UPSTREAM MANAGEMENT SOLUTIONS

Upstream Regulatory Problem Solving

TARIFF-FREE

Jordan Max, President

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Today's Webinar

- **Why and how to start "upstreaming" solutions to prevent or reduce regulatory problems**
- Recorded and slides to be shared with participants
- Made available for free on the Upstream Management Solutions website for download/access for subscribers

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About Upstream

Public Sector Consulting in five content areas:

- **P**olicy Research, Development & Analysis
- **U**ser Experience/Human Centred Design
- **L**earning & Development
- **S**trategy/Strategic Planning
- **E**ngagement with Stakeholders & Partners

Focus on looking “upstream” for problem sources to find durable system-oriented preventative solutions

Limited Time Offer!
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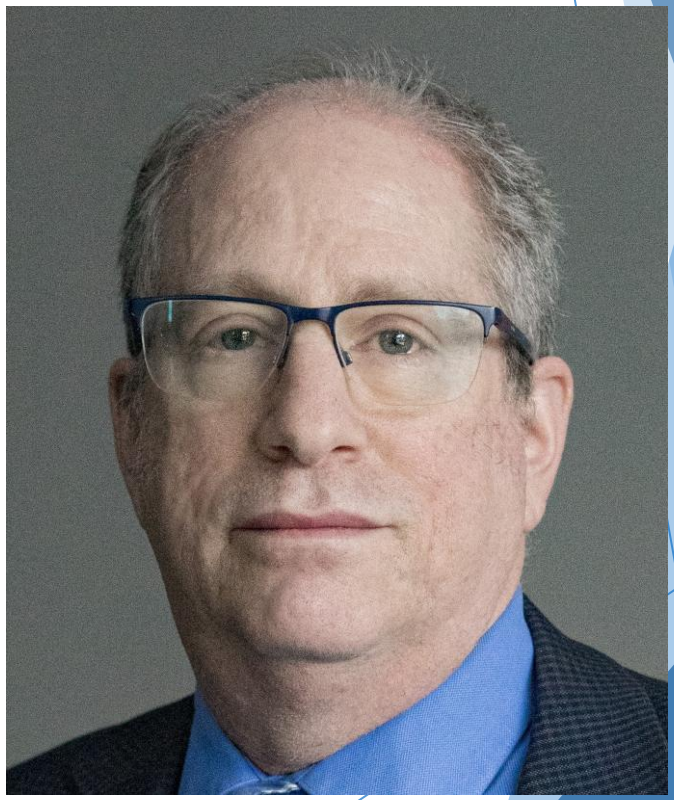
A Bit About Me

- 20 years' experience in Profession regulation at Professional Engineers Ontario- policy, strategy, governance, & CPD/professional practice issues
- 10+ years at Ontario Cabinet Office and Ministry of Community and Social Services
- Founded and co-ordinated Ontario Profession Regulators' Policy Network 2005-2016



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Your biggest, repeated Regulatory Problems?

- Complaints ($$$ Legal, duration, volume, type)
- Failure rates on applications, exams?
- Practitioner noncompliance with
  - Professional Practice Standards & Guidelines
  - CPD
  - Annual Reporting
  - Quality Assurance
- Committees/Board governance – agendas, decisions

WHAT WOULD IT TAKE FOR THIS PROBLEM TO NEVER HAPPEN AGAIN?

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Inspiration for this Webinar

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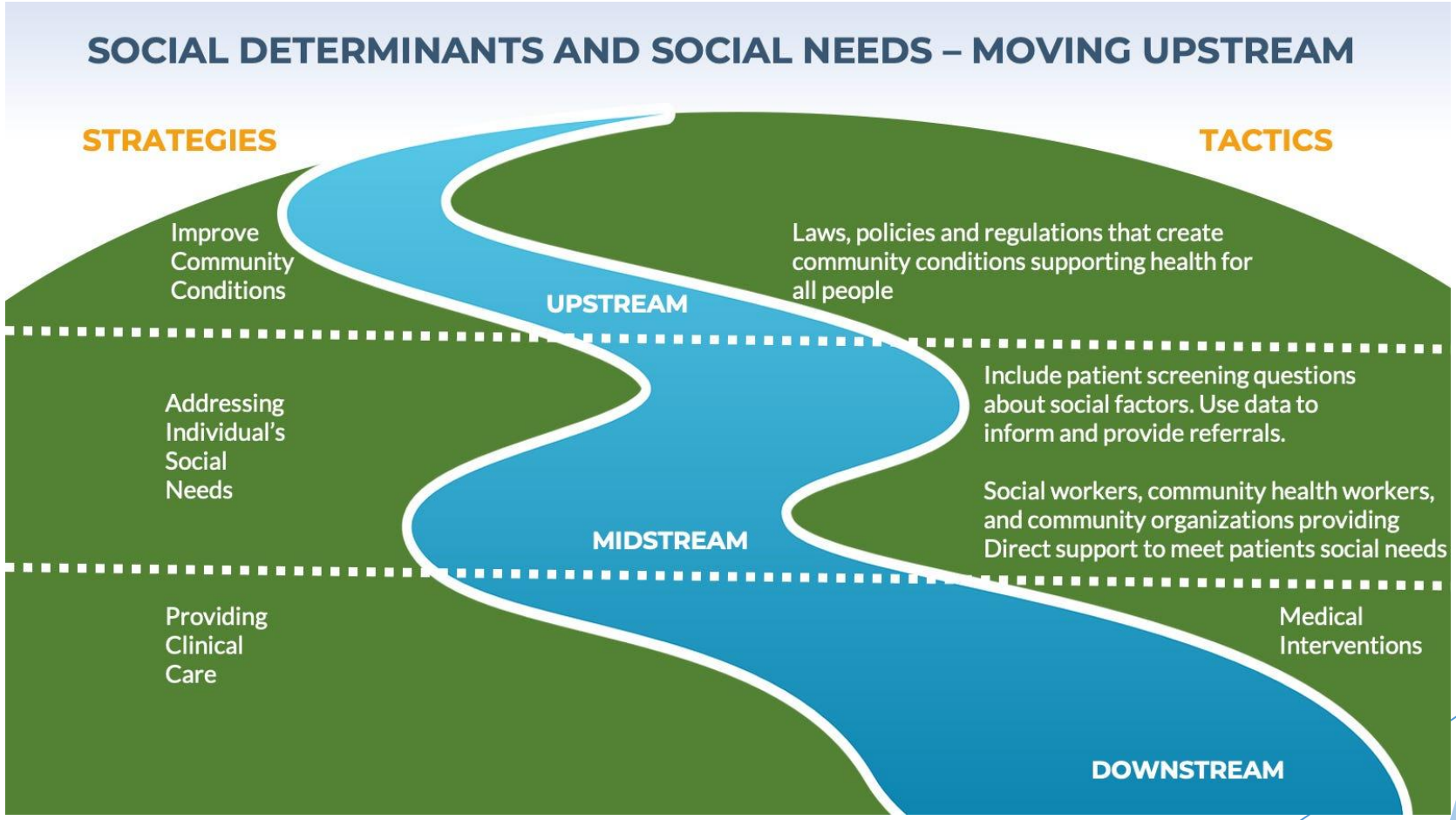
Upstream vs. Downstream Thinking



Source: https://dledingham.substack.com/p/moving-your-decision-making-upstream

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Upstream Thinking…

- **detects problems before they occur**
- **preventative, proactive and risk-based**
- focuses on **early warning signs**
- involves **systems thinking**
- solutions are broader and slower but achieve **long lasting results**
- is a **direction** … but you can always go further upstream

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Common Examples of Good Preventative measures (but needs enforcement/takeup)

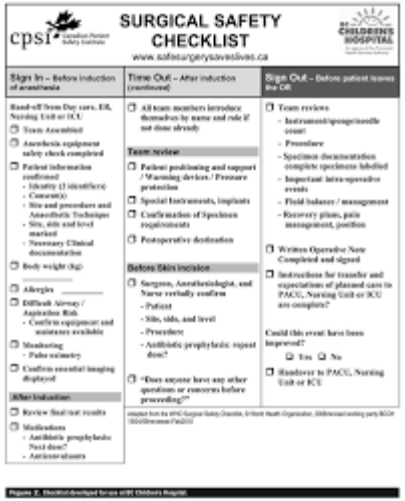

Figure 1. Fluoride Yes! campaign button

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Example: Chicago Public Schools (High School)

1998: 52.4% Graduation Rate

Accepted as unchangeable

Upstream Work:

Own the Problem, Leverage

Data Research: 1st year student success is critical

Assigned best teachers to keep 1st year students on track

2018: 78% Graduation rate (25% increase)

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First Steps - Mindset

1. Do Not Accept the Problem as Is
2. Own Solving the Problem
3. Avoid Tunnel Vision, Procrastination, and Obvious Choices

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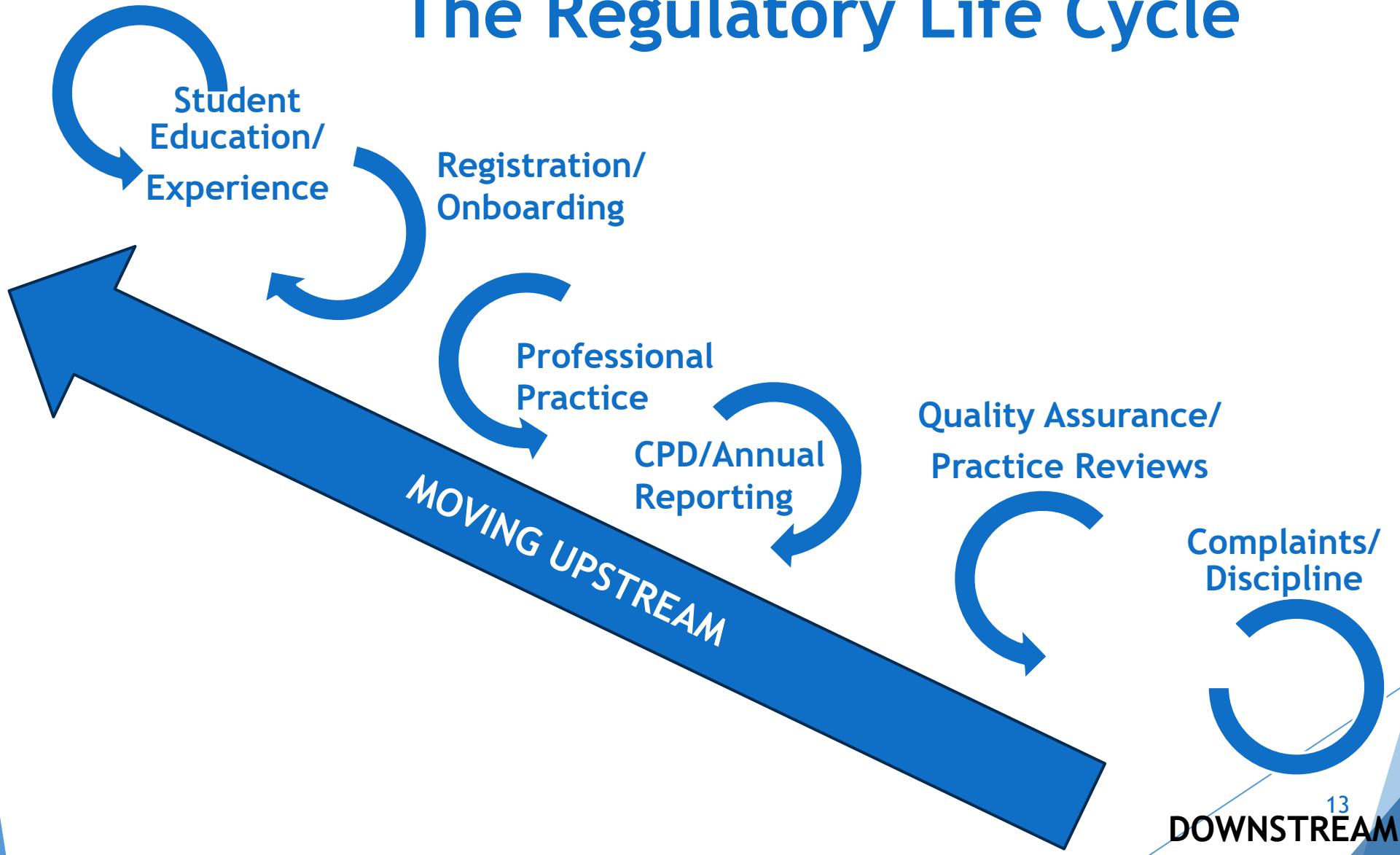
The Regulatory Life Cycle



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Regulatory Example - Law Society of Ontario

As of January 1, 2025, lawyers and paralegals declaring as sole practitioners for the first time must complete the Foundations of Sole Practice course, delivered by the Law Society.

- Provides licensees who are **starting out as sole practitioners** with a road map to the critical information they need to know.
- Delivered through 30 hours of online content in a modular format, the course covers the areas of practice that result in **the highest incidence of complaints, negligence claims and identified practice deficiencies**. By focusing on these core aspects, the course is designed to help set licensees up for successful practice and effective client management.
- The course must be completed by the end of 2026, and failure to do will result in administrative suspension.

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How to Get Started in Upstream Thinking

Identify and quantify the problem within a system or chain

- What is the problem? (Errors, “near misses”)
- Why (and how) is it problem? For whom? (Use 5 Whys)
- What is the impact (cost, time, etc.)?
- Who does the problem involve? (actors, those impacted)
- Where, when, how does the problem happen? Once or repeated?
- Data patterns, correlations
- Who has what level of responsibility for the problem?

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How to Get Started in Upstream Thinking cont'd.

- Find the people who want to own and solve the problem
- Model the problem in a system as the end point of a sequence of events, actions, or decisions
- User Experience research to understand actors, behaviours, their incentives & disincentives, decisions
- Ideate possible leverage points and actors
- Prioritize leverage at different stages
- Do Randomized Control Trials or A/B Testing
- Commit resources to pilot the intervention
- Evaluate results and adjust or scale up

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Measuring Prevention Success

- Clearly **define the expected outcome** (positive or negative) at different stages
- **How** will you measure it? What qualifies (over or underreporting)?
- **Who** will measure it and report it – subjectivity? Reliability? Interpretation?
- **Randomized Control Trials or A/B Tests:** Measure intervention vs. non-intervention in different but similar population groups and compare "downstream" results
- **Monitor Early Warning indicators** and adjust action if necessary
- Will non-compliants simply "go elsewhere" to meet their need?

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Cautions about Data

- **4 Ways Measures Fool You:**
- Your measures show that you're succeeding, but **you've mistakenly attributed that success to your own work.**
- You've succeeded on your short-term measures, but they **didn't align with your long-term mission.**
- Your short-term **measures became the mission in a way that really undermined the work.**
- You **underestimated the substitution effect** – did non-participants simply go elsewhere to meet their needs?

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Early warning signs/interventions

- **design a "smoke detector" alarm system** forewarning you of a problem to come, so you can take upstream action to prevent the problem occurring.
- In some situations, you do not want too many **false positives**, leading to alarm fatigue where people end up ignoring the alarms.
- But where the impact of missing a problem would be devastating, you may be willing to accept a high rate of false positives.

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Unintended Consequences – Story 1

Plastic Bags:

- Some people attributed a deadly 2017 hepatitis A outbreak in San Diego to the lack of plastic bags.
- Why?
- Homeless people had been in the habit of using the bags to dispose of their own waste. When the bags became less plentiful, the other alternatives turned out to be less sanitary.

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Summary

- Upstream thinking is a powerful tool to avoid or mitigate downstream repeated problems
- Requires a systems mindset and clarity on the source of the problem, actors and behavioural decisions (user experience)
- Possible solutions must be tested first before being piloted to avoid measurement error or unintended consequences
- Always remember that human behaviour is not predictable; capture/ enforcement and consistency are crucial to measurement and success
- Solutions can be designed for previous stages of the problem's occurrence and worked backwards/upstream
- Set up early warning sensors to allow for adjustments

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A Final Question to Ponder

- What (if any) is a regulator's role to assist practitioners with reducing the original health, social, and economic conditions that create the needs for practitioners to address?
- Do our practitioners get paid for preventing (as opposed to treating) problems?
- Who owns this larger problem?

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Coming Attractions

June webinar: Your Next Strategic Plan: Delta or de novo?

July webinar: User Experience/Human Centered Design

August webinar: Stakeholder & Partner Engagement

September webinar: Employee & Practitioner Learning

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