

1983

# Report to the Governor and to the Legislature

Office of Administrative Hearings

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**OFFICE OF  
ADMINISTRATIVE HEARINGS**

Report to the Governor  
and to the Legislature



**State of California  
George Deukmejian  
Governor**

**1983**

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C34  
1983

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782.A2  
C34  
1983

**STATE OF CALIFORNIA**

**GEORGE DEUKMEJIAN**  
*Governor*

**STATE AND CONSUMER SERVICES AGENCY**

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*Acting Director*

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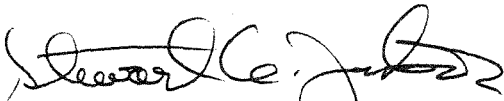
MEMBERS OF THE LEGISLATURE

This report is mandated<sup>1</sup> to describe developments in administrative law affecting the Office of Administrative Hearings and to make recommendations which promote fairness, uniformity and expedition of government's business. Three new laws are proposed which meet those goals while reducing the cost of government.

Topics discussed include the electronic recording of hearings, health planning and certificate of need hearings, dedication of administrative hearing room, publication of Administrative Procedure Act, child care contractor appeals, child nutrition contractor appeals, nonprofit human services contractor appeals, and arbitration of construction contract disputes.



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Department of General Services



STEWART A. JUDSON, Acting Director  
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1. Government Code Section 11370.5

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## **I. Electronic Recording of Hearings**

In its 1981 Report to the Governor and to the Legislature, the Office of Administrative Hearings (OAH) presented at some length the merits of permitting the use of alternative means of hearing recording and transcription under the Administrative Procedure Act (APA). In 1977, a study conducted by the Department of General Services concluded that the use of electronic recording devices by OAH could result in potential savings to the State of over \$400,000. The quality of transcripts prepared as a result of electronically reported hearings has equaled or exceeded the quality of transcripts prepared by stenographic reporters. The electronically reported transcripts have consistently been accepted by the courts.

Under existing law, APA hearings must be recorded by "a phonographic reporter" (Government Code Section 11512(d)). In 1978, the Office of the Attorney General informally ruled\* that "phonographic reporter" meant "stenographic reporter", but if both parties to an APA proceeding waived their right to a stenographic reporter, the hearing could be conducted without such a reporter using a tape recording device. OAH proceeded to implement this program on an experimental basis in cases where waivers were obtained. Parties did not agree to waive the phonographic reporter provision, however, with any frequency. OAH then unsuccessfully challenged the interpretation of "phonographic reporter" found in the informal opinion by means of a complaint for declaratory relief brought before the Superior Court of Sacramento County. The Office of the Attorney General subsequently issued a formal opinion on December 31, 1982 (65 Cal. Ops. Atty. Gen. 682 (1982)) concluding that OAH is now completely precluded from using electronic recording devices to report an APA hearing, even if the parties attempt to waive the requirement of "a phonographic reporter" found in Government Code Section 11512(d).

OAH still believes this proposal for an alternative and inexpensive means of recording is meritorious. A bill introduced in 1983, AB 1298, would have amended Government Code Section 11512(d) to permit, but not require, electronic recording of APA proceedings. It failed passage in committee. Other bills dealing with electronic recording have also been introduced in 1983, including AB 2098 and SB 1075. OAH urges adoption of this change.

## **II. Health Planning and Certificate of Need Hearings**

As a result of Chapter 873, Statutes 1981, the Office of Administrative Hearings (OAH) assumed responsibility on January 1, 1982 for holding health planning and certificate of need hearings formerly conducted by the Office of Statewide Health Planning (OSHPD). Three hearing officers formerly employed by OSHPD were also transferred to the staff of OAH and were assigned primarily to OSHPD cases as well as to other types of Administrative Procedure Act (APA) hearings. Filings have decreased

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\* Attorney General Index letter to Senator Robert Beverly, No. CV77/181 IL.

from 48 appeals in Fiscal Year 1981–82 to 12 appeals during the first nine months of Fiscal Year 1982–83.

Certain health care projects require the issuance of a certificate of need by OSHPD before implementation. Examples include construction of new health facilities, increases of bed capacities in existing health facilities, and certain capital expenditures in excess of \$600,000 (in 1982).

### **III. Dedication of Administrative Hearing Room**

On December 10, 1982 the Office of Administrative Hearings dedicated the principal administrative hearing room in the State Building in San Francisco to the memory of the late California Supreme Court Associate Justice Wiley W. Manuel. The dedication implemented Resolution Chapter 25 filed March 30, 1982 (ACR 92, W. Brown).

### **IV. Publication of Administrative Procedure Act**

In March 1983 the Office of Administrative Hearings (OAH) published the administrative adjudicative portion of the Administrative Procedure Act (APA).<sup>\*</sup> The adjudicative portion of the APA had not been published in pamphlet form by OAH since 1979, and the language contained in that pamphlet had become outdated in many places. Copies have been distributed to all State agencies appearing before OAH and to other interested parties as well.

### **V. Child Care Contractor Appeals**

As a result of Chapter 1061, Statutes 1981, the Office of Administrative Hearings (OAH) was authorized for the first time to hear administrative appeals by child care contractors dissatisfied with certain decisions made by the State Department of Education. Three types of appeals by contractors are permitted by the statute: termination or suspension of an existing contract, denial of up to \$25,000 on a payment for services schedule, or demand for an overpayment of up to \$25,000. Hearings must be conducted according to the Administrative Procedure Act (APA) unless otherwise specified. Hearings are held only in Sacramento or (in limited situations) in Los Angeles. OAH's decisions are final under the program, rather than in a proposed form as is done in other APA cases. Regulations implementing certain provisions of the bill will be adopted in spring 1983.

OAH recommends that Education Code Section 8403, originally enacted by this statute, be amended so as to permit—but not to require—hearings under this program to be held under the APA. OAH currently has a staff of hearing officers dedicated under agreement with the State Department of Education to conduct special education, as well as child nutrition, hearings. Many of the contractors involved in providing child care services also provide child nutrition services. The “special education” staff, who would be a logical choice to hear some or all of these cases, do not currently meet all of the standards set forth in Government Code

<sup>\*</sup> Since July 1, 1980, the Office of Administrative Law has had responsibility for the administrative regulation portion of the Administrative Procedure Act (Chapter 567, Statutes 1979).



Section 11502 and thus cannot hear cases under the APA. Also OAH anticipates that hearing procedures could then be less formal than those required under the APA and would be less expensive.

## **VI. Child Nutrition Contractor Appeals**

Since July 1, 1981 the Office of Administrative Hearings (OAH) has been contractually responsible for conducting hearings and issuing decisions for the Office of Child Nutrition Services within the State Department of Education. These hearings involve appeals by child nutrition program contractors from certain adverse actions taken by the Department of Education and are authorized by Public Law 94-105. The hearings are conducted by the same unit of hearing officers that is involved in special education appeals. The procedures are governed by federal regulations which generally are not as formal as the requirements of the Administrative Procedure Act. To date 117 appeals have been filed. Of these, 65 have resulted in written decisions, and 41 others have been resolved without OAH rendering a final decision.

## **VII. Nonprofit Human Services Contractor Appeals**

As a result of Chapter 1373, Statutes 1982, the Office of Administrative Hearings (OAH) has been given authority to hear appeals involving certain contractual disputes by private nonprofit human services organizations dissatisfied with an action taken by the Health and Welfare Agency or one of the departments within that agency. Regulations governing the program are to be adopted by the end of 1983.

Funding for the appeals is to be obtained by OAH through the regular budget process. All other hearings conducted by OAH are funded entirely by the state (or other public) agency requesting the hearing. If funds are not appropriated to reimburse OAH for its internal operating expenses, OAH will lack the resources to conduct such hearings. OAH recommends that Health and Safety Code Section 38060, and Section 2 of the statute, be amended to conform with Government Code Section 11370.4, which currently governs the funding of all other services provided by OAH.

The Legislature apparently intends that OAH provide some flexibility in the hearing process. However, OAH is also required by the statute to use current procedures presently established. In prior years OAH offered a somewhat informal determination of rights procedure for certain disputes of \$50,000 or less involving contracts awarded by specific State agencies. As noted in item VIII, however, that procedure has now been repealed. Currently, all disputes heard by OAH involving State agencies are governed by the procedures set forth in the Administrative Procedure Act (APA) (with the exception of certain appeals involving the State Department of Education which are governed by applicable federal procedures). The APA provides for quasi-judicial proceedings which are somewhat formal in nature. OAH recommends that the Legislature amend Health and Safety Code Section 38060 to permit OAH to establish new procedures for this particular program or, in the alternative, to

amend Health and Safety Code Section 38057 to indicate that the appeal process shall be governed by the provisions of the APA.

### **VIII. Arbitration of Construction Contract Disputes**

As set forth in the Office of Administrative Hearings (OAH) 1981 report, former Governor Brown issued Executive Order B 50-78 on December 8, 1978. That order established a State Construction Contract Arbitration Program to resolve construction contract disputes between contractors and the Departments of General Services, Transportation, or Water Resources under the State Contract Act. OAH was, and still is, responsible for administering the program.

Much of the Executive Order was codified as Government Code Sections 14410 et seq. by Chapter 769, Statutes 1981. The following year, the language was deleted and technically transferred without change to Public Contract Code Sections 10240 et seq. by Chapter 466, Statutes 1982. Similarly, the provisions governing the Public Works Contract Arbitration Committee established by the original Executive Order were codified first as Government Code Sections 14415 et seq. and then transferred to Public Contract Code Sections 10245 et seq. With the enactment of these sections, the determination of rights provisions for hearings before OAH on claims of \$50,000 or less formerly found in Government Code Sections 14378 through 14380 were repealed. The regulations enacted to implement the determination of rights program, formerly found in Title 1, Cal. Admin. Code Sections 201 through 233, were repealed by OAH to conform with the legislation.

Public Contract Code Section 10240.5 (formerly Government Code Section 14410.5) provides that the arbitration rules currently in force and effect shall govern until initial uniform regulations under the statute are adopted. The three State agencies held a public hearing in April 1983 to hear comments on proposed regulations and currently intend to adopt new regulations by summer 1983.

Over the past two years the Arbitration Committee has met periodically on an infrequent basis. The Committee reviewed the proposed initial uniform regulations and presented its comments to the three State agencies, pursuant to Public Contract Code Section 10245.2. In December 1982 the Committee technically revised a portion of the criteria established for certification of arbitrators. By the close of 1982 a total of 169 arbitrators had been certified for the program by the Committee. As a result of a questionnaire issued by OAH in January 1983, a number of individuals removed themselves from the panel, leaving 150 active names as of April 1, 1983.

Filings have steadily increased each year. By the end of 1982, 62 cases had been filed with OAH; as of April 1, 1983, 69 cases have been filed. To date nearly half of those cases have been either adjudicated or settled. Amounts claimed have ranged from \$1240 to several million dollars. Awards made have ranged from zero to almost \$1.2 million. Many of the simpler cases have required about six months from the date of a demand for arbitration to the issuance of a written decision or settlement. Some of the more complicated cases, however, have averaged nearly two years before completion. Delays of from three to six months have occurred in

some cases because of hiring freezes imposed for new arbitrators by former Governor Brown in 1982 and by Governor Deukmejian in 1983.

OAH has no recommendations toward changing the existing legislation. The program appears to be working successfully.

## IX. FILINGS FOR FISCAL YEAR 1980-81

<i>Agency</i>	<i>North</i>	<i>South</i>	<i>State</i>
ACCOUNTANCY .....	6	3	9
AERONAUTICS .....	3	3	6
ALCOHOLIC BEVERAGE CONTROL .....	222	456	678
ARCHITECTURAL EXAMINERS .....	1	1	2
ATHLETIC COMMISSION .....	1	0	1
AUTOMOTIVE REPAIR .....	14	4	18
BARBER BOARD .....	24	125	149
BEHAVIORAL SCIENCE .....	6	5	11
CHIROPRACTIC EXAMINERS .....	4	17	21
COLLECTION AGENCIES .....	2	11	13
CONTRACT DISPUTES .....	2	1	3
CONTRACTORS' STATE LICENSE BOARD .....	305	286	591
CORPORATIONS .....	2	19	21
COSMETOLOGY .....	3	6	9
DENTAL EXAMINERS .....	23	22	45
EDUCATION .....	1	0	1
EMPLOYMENT AGENCIES .....	8	5	13
ENGINEERS .....	12	4	16
FAIR EMPLOYMENT AND HOUSING .....	50	45	95
FAIR POLITICAL PRACTICES COMMISSION .....	1	4	5
FIRE MARSHAL .....	0	4	4
FOOD & AGRICULTURE .....	4	5	9
FUNERAL DIRECTORS .....	4	4	8
HEALTH SERVICES .....	13	28	41
HIGHWAY PATROL .....	0	3	3
HORSE RACING BOARD .....	2	2	4
HOUSING AND COMMUNITY DEVELOPMENT .....	1	2	3
INSURANCE .....	43	223	266
INVESTIGATIVE SERVICES .....	5	6	11
JUSTICE .....	1	0	1
MEDICAL QUALITY ASSURANCE .....	101	137	238
MOTOR VEHICLES .....	182	355	537
NURSES (REGISTERED) .....	66	74	140
NURSING HOME ADMINISTRATORS .....	2	7	9
OPTOMETRY BOARD .....	1	4	5
OSTEOPATHIC BOARD .....	0	2	2
PARKS AND RECREATION .....	1	0	1
PEACE OFFICER TRAINING AND STANDARDS .....	1	1	2
PHARMACY .....	19	36	55
PHYSICAL THERAPISTS .....	0	2	2
PHYSICIANS' ASSISTANTS .....	1	0	1
PODIATRY .....	6	2	8
PSYCHIATRIC TECHNICIANS .....	10	29	39

<i>Agency</i>	<i>North</i>	<i>South</i>	<i>State</i>
PSYCHOLOGY .....	3	6	9
REAL ESTATE .....	249	366	615
REGISTERED DISPENSING OPTICIANS .....	0	4	4
REPAIR SERVICES (ELECTRONIC) .....	11	5	16
RETIREMENT—PERS .....	59	40	99
RETIREMENT—TEACHERS .....	36	45	81
RETIREMENT—UNIVERSITY OF CALIFORNIA .....	7	1	8
SAVINGS AND LOANS .....	0	4	4
SECRETARY OF STATE .....	18	51	69
SHORTHAND REPORTERS .....	2	4	6
SOCIAL SERVICES .....	31	25	56
STATE BANKING .....	0	1	1
STRUCTURAL PEST CONTROL .....	38	34	72
SUPERINTENDENT OF PUBLIC INSTRUCTION .....	0	1	1
TEACHER PREPARATION AND LICENSING .....	11	9	20
VETERINARY MEDICINE .....	2	3	5
VOCATIONAL NURSE EXAMINERS .....	24	57	81
TOTAL STATE AGENCIES .....	1,644	2,599	4,243
<b>SCHOOLS:</b>			
CLASSIFIED EMPLOYEES .....	5	0	5
COMMUNITY COLLEGE (FACULTY) (for cause) .....	2	2	4
PROBATIONARY TEACHERS .....	116	91	207
STUDENTS (discipline/grievance) .....	2	2	4
TEACHER GRIEVANCE .....	2	0	2
TENURED TEACHERS .....	18	30	48
TOTAL SCHOOL .....	145	125	270
CITY AND COUNTY & S.F. RETIREMENT .....	102	9	111
COMMUNITY HOSPITALS .....	0	1	1
TOTAL LOCAL GOVERNMENT .....	102	10	112
TOTAL ALL AGENCIES .....	1,891	2,734	4,625

## X. FILINGS FOR FISCAL YEAR 1981-1982

<i>Agency</i>	<i>North</i>	<i>South</i>	<i>State</i>
ACCOUNTANCY .....	8	7	15
ACUPUNCTURE .....	2	0	2
AERONAUTICS .....	1	2	3
ALCOHOLIC BEVERAGE CONTROL.....	283	523	806
ARCHITECTURAL EXAMINERS .....	1	0	1
AUTOMOTIVE REPAIR .....	8	14	22
BANKING.....	0	9	9
BARBER EXAMINERS .....	32	150	182
BEHAVIORAL SCIENCE .....	3	1	4
CHIROPRACTIC EXAMINERS .....	9	11	20
COLLECTIONS AGENCY.....	5	6	11
COMMUNITY COLLEGE BD. OF GOVERNORS.....	3	0	3
CONTRACTORS STATE LICENSE BOARD.....	232	398	630
CONSERVATION (FORESTRY) .....	3	0	3
CORPORATIONS.....	4	13	17
COSMETOLOGY .....	2	13	15
DENTAL EXAMINERS .....	7	14	21
EDUCATION (CHILD DEVELOPMENT) .....	1	11	12
ELECTRONIC & APPLIANCE REPAIR .....	6	7	13
EMPLOYMENT AGENCIES.....	7	6	13
ENGINEERS .....	5	6	11
FAIR EMPLOYMENT & HOUSING .....	52	113	165
FAIR POLITICAL PRACTICES COMMISSION .....	1	0	1
FIRE MARSHALL .....	0	5	5
FOOD & AGRICULTURE.....	4	2	6
FUNERAL DIRECTORS .....	4	8	12
HEALTH SERVICES.....	11	24	35
HORSE RACING BOARD .....	1	2	3
HOUSING AND COMMUNITY DEVELOPMENT .....	11	7	18
INDUSTRIAL RELATIONS (LABOR COMM) .....	0	2	2
INSURANCE .....	34	72	106
INVESTIGATIVE SERVICES .....	20	31	51
JUSTICE .....	1	0	1
MEDICAL QUALITY ASSURANCE .....	78	106	184
MOTOR VEHICLES .....	179	254	433
NAVIGATION & OCEAN DEVELOPMENT .....	-	1	1
NURSES (REGISTERED) .....	58	66	124
NURSING HOME ADMINISTRATORS .....	0	8	8
OFFICE OF STATEWIDE HEALTH PLANNING .....	48	0	48
OPTOMETRY BOARD .....	2	2	4
OSTEOPATHIC BOARD .....	2	1	3
PHARMACY.....	16	26	42
PHYSICAL THERAPISTS .....	2	3	5
PODIATRY.....	2	0	2
PSYCHIATRIC TECHNICIANS .....	19	13	32
PSYCHOLOGY EXAMINERS.....	1	5	6
REAL ESTATE .....	223	313	536
RETIREMENT—PERS .....	53	37	90
RETIREMENT—TEACHERS .....	18	47	65
RETIREMENT—UNIVERSITY OF CALIFORNIA.....	4	1	5
SECRETARY OF STATE .....	21	49	70
SHORTHAND REPORTERS.....	2	1	3
SOCIAL SERVICES.....	29	28	57
STRUCTURAL PEST CONTROL .....	30	48	78
TEACHER PREPARATION & LICENSING .....	5	3	8
TRANSPORTATION .....	6	0	6

<i>Agency</i>	<i>North</i>	<i>South</i>	<i>State</i>
VETERINARY MEDICINE .....	6	6	12
VOCATIONAL NURSE EXAMINERS .....	43	53	96
TOTAL STATE AGENCIES .....	1,608	2,528	4,136
SCHOOLS: ATHLETIC VIOLATION (HIGH SCHOOL) ....	0	1	1
CLASSIFIED EMPLOYEES .....	15	3	18
COMMUNITY COLLEGE (FACULTY) (for cause) .....	2	6	8
PROBATIONARY TEACHERS.....	158	82	240
STUDENTS (discipline/grievance) .....	1	4	5
TEACHER GRIEVANCE .....	-	-	-
TENURED TEACHERS .....	33	33	66
TOTAL SCHOOL.....	209	129	338
CITY & COUNTY.....	126	14	140
COMMUNITY HOSPITALS.....	-	-	-
TOTAL LOCAL GOVERNMENT .....	126	14	140
TOTAL ALL AGENCIES.....	1,943	2,671	4,614

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