UTAH | COMMERCE

OPLR 101:

THE OFFICE OF PROFESSIONAL LICENSURE REVIEW

OPLR STATUTORY OVERVIEW

- Executive Order 2021-01 required each executive agency to review rules and regulations for occupational licensing to 1) identify rules and regulations that are no longer necessary, and 2) reduce barriers to working while still protecting the health, safety, and well-being of Utah residents
- SB 16 (2022 general session) created the Office of Professional Licensure Review (OPLR) within the Department of Commerce to perform the following duties:

  The office shall:

  (1) conduct a **sunrise review** of any applications to establish a new regulated occupation

  (2) conduct a **review of each regulated occupation** at least once every 10 years

  (3) review and respond to any **legislator inquiry** regarding a proposed or existing regulated occupation

  (4) **report** to the Business and Labor Interim Committee annually
- SB 16 (2022 general session) was enacted and became Utah Code 13-1b, which applies to any regulation of an occupation that is administered by a state executive branch agency (13-1b-102)

OPLR PROVIDES ONGOING SYSTEMATIC LICENSING REFORM

Stable	Relevant	Continuous
Brings stability for both the licensee and the consumer by creating an expected process for reform	Prevents Utah laws from becoming outdated by creating a systematic process that evaluates current needs and best practice	Sets Utah up for continuous, long-term licensing reform by creating a routine review process based on legislative priorities

OPLR Team

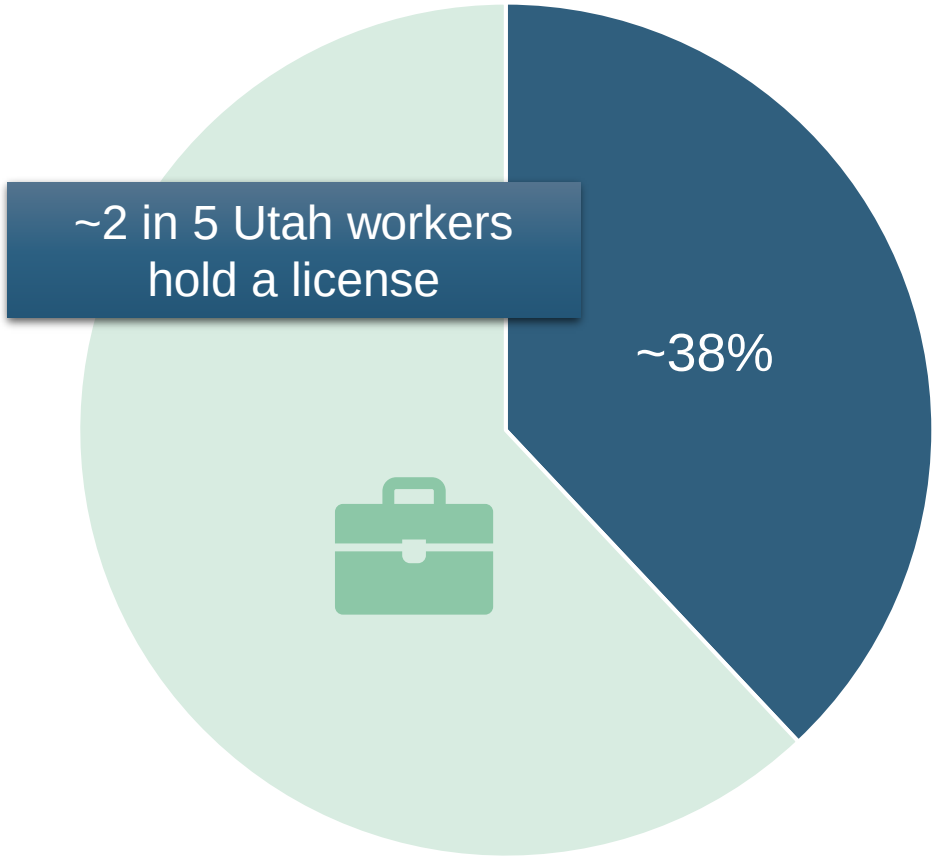
Jeff Shumway, Director
- Leadership roles at the Bridgespan Group and Social Finance (social impact & policy consulting)
- Adjunct professor with BYU's Ballard Center for Social Impact
- M.A. of Public Policy, Harvard Kennedy School; B.S. in Economics, BYU

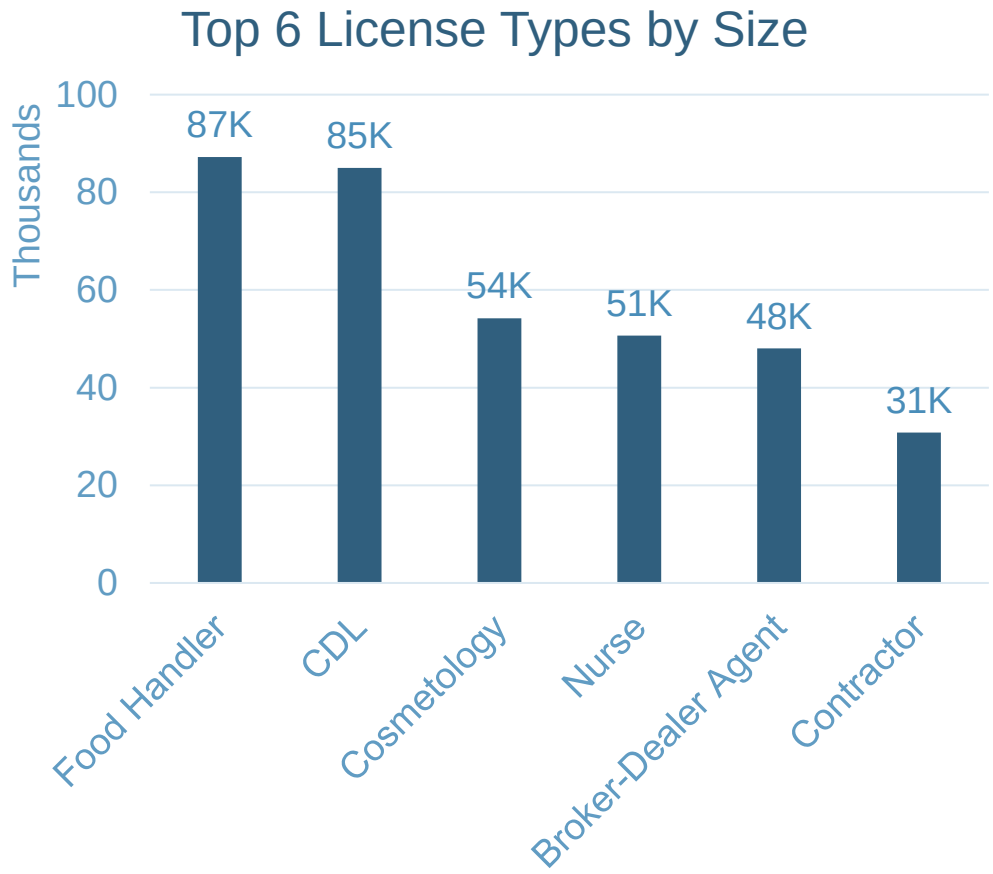
Gabrielle Cunningham, Manager, Research and Policy
- PhD in Management, Oxford; M.A. of Business Administration, BYU
- Research specialization in occupational identity

Laurie Haupt, Policy Analyst
- M.A. of Public Administration, BYU

Prudvi Marneedi, Policy Analyst
- M.A. of Public Health, U of Utah

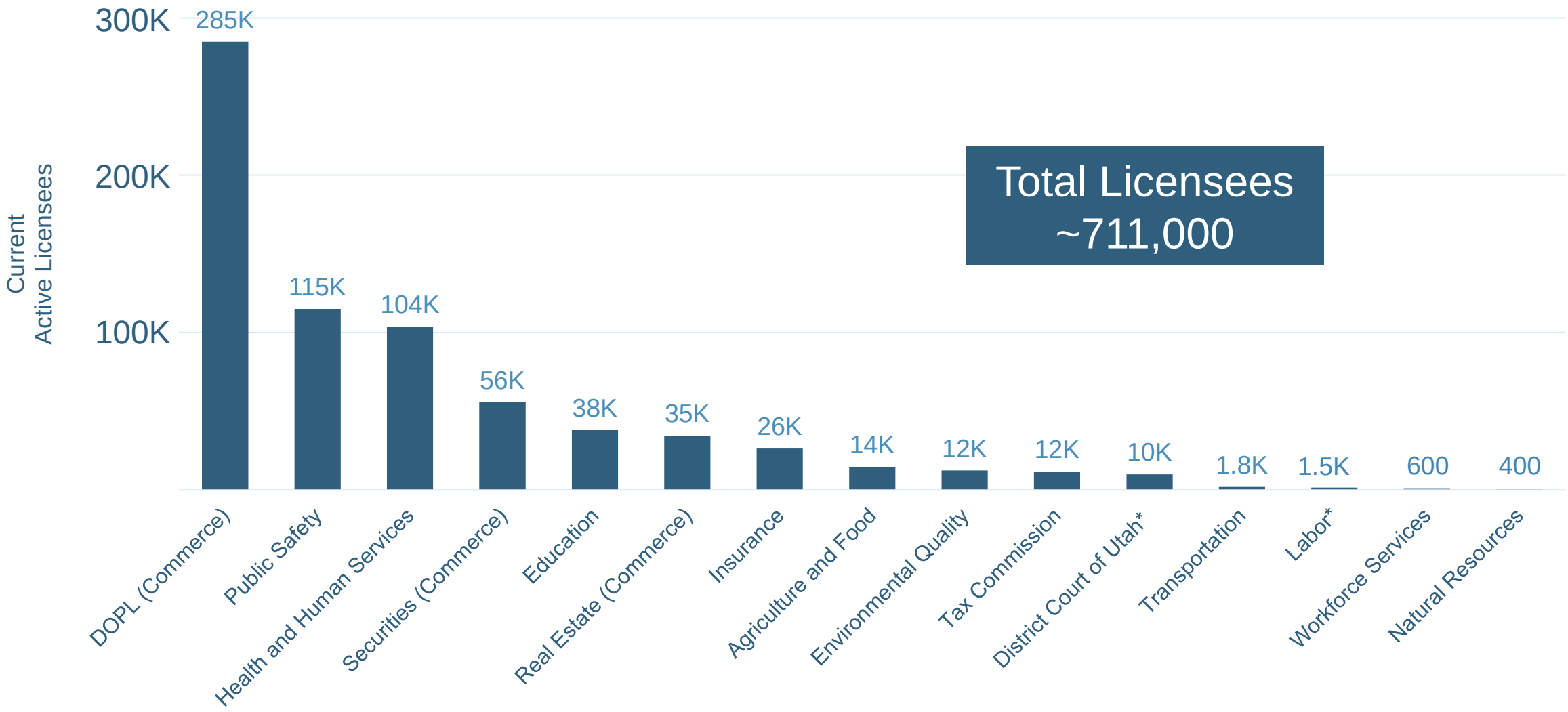
LICENSING HAS A BIG IMPACT ON UTAH'S WORKFORCE





Source: Data on DOPL licenses was obtained from an MLO database report in July 2022. Data on all other executive agency licenses was obtained from communications with agency administrators between July and September 2022.
Notes: 38% estimate based on DWS July 2022 labor force count of 1.7 million workers (seasonally adjusted). Estimate adjusted downward to reflect double count rate within DOPL then applied to other executive branch agencies to estimate the statewide total.

LICENSEES ARE DISTRIBUTED ACROSS UTAH'S AGENCIES



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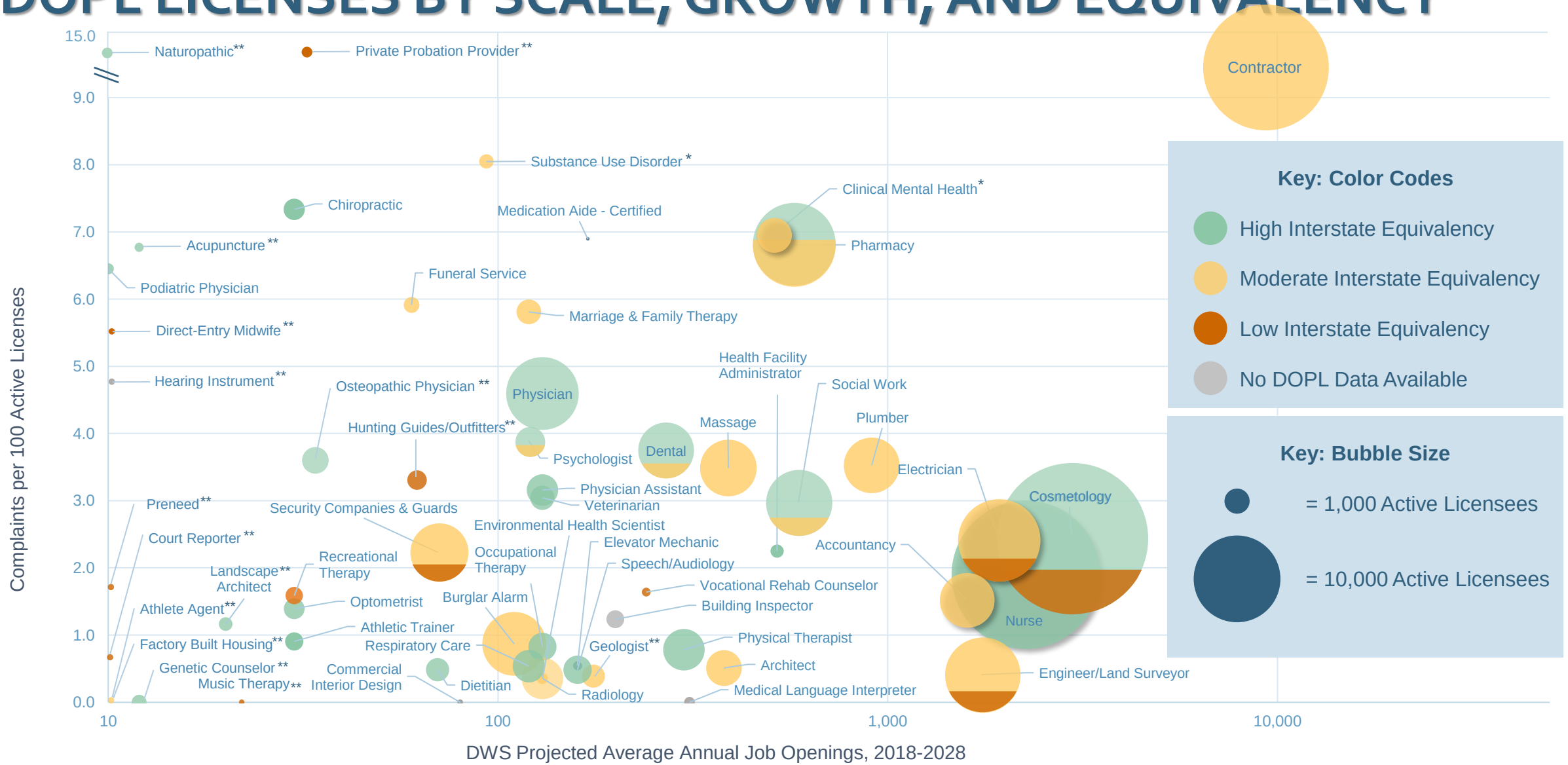
*Licensed attorneys do not fall under OPLR's statutory mandate to review; they are included in this census to be comprehensive. Labor: Certifications are not tracked by the Labor Commission past the initial certification test; this is an estimate of currently employed certified workers based on DWS workforce and industry data.

PRELIMINARY

DOPL LICENSES BY SCALE, GROWTH, AND EQUIVALENCY



Source: Utah DWS Economic Data, 2018-2028 Projected Average Annual Job Openings. Accessed July 21, 2022. **Notes:** Y-axis is a measure of harm-found complaints (complaints for which final disposition indicates that harm was found to have occurred, e.g. administrative or other action was taken) per 100 active licenses from 2017-2021. Job openings are shown on a logarithmic scale. *Openings for Clinical Mental Health and Substance Use Disorder counselors were reported together, so individual projected openings here are calculated using the current ratio of active licenses. **For professions for which DWS projections are not available, projected openings are based on related occupations' growth rates and/or annual new licenses issued by DOPL.

PERIODIC REVIEW (10-YEAR): STATUTORY CRITERIA

Mandated by SB 16, the periodic review 'shall consider the following criteria' (paraphrased):

- **Harm** to the public
  - Harm to health, safety or financial welfare
  - Present, recognizable, significant harm
  - Severity, probability, and permanence
- **Economic effects** of regulation
  - Supply of practitioners
  - Barriers (to service, to entry)
  - Costs to existing practitioners
  - Mobility of practitioners and reciprocity with other jurisdictions
  - Ability to obtain payments for healthcare providers (e.g., Medicare, Medicaid)
- **Benchmarking** other jurisdictions
- **Solutions**
  - Effect of regulation on the harm (does the regulation protect against or diminish harm?)
  - Alternative pathways for obtaining a license
  - Costs to the state to regulate
  - Expertise and resources of the agency to regulate
  - Scope of regulation (clearly distinguishable from other regulated occupations; potential for narrow regulation)
  - Less burdensome alternatives
- **Any other criteria** the office adopts

PRELIMINARY

OPLR WILL CONDUCT THOROUGH REVIEWS

Phase I: Background

1. Basic info (internal)
   - Scope of practice
   - Requirements (time, education, experience)
   - Contingent regulation (e.g., exemptions)
   - Related occupations
   - # active licensees
2. Stakeholders
   - Interested legislators
   - Licensing agency & boards
   - Industry groups/assoc.
   - Employers
   - Higher ed/training orgs.
   - Expert researchers & academics
   - Major reports & key data sources
   - [Stakeholder survey]

Phase II: Data gathering and analysis

1. **Harm**: Risk to public health, safety, and financial welfare
   - Understand mechanism of harm (via investigators, consumer groups)
   - # of complaints/investigations
   - QALY/DALYs/VSL methods; insurance/actuarial data
2. **Consumer**: Economic effects for the public (e.g., access, cost)
   - Total # licensees; # consumers affected
   - # of open positions for the occupation; shortage/waitlist for services
   - Growth in occupation: past, present, projected future
   - Compensation (wage increases, overtime, signing bonuses)
3. **Practitioner**: Economic effects for the practitioner/field (e.g., burden)
   - Cost/time required for training
   - Economic impact to organization/firm/employer
   - Impact on reimbursement (where applicable, e.g., CMS)
   - Changes in technology, best practice, market
4. **Benchmarks:** Other jurisdictions
   - State-level scope of practice, qualifications, time requirements
   - International examples (as applicable)
5. **Alternative oversight**: Other actors
   - Non-state oversight (e.g., accrediting bodies, local enforcement)
   - Market forces (e.g., online ratings, employer hiring policies)

Phase III: Solution generation

1. Necessity of regulation
2. Regulating agency (expertise, capacity)
3. Regulatory option (e.g., private credentialing, registration vs licensing, micro-licenses)
4. Scope of practice changes
5. Licensing burden (e.g., education, exam, time req's)
6. Mobility/Foreign licenses
7. Effects of proposed regulatory changes
   - Harm prevention
   - Economic impacts
8. Cost to the state to regulate
9. Best practice examples from other jurisdictions
10. Board composition
11. [Stakeholder survey]

Phase IV: Review & submission

1. OPLR drafting and Office review process
2. Internal Commerce editorial board (Busse, Dennis, Hart, Steinagel)
3. Formal review and response by licensing agency/division/boards
4. Formal review and public comment/response by interested groups (e.g., industry associations)
5. Submit to Business and Labor Interim Committee
6. Publish on OPLR website

THANK YOU!

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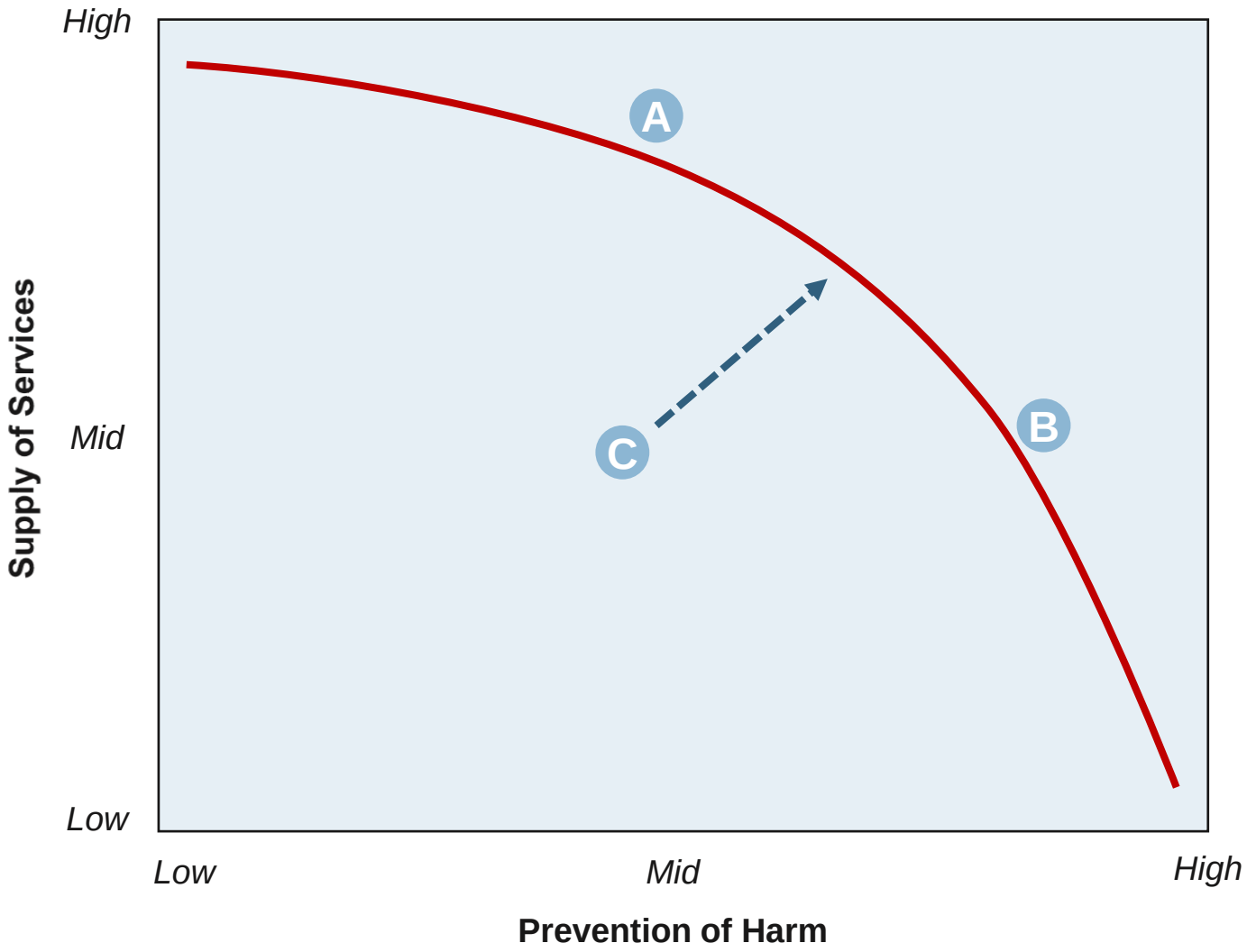
PERSPECTIVE ON OCCUPATIONAL LICENSURE: PART I



The purpose of occupational licensing is to:

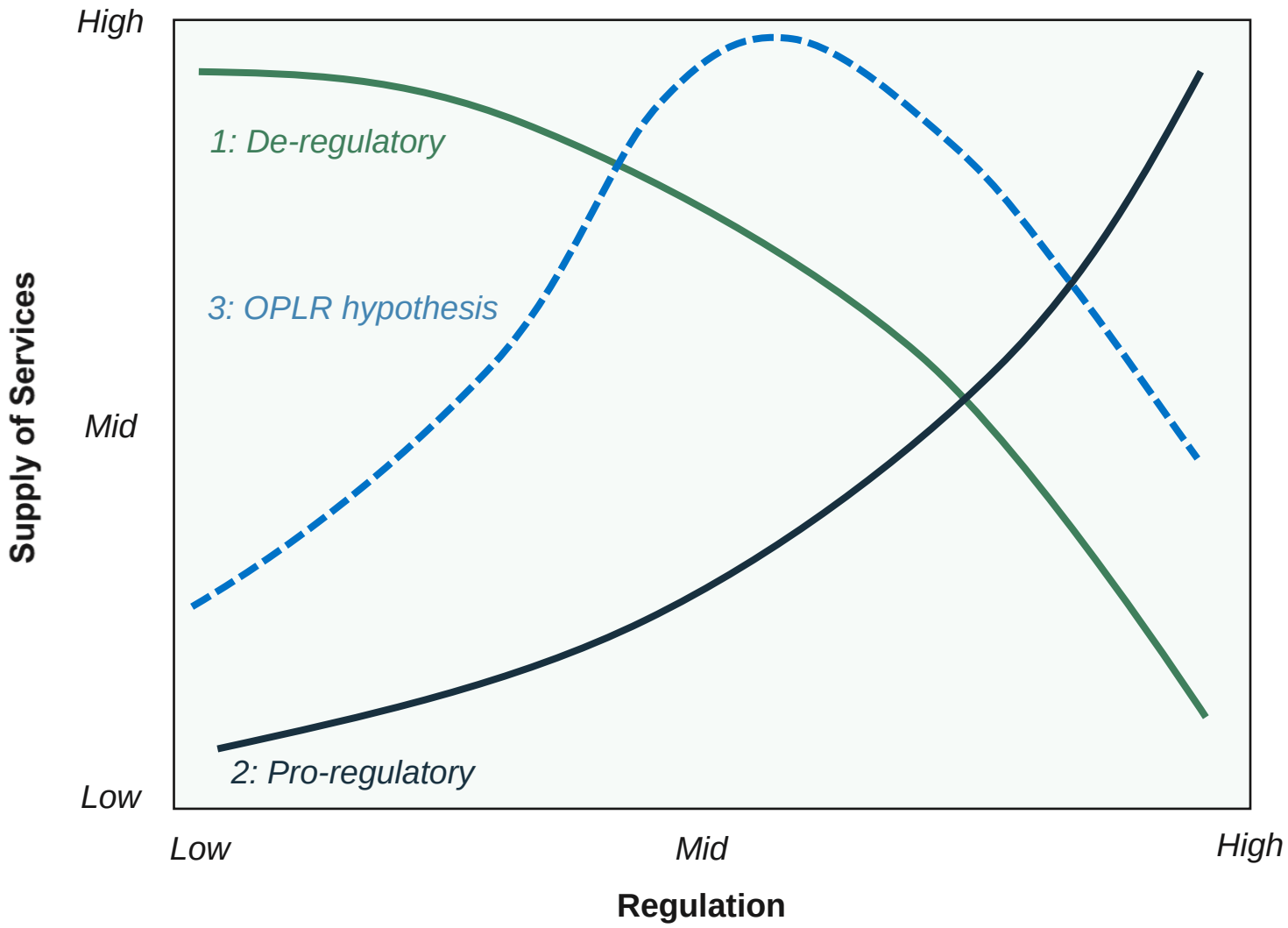
1. Protect the **health, safety, and financial well-being** of consumers, and
2. Do so in the **least restrictive** way possible, allowing adequate **supply in regulated occupations**

- ***Point A*** *prioritizes supply over harm prevention, perhaps because the harm is low probability, limited severity, or limited permanence*
- ***Point B*** *prioritizes harm prevention, imposing more licensing burden to ensure safety and quality in cases where severe harm is possible*
- ***Point C*** *is inefficient as it could improve both harm prevention and supply of services through better regulation (e.g., lower licensing requirements which also target harm prevention more precisely)*

OPLR will seek opportunities to **improve on both harm and supply** dimensions where possible

Note: 'Supply of Services' means adequate supply of qualified individuals to meet demand in the state. Both supply and prevention of harm represent benefits to the public; the curve bows outward because appropriate regulation increases trust and confidence, with gains from trust offsetting losses due to regulation

PERSPECTIVE ON OCCUPATIONAL LICENSURE: PART II



1. **De-regulatory view:**
   - Regulation stifles supply with little additional benefit to public health and safety
   - Ergo, 'less is more' prescription; avoid regulation
2. **Pro-regulatory view:**
   - Public harm erodes confidence; regulation builds professionalization, quality, and trust, and thereby spurs greater supply of qualified individuals
   - Ergo, err on the side of addressing potential harm via regulation
3. **OPLR hypothesis**
   - Under-regulation leads to public harm, hurting confidence and thus commercial activity; over-regulation prevents individuals from working, inhibits competition, and increases cost
   - Appropriate regulation provides information to consumers, builds confidence in professions, and thereby spurs commercial activity
   - The shape of this curve is occupation-dependent; the 'regulatory peak' may point to less regulation for one occupation, and more for another

Note: The x axis here is distinct from 'prevention of harm'; regulation can have more or less effect on preventing harm

OPLR'S GUIDING PRINCIPLES

Appropriate occupational regulation should balance the following goals:

- Prevent **harm** to the health, safety, and financial welfare of the public
- Encourage **sufficient supply** of qualified individuals in the occupation to serve public/market demand
- Utilize the **least restrictive, least burdensome** regulatory option available to both improve consumer choice and increase economic opportunity for individuals

OPLR guiding principles:

- OPLR will use the **best available data** to assess harm, market demand, regulation in other jurisdictions, and other review criteria, creating a balanced, dispassionate view of the costs and benefits of licensing
- OPLR will **engage and gather input from interested stakeholders**—legislators, licensing agencies, industry, licensees, and others—so that proposed reforms are transparent and broadly informed
- Wherever possible, OPLR will prioritize and recommend licensing reforms that **BOTH increase supply AND reduce harm** via the supply of qualified individuals in high-demand occupations

PRELIMINARY

DEVELOPING THE FIRST PRIORITIZED LIST

The proposed prioritized list will be based on five criteria (profession as the unit of analysis):

Objective criteria				Subjective criteria
Harm to health, safety, well-being	**Demand** for services	**Regulation** in other jurisdictions	**Scale** in the economy	**Feasibility** of reform

Potential data:

• Complaints per 100 active licensees (justified only) • Insurance rates/actuarial data (e.g., Verisk) • Major technological changes affecting harm	• Job openings (BLS/DWS) • Projections of future openings (BLS/DWS) • Shortage designations • Private job openings data (EMSI data) • Opportunities for low-income workers (e.g., educational req's)	• # of other states w/ equivalent license • Licensing burden (time, education, exams) of other states w/ licensing	• Active licensees per DOC MyLo database for DOPL • Active licensees per DOC MyLo database for DRE, SEC • Active licensees per other executive agencies as identified (e.g., DNR, HHS)	• Conversations with licensing division/agency • Conversations with interested legislators • Internal Commerce knowledge • Upcoming sunset • Date of most recent review (by legislature, licensing agency)

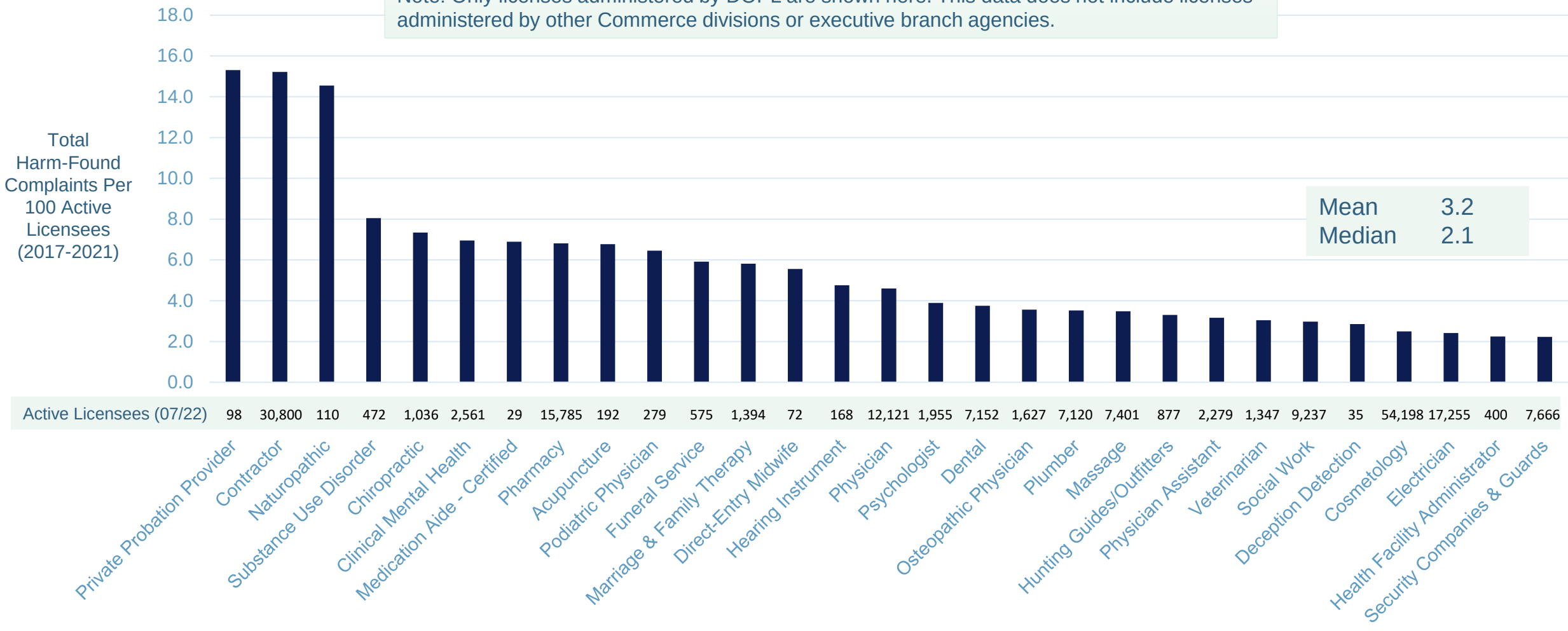
Dark font = data identified (for at least a subset of professions)
Grey font = in progress

Notes: The prioritized list will be based on simple data pulls as a way to triage and develop an initial list. That list will then be vetted within DOC, with other licensing agencies, the Governor's office, and legislators before it is submitted to the Business and Labor Interim Committee.

PRELIMINARY

COMPLAINT INDEX (1 OF 2)

Note: Only licenses administered by DOPL are shown here. This data does not include licenses administered by other Commerce divisions or executive branch agencies.



Source: MyLicense Office, Report: "DOPL Closed Complaints – All", 2017-2021. Accessed July 14, 2022.
Note: "Harm-Found Complaints" are defined as complaints for which final disposition indicates that harm was found to have occurred, e.g. administrative or other action was taken.

PRELIMINARY

COMPLAINT INDEX (2 OF 2)

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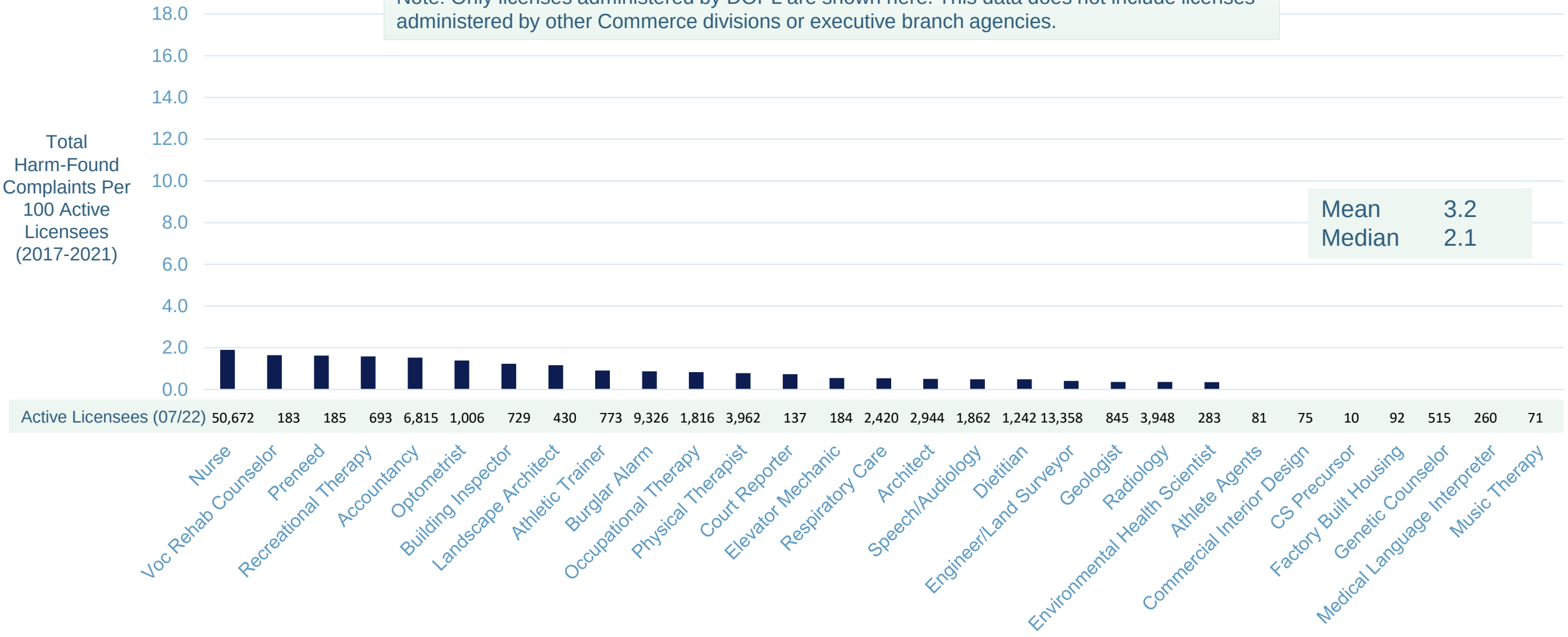

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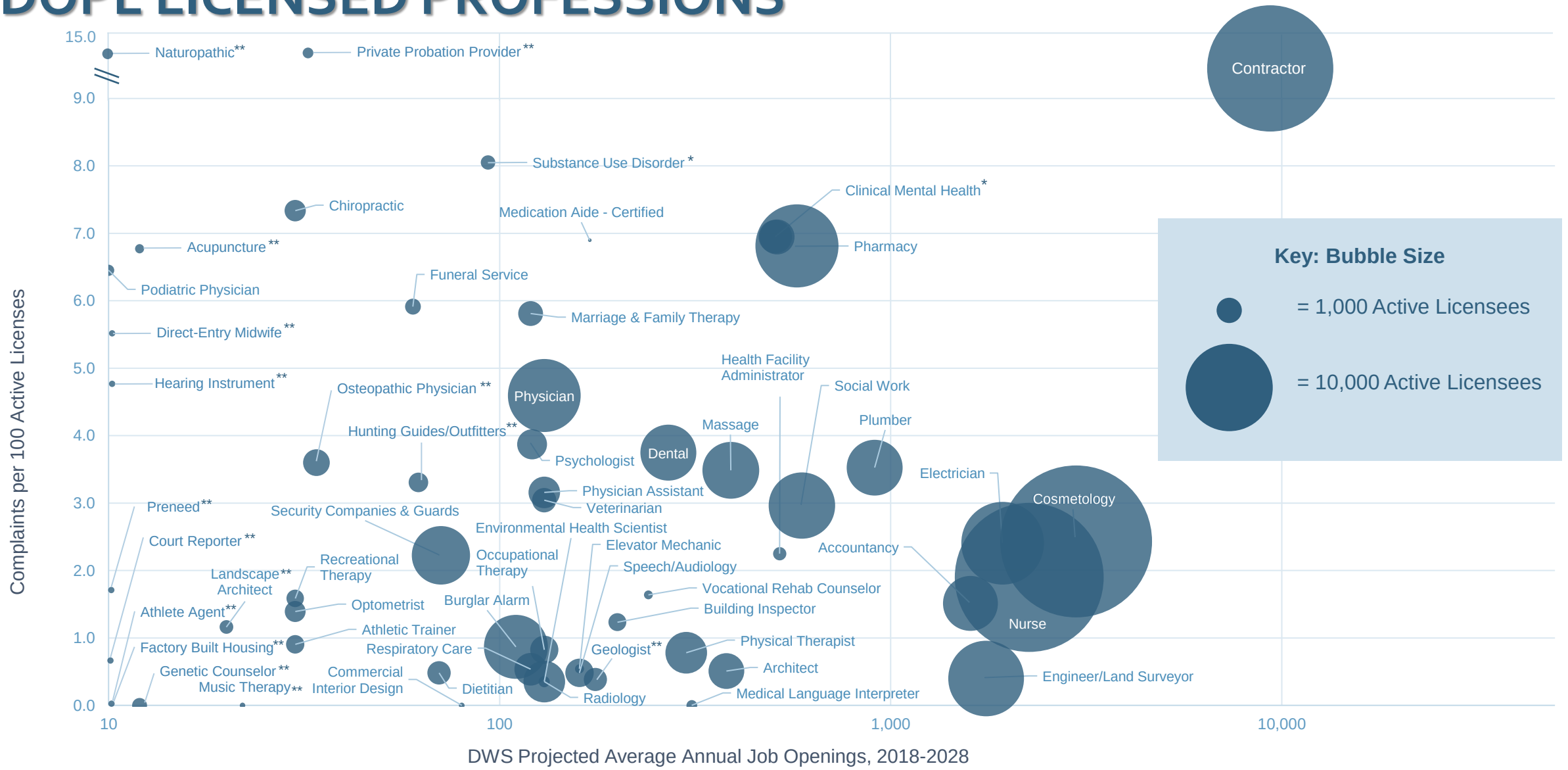
PRELIMINARY

DOPL LICENSED PROFESSIONS



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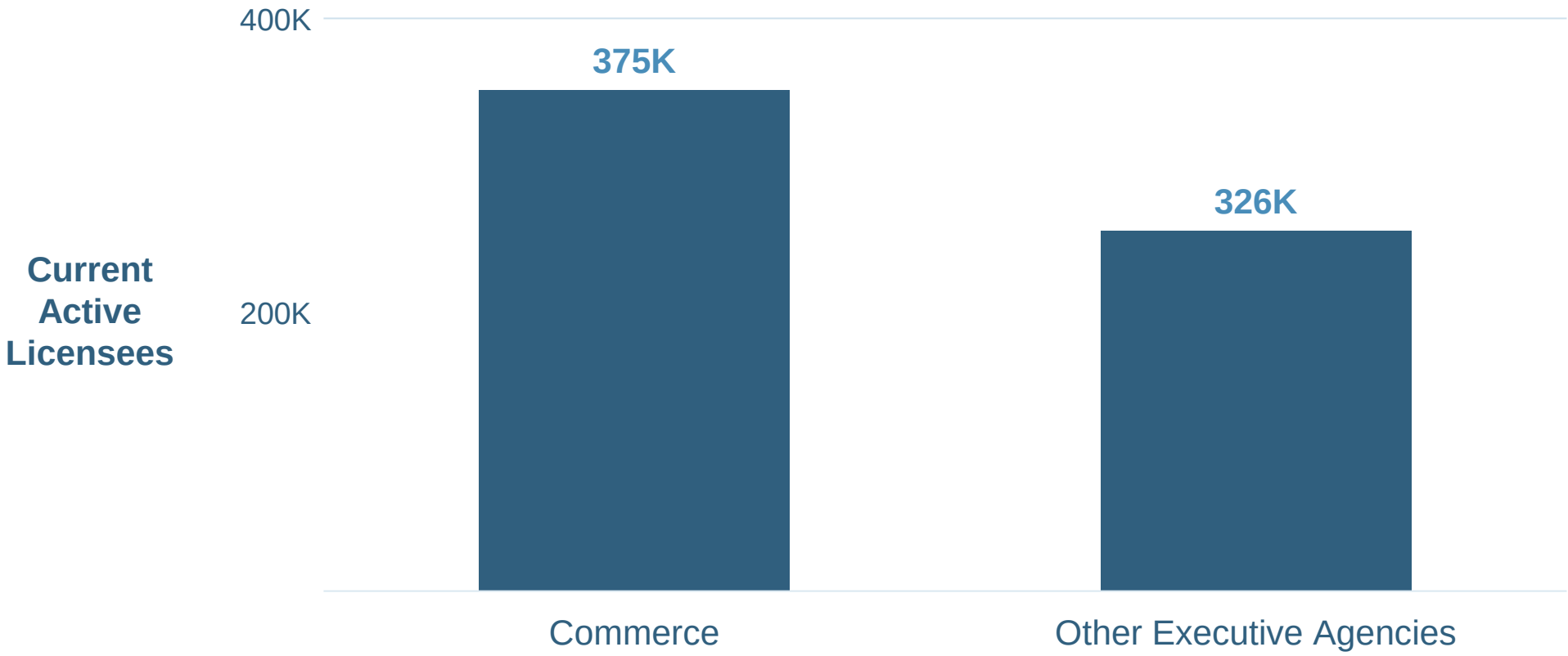
LICENSED OCCUPATION SIZE CLASSES

Size	Occupational License Types	Active Licensees
>30,000	Food Handlers	87,179
	CDL Drivers	85,000
	Cosmetology	54,198
	Nurse	50,672
	Broker-Dealer Agent	48,015
	Contractor	30,800
>10,000	Insurance Producer	22,937
	Real Estate Sales Agent	18,552
	Electrician	17,255
	Pharmacy	15,785
	Engineer/Land Surveyor	13,358
	Secondary Teachers	13,196
	Elementary Teachers	12,316
	Physicians	12,121
>5,000	Examples: Social Workers, Pesticide Applicators, Massage, Dental, Accountancy, Plumbers	
>1,000	Examples: Physical Therapists, Special Education Teachers, Clinical Mental Health Counselors, Dietitians, Principal Brokers	
<1,000	Examples: Building Inspector, Funeral Service, Landscape Architect, Wastewater Lab Analyst, Court Reporter	

LICENSEES: COMMERCE VS. OTHER AGENCIES



Note: The number of licenses located in other executive branch agencies will be updated as OPLR continues to receive licensing information. The total number shown here (701K) differs from the previous slide due to the omission of ~10K attorneys not licensed via the executive branch