Smarter Regulation Through Behavioral Science

Moving human services licensing from **anecdote to science**

Dr. Sonya Stevens, NARA

Learning Objectives

1. Learn how and why how people respond to regulation.
2. Understand why more enforcement doesn't always improve safety
3. Learn a smarter way to focus oversight where risk is highest
4. Understand how better measurement leads to better public safety

Framing the Problem

Bringing Human Behavior into the Conversation

Why Traditional Regulation Underperforms

The Linear Fallacy
The belief that compliance behaves like a volume knob—turn it up and quality always improves."

Drives what is called Zero-tolerance enforcement and includes exhaustive inspections & administrative overload.

The Plateau Effect
Quality increases with compliance **only up to a point (98–99% compliance).**

When systems push beyond the plateau, inspectors are incentivized to find something — anything — to justify the inspection.

Effective systemic risk management requires mapping cognitive biases onto regulatory frameworks

Cognitive Bias

The problem isn't enforcement — it's enforcement without a behavioral model."

What drives human behavior under regulation?

Regulation must be grounded in:
- Behavioral science
- Organizational dynamics
- Empirical outcome measurement

Prospect Theory

Loss Aversion

Citations, penalties, and threats to licensure are processed psychologically as losses, not feedback.

Certainty Effect

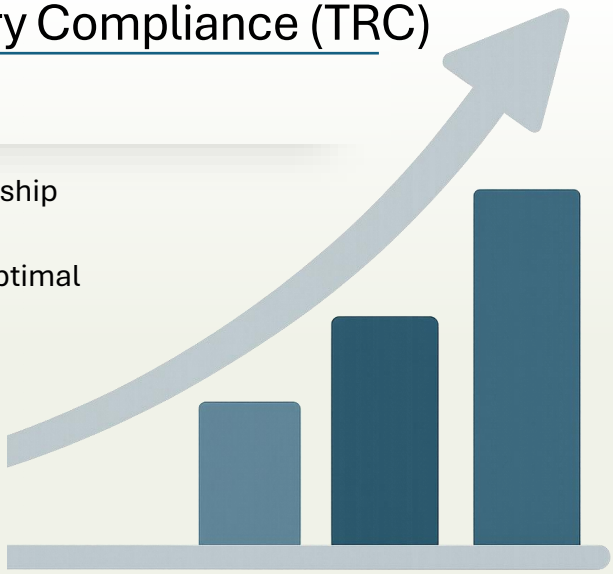
When expectations are clear and outcomes are reliable, providers become risk-averse and compliance-oriented.

Risk Seeking

What looks like reckless or unethical behavior is predictable psychological behavior under perceived certainty of loss.

Theory of Regulatory Compliance (TRC)

- Compliance–quality relationship is curvilinear, not linear
- Substantial compliance is optimal
- Supports:
  - Differential monitoring
  - Targeted inspections
  - Risk-based oversight



Certainty as a Regulatory Resource

Regulatory system are predictable & consistent

- What standards apply
- How rules will be interpreted
- What outcomes to expect

Expectations are clear and outcomes are stable

- High-performing providers work to preserve their status
- The incentive shifts from gaming the system to maintaining compliance
- Inspectors spend less time re-verifying low-risk entities and more time on real risk
- Certainty stabilizes the entire system.

High-performers are rewarded

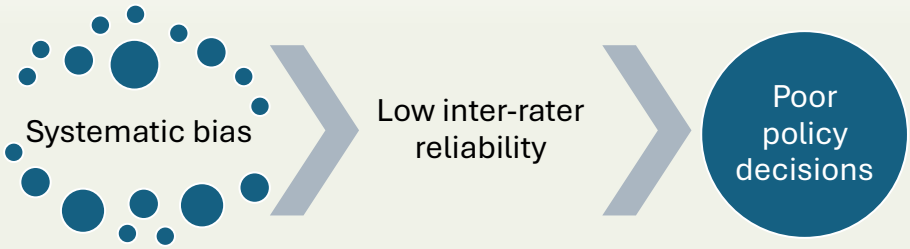
- Fewer routine inspections
- Abbreviated reviews
- Faster regulatory resolution

The Measurement Problem in Licensing

Binary Data Is the Core Limitation!

Binary systems:

- Collapse nuanced performance into a single outcome
- Treat minor administrative issues the same as serious safety risks
- Provide very little insight into *how certain* an inspector's decision is



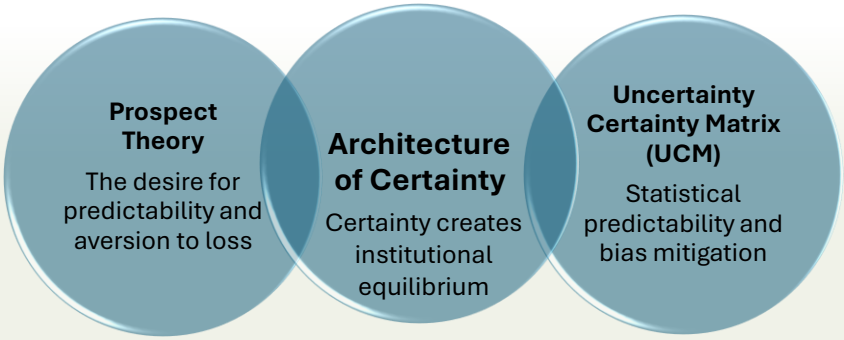
Uncertainty-Certainty Matrix (UCM)

Inspector Decision Regarding Compliance

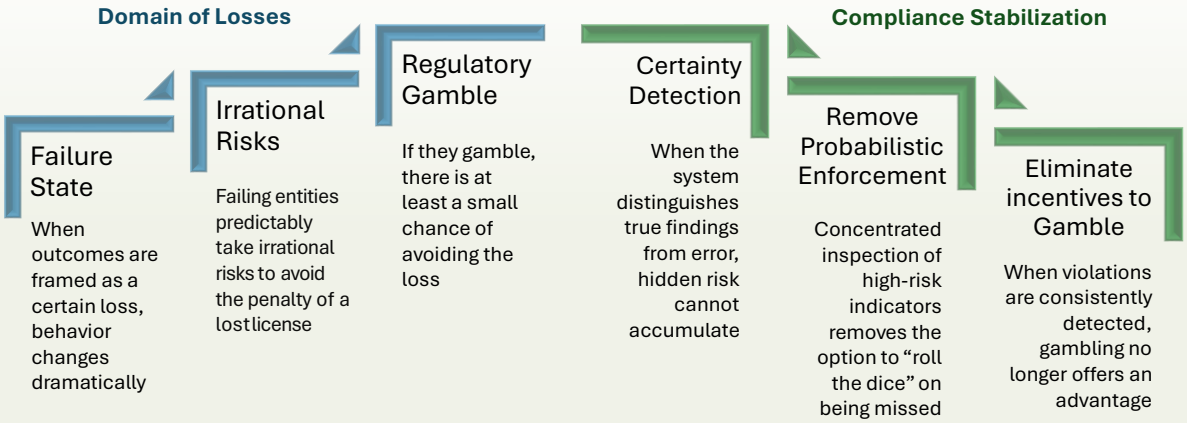
Actual State of Compliance	(+) In Compliance	(-) Not in Compliance
(+) In Compliance	**Agreement (True Positive)** The decision is "in compliance" and the actual state is "in compliance". This is a correct, certain outcome.	**Disagreement (False Positive)** The decision is "not in compliance" but the actual state is "in compliance". An uncertainty to be minimized.
(-) Not in Compliance	**Disagreement (False Negative)** The decision is "in compliance" but the actual state is "not in compliance". The most dangerous uncertainty.	**Agreement (True Negative)** The decision is "not in compliance" and the actual state is "not in compliance". This is also a correct, certain outcome.

The Certainty Effect

Once a provider reaches a high-certainty state of compliance, the frequency of inspections can safely drop because the risk has already been mitigated.

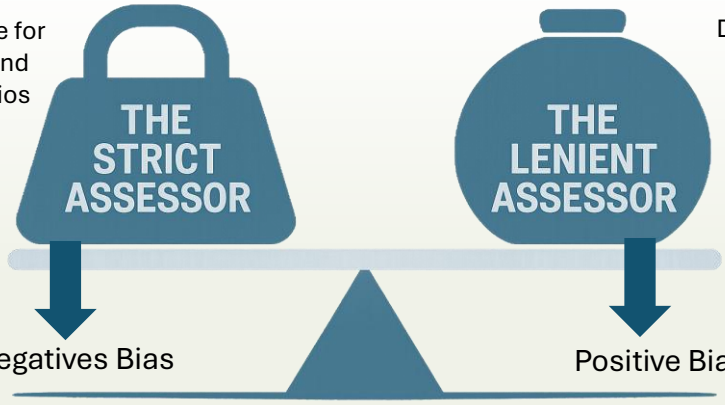


Domain of Losses



Inspector Bias Patterns

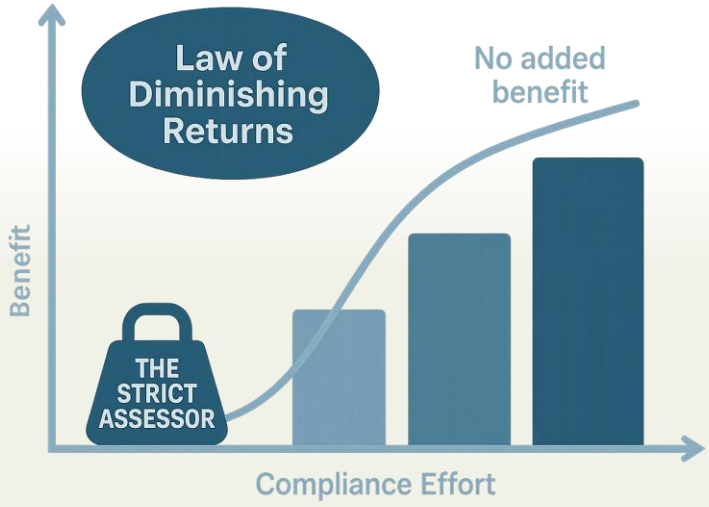
Driven by a desire for safe authority and low-risk scenarios



Driven by a desire to avoid conflict and work related to high-risk citations

When an inspector cannot reach a state of certainty, they regress to their domain of psychological bias.

The Law of Diminishing Returns



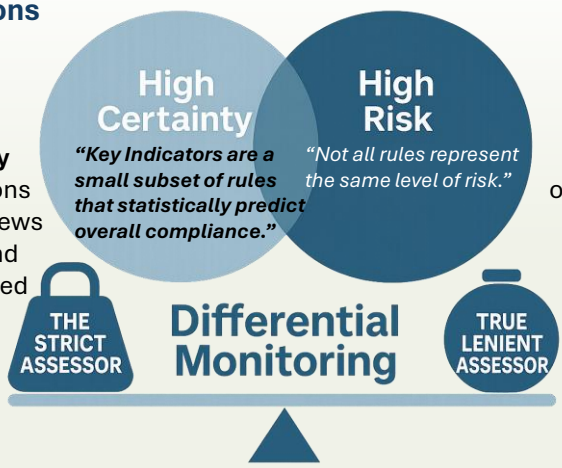
Bringing it together

Combining Behavioral Science and Regulatory Science

Differential Monitoring & Risk-Based Oversight

Risk-based monitoring mathematically counteracts the human instinct to gamble in losing situations

For **high-certainty providers** inspections are abbreviated, reviews are fast-tracked and certainty is reinforced and preserved.



For **high-risk providers** oversight is intensified, the probability of detection increases and, the incentive to gamble is removed.

"Differential monitoring is not leniency—it is precision."

Behavioral Framing in Enforcement

The same regulatory action can produce very different behavior depending on how it is framed. Under Prospect Theory, framing determines whether providers remain **risk-averse and cooperative or** shift into **risk-seeking behavior**.

Gain Frame

"Maintaining compliance ensures you keep your "five Star" rating."

→ **Phycological Result:** Promotes stable, risk-adverse behavior.

Loss Frame

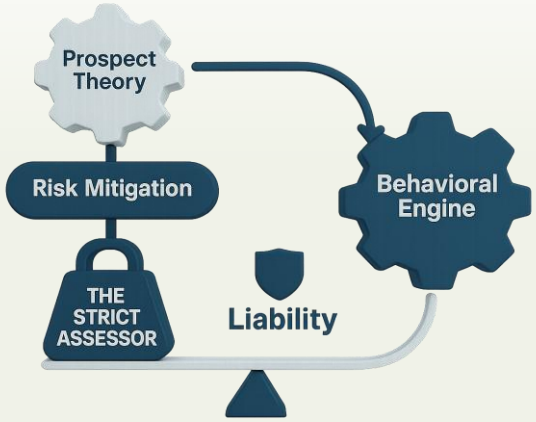
"Failure to fix this will result in a $500 fine."

→ **Phycological Result:** Triggers defensive risk-seeking behavior.

Risk Mitigation, Liability & the Behavioral Engine

Prospect Theory is essentially the engine that makes Fiene's risk-based monitoring necessary

- Aligns regulation with behavioral science
- Improves safety without expanding enforcement
- Produces more reliable data
- Reduces preventable harm and liability



Summary

Smarter regulation aligns oversight with how people actually behave.

Key Takeaways

1. Compliance does not respond linearly to enforcement
2. Human behavior under regulation is driven by loss, risk, and certainty
3. Over-enforcement increases error, instability, and hidden risk
4. Certainty, not threat, stabilizes compliance behavior
5. Risk-based, differential monitoring reduces harm and liability

Questions?

Thank You

sonyastevens@naralicenings.org

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