below your ratings, write down your observations and opinions.
- Are you surprised that a particular hazard has a higher number—and therefore a more regulatory management response—than others?
- Reconsider any changes.

# SECTION J: NEXT STEPS

**What are the next steps to adjust the climate of regulation of the profession you are reviewing?**

Compare your score with others:

- Review the documentation you have created in the previous exercises.
- What changes are needed to implement new management strategies?
- What are current inhibitors to improvement in management of relevant hazards?
- Reconsider any changes.
- Create a written, time-bound plan to accomplish next steps

# **THANK YOU!**

**THE REGULATORY REVIEW TEAM**

**GOVERNOR MICHAEL J. DUNLEAVY**

*Amy Demboski, Assistant Commissioner, DCCED (Project Manager)*

*Julie Anderson, Commissioner, DCCED*

*Adam Crum, Commissioner, DHSS*

*John MacKinnon, Commissioner, DOTPF*

*Sara Chambers, Division Director, DCCED*

*Glenn Hoskinson, Special Assistant, DCCED*

**From:** [REDACTED]  
**To:** [REDACTED]  
**Subject:** Re: Scope of Practice Question  
**Date:** Monday, September 30, 2019 3:20:08 PM

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I guess it should be discussed at the October meeting.

I believe it would be prudent to inform the individual that “board would like to address the issue following enactment of pending regulation changes”.

Thanks

Damien

Sent from my iPhone

On Sep 30, 2019, at 2:01 PM, Mesch, Emily (CED) <[emily.mesch@alaska.gov](mailto:emily.mesch@alaska.gov)> wrote:

Hi Dr. Delzer,

What I can say is that the inquiry is coming from a representative of an academic institution in the lower-48. This is not in reference to a current or prospective licensee, but rather sounds like database compiling. I hope this helps.

Kind regards,

*Emily Mesch*

*Occupational Licensing Examiner  
Division of Corporations, Business and Professional Licensing  
Ph: (907)465-2541 Fax: (907)465-2974*

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**From:** Damien Delzer [REDACTED]  
**Sent:** Monday, September 30, 2019 1:35 PM  
**To:** Mesch, Emily (CED) <[emily.mesch@alaska.gov](mailto:emily.mesch@alaska.gov)>  
**Subject:** Re: Scope of Practice Question

Hi Emily,

May I ask who is inquiring? I want to proceed cautiously in answering this inquiry with our legislative project nearly at completion.

Damien

Damien

Sent from my iPhone

On Sep 30, 2019, at 1:00 PM, Mesch, Emily (CED) <[emily.mesch@alaska.gov](mailto:emily.mesch@alaska.gov)> wrote:

Hi everyone,

I've received a question regarding whether or not Salzmann Nodule removal is within scope of practice in Alaska. I'm not familiar with this procedure, so I'd like to ask you for your input.

Please respond only to me, and not to other board members.

Kind regards,

*Emily Mesch*

*Occupational Licensing Examiner*

*Division of Corporations, Business and Professional Licensing*

*Ph: (907)465-2541 Fax: (907)465-2974*

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**From:** [REDACTED]  
**To:** [Mesch, Emily \(CED\)](#)  
**Subject:** Re: Scope of Practice Question  
**Date:** Monday, September 30, 2019 1:28:53 PM

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Based on the April 2019 regulations, I would say no.  
It's possible that may change as the regulations that address HB 103 are all in effect.

On Mon, Sep 30, 2019 at 1:00 PM Mesch, Emily (CED) <[emily.mesch@alaska.gov](mailto:emily.mesch@alaska.gov)> wrote:

Hi everyone,

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