care practitioner, is a regulation because the "opinion" implements, interprets, or makes specific statutory law or supplements regulatory law which governs respiratory care practitioners. Government Code section 11347.5 requires that such a standard be adopted pursuant to the APA.

-July 22, 1988, OAL Determination No. 12, Docket No. 87-018. OAL concluded that certain design and construction requirements applied by the Office of the State Architect (OSA) to planned "essential services buildings" (ESBs) are regulations required to be adopted in compliance with the APA, while others were determined to be nonregulatory.

OSA's requirement that the lease or purchase of the ESB is conditioned upon the completion and submission of certain forms to OSA was found to be a regulation, as well as OSA's requirement that ESB contractors conform to the school and hospital construction standards set out in Title 24 of the California Code of Regulations (CCR). However, OAL found that OSA's requirements for the design and construction of ESBs are not regulations insofar as they reflect Model Code provisions, Title 24 provisions not expressly limited to specified structures (*e.g.*, hospitals or schools), or the Essential Services Seismic Safety Act of 1986.

Legislative Requests for OAL Review of Regulations. Government Code section 11340.5 provides that OAL shall, at the request of any standing, joint, or select committee of the legislature, initiate a "priority review" of any regulation, group of regulations, or series of regulations. Notice of such a request is published in the *Notice Register* and is sent to interested parties. OAL subsequently takes into consideration the comments of interested parties in determining whether the regulation complies with the six standards of review established under Government Code section 11349.1.

A priority review requested by legislators must be completed within ninety days of OAL's receipt of the request. If OAL determines that the challenged regulation does not satisfy any of the six APA standards, it must issue an order to show cause (OSC) as to why the regulation should not be repealed. If the agency which promulgated the challenged provision does not make the proper showing within the specified time period, OAL must pursue repeal of the regulation as provided by Government Code section 11340.15(c).

Recent OAL activities involving legislative requests for priority review include the following:

-Section 16200(a)(3)(E), Title 8 of the CCR, was ordered repealed by OAL. In September 1987, Senator Bill Greene, Chair of the Senate Committee on Industrial Relations, requested that OAL determine if the Department of Industrial Relations exceeded its authority when it restricted holidays in determining prevailing rates to holidays that are recognized by federal and state law. The Senate Committee alleged that section 16200 was inconsistent with section 1773 of the Labor Code.

Following APA procedure, the Department responded to OAL's order to show cause why section 16200 should not be repealed, and OAL issued a statement that an order of repeal would issue following the thirty-day period of review by the Governor. As the Governor has not overruled OAL's decision to repeal, the OAL order to repeal will become effective.

Decisions of Disapproval. On July 28, the Department of Conservation submitted an emergency amendment to section 2606, Title 14 of the CCR, to OAL for review. On August 8, OAL notified the Department that its proposed regulatory action was disapproved.

The emergency amendment would have established a new procedure for the administrative processing and adjudication of alleged violations of certain specified provisions of the California Beverage Container Recycling and Litter Reduction Act. However, OAL determined that the proposed emergency amendment was not needed immediately to protect the public welfare under its authority to review emergency regulations.

On June 27, the California Student Aid Commission submitted regulatory action to OAL to adopt sections 30501 through 30517, Title 5 of the CCR. The proposed regulation would establish the "Paul Douglas Teacher Scholarship Program" in California. On July 27, OAL notified the Commission of its disapproval of the proposed regulation. OAL's disapproval of the proposed regulatory action was based on its failure to comply with the necessity, clarity, and consistency standards of the APA.

OAL Determinations Index. The July 1988 revision of the OAL Determinations Index is currently available from the Office of Administrative Law. The Index details "underground regulations" determinations issued in 1986, 1987, and the first ten determinations in 1988 pursuant to Government Code section 11347.5. The Index contains such information as which state agencies have requested or been affected by such determinations, rulemaking authority, and a table of where the determinations can be found in the *Notice Register.*

LEGISLATION:

AB 2732 (Felando) (reported in CRLR Vol. 8, No. 3 (Summer 1988) p. 24) would have provided that whenever a state agency, during the course of the APA rulemaking process, cites a statute or section of a statute as reference or authority for promulgation of a regulation which is later repealed or becomes ineffective, the correlative regulation shall be deemed to be repealed, ineffective, and inoperative coincident with the repeal of the statute upon which it relies. The bill was vetoed by the Governor.

LITIGATION:

In *California Chapter of the American Physical Therapy Association, et al. v. California State Board of Chiropractic Examiners, et al.* (see CRLR Vol. 8, No. 3 (Summer 1988) p. 36 for background information), the OAL took no action to appeal a Sacramento County Superior Court decision overruling its demurrer and denying its motions to strike various causes of action.

In this case, plaintiffs allege that OAL "did arbitrarily, capriciously, and unlawfully approve" section 302, Title 16 of the CCR, which was adopted by the Board of Chiropractic Examiners to define the scope of chiropractic practice.

At present, discovery requests have been served on OAL and remain outstanding. Plaintiffs Board of Medical Quality Assurance and California Medical Association have filed motions for summary judgment.

OFFICE OF THE AUDITOR GENERAL

Auditor General: Thomas W. Hayes (916) 445-0255

The Office of the Auditor General (OAG) is the nonpartisan auditing and investigating arm of the California legislature. OAG is under the direction of the Joint Legislative Audit Committee (JLAC), which is comprised of fourteen members, seven each from the Assembly and Senate. JLAC has the authority to "determine the policies of the Auditor General, ascertain facts, review reports and take action thereon...and make recommendations to the Legislature...

concerning the state audit...revenues and expenditures...." (Government Code section 10501.) OAG may "only conduct audits and investigations approved by" JLAC.

Government Code section 10527 authorizes OAG "to examine any and all books, accounts, reports, vouchers, correspondence files, and other records, bank accounts, and money or other property of any agency of the state...and any public entity, including any city, county, and special district which receives state funds...and the records and property of any public or private entity or person subject to review or regulation by the agency or public entity being audited or investigated to the same extent that employees of that agency or public entity have access."

OAG has three divisions: the Financial Audit Division, which performs the traditional CPA fiscal audit; the Investigative Audit Division, which investigates allegations of fraud, waste and abuse in state government received under the Reporting of Improper Governmental Activities Act (Government Code sections 10540 *et seq.*); and the Performance Audit Division, which reviews programs funded by the state to determine if they are efficient and cost effective.

RECENT AUDITS:

Report No. P-716 (June 1988) is a review of the California State Bar's processing of complaints against attorneys accused of misusing client trust funds. OAG staff found that the State Bar has not met its statutory goal of resolving complaints within six months of filing. From 1984 through 1986, 54% of all complaints filed were not promptly resolved during the six-month period. The audit also concludes that the State Bar could have done more to ensure that potential claimants filed for reimbursement from its Client Security Fund (CSF), which was specifically established to compensate clients whose attorneys have misused funds entrusted to them. (For more information on the Bar's Client Security Fund, *see supra* FEATURE ARTICLE.)

The State Bar has legislative authority to investigate complaints of unprofessional conduct by attorneys. Under the jurisdiction of the Supreme Court of California, the State Bar is responsible for enforcing the rules of professional conduct. It may recommend various forms of discipline including censures, suspensions, and disbarments.

In a random study of 131 complaints of attorney misuse of client trust funds, the OAG audit found that the State Bar took no action on 64 cases for at least 90 days; took no action on 40 cases for at least 180 days; and in one case, the file showed no work was completed to resolve the complaint for almost one-and-one-half years.

The State Bar does not believe that it can resolve all complaints alleging client misuse of funds within its six-month goal because some cases are too complex and require more time. SB 1498, which was recently signed by the Governor (Chapter 1159, Statutes of 1988), extends the maximum time allowed to process complex cases. However, the OAG report notes that the State Bar's delay in processing complaints stems from its lack of a complete case management system. Although the OAG admits that the State Bar has improved its case management system in processing complaints since the 1984-86 time period, it still has no procedures for ensuring that staff meet required deadlines for the processing of such complaints.

The OAG reviewed 48 claims for reimbursement from the CSF and found that the Fund paid 25% (12 claims) of these claims an average of 18.4 months after the respondent attorneys were disciplined, had resigned, or had died. The report notes that California lags behind other states in prompt payment of reimbursement from similar CSFs. Potential claimants are not always notified of their eligibility for reimbursement under the California State Bar system.

Of the 12 claims paid by the CSF, the OAG found that only two of those claimants had been notified about the availability of the CSF by the State Bar. Most of the claimants had learned about the Fund from other sources.

The OAG report concludes that State Bar's delay in resolving complaints against attorneys results in uninformed decisionmaking by the public about hiring attorneys; and dishonest attorneys—whom the State Bar may eventually disbar because of their misuse of client funds—continue to practice law.

To ensure that the State Bar does not delay in resolving complaints, the OAG report recommends that the State Bar set specific guidelines for processing complaints and continue to implement a case management system to monitor the processing of complaints. Further, the State Bar should automatically inform consumers of the availability of the CSF when they file complaints of attorney misuse of funds.

Report No. P-739 (August 1988) investigates the accuracy and completeness of California records on the incidence of child abuse. The OAG report found that overall, the records are both under- and overinclusive.

Enacted in 1980, California's Child Abuse Reporting Law requires individuals responsible for providing custodial, medical, and nonmedical care for children to report known or suspected child abuse to child protective agencies. The law then requires the child protective agencies (police and sheriff departments, county welfare departments, and county probation departments) to investigate and report incidents of suspected child abuse to the Department of Justice (Department).

The Department maintains a file of these reports called the Child Abuse Central Index (Index) to assist child protective agencies in future investigations, in order to identify both suspects and victims to prevent further abuse. The Index is also used by the Department of Social Services to determine whether a license should be issued to an individual or entity seeking to provide care and services to children.

The OAG staff evaluated a sample of reports of suspected child abuse received by 13 of over 530 child protective agencies in California to determine the accuracy and completeness of the information in the Index. The period of review was January 1, 1987 through June 30, 1987. The 13 agencies consisted of four police departments, four county sheriff departments, four social service departments, and one probation department.

To determine whether child protective agencies are reporting suspected murders of children as suspected incidents of child abuse, OAG also reviewed the files on 59 incidents of suspected murders investigated by the law enforcement agencies it evaluated.

The OAG staff found that the Index did not contain some 32% of the investigated child abuse reports which were substantiated by the child protective agencies. In addition, the law enforcement agencies which investigated and substantiated the 59 incidents of suspected murder did not submit reports of suspected child abuse to the Index in 93% of the cases.

The omission of suspected child abuse reports is primarily due to the child protective agencies' failure to submit the reports to the Department as the law requires. Law enforcement agencies did not report the suspected murders

as incidents of suspected child abuse because they were either unaware of the reporting requirement or because of a belief that murders are excluded under the reporting law.

Moreover, the OAG audit also discovered that the Index contained some reports of suspected child abuse which should have been omitted. In the OAG sample of 71 reports that child protective agencies determined to be unfounded, 4 appeared in the Index. These errors occurred because the child protective agencies failed to notify the Department that previous reports of suspected child abuse were later proven to be unfounded.

The OAG report concludes that the inaccurate Index hinders child protective agencies in their effort to protect children from abuse and to identify, apprehend, and provide information to prosecute those individuals suspected of child abuse. An incomplete Index could result in the unintentional issuance of a child care license to someone previously a suspect in a child abuse incident. Moreover, as a result of errors in failing to update unsubstantiated reports of child abuse incidents, the Department could erroneously identify individuals as suspects in child abuse incidents, resulting in unfair delay in their obtaining licenses or employment in child care.

The OAG report made the following recommendations to ensure that all child protective agencies are familiar with the requirements for the reporting of suspected child abuse. First, all child protective agencies should ensure that their employees are aware of the reporting requirements. Second, the agencies should establish controls to ensure that each incident of suspected child abuse is investigated and, if substantiated, reported to the Department. Finally, the Department should take appropriate action to correct deficiencies in the reporting system.

Report No. P-773 (August 1988) concludes that California can improve its program to fund asbestos abatement projects in school districts. Asbestos was widely used in school building construction for fireproofing and insulation from 1946 to 1972. Since the discovery of the health hazards related to exposure to asbestos fibers, California has made funds available to remove materials from its schools. (For extensive background information on the asbestos problem, see CRLR Vol. 8, No. 2 (Spring 1988) pp. 34-35; Vol. 7, No. 4 (Fall 1987) p. 31; and Vol. 7, No. 3 (Summer 1987) pp. 52-53.)

In 1984, California created the Asbestos Abatement Fund, to which $24.75 million was allocated. The state's Office of Local Assistance (OLA) of the Department of General Services administers the fund and has disbursed approximately $8.6 million to various school districts for the purpose of removing asbestos. The state directed the State Allocation Board (SAB) to establish policies for allocating the funds and authorizes SAB to establish funding priorities based on the imminence of the health hazards caused by asbestos in California schools.

Under the authority of the Asbestos Hazard Emergency Response Act, the federal Asbestos Inspection and Management Plan Assistance Program was established to provide federal financial support to assist states with the costs of inspecting school buildings for asbestos and preparing plans for its removal. States interested in these funds applied through the U.S. Environmental Protection Agency (EPA).

The OAG reports that California's application was received by EPA two weeks past the established deadline. As a result, California school districts lost an opportunity to compete for up to $500,000 in federal funding.

The OAG staff evaluated OLA's administration of its state program to fund asbestos abatement projects by examining OLA's application review process and disbursement of funds. OAG also examined OLA's efforts to obtain the federal funds available through the EPA.

The OAG report concludes that OLA has been slow in processing school district applications for asbestos abatement funds. As of February 3, 1988, 43 of 100 applications reviewed by OAG were two-and-one-half years old. The OLA still has not released funds for these applications. Since the program's inception, OAG estimates that 31% of the applications reviewed by OLA are still pending. Further, new applicants are not receiving funds because nearly all available funds have been reserved to many of the applications still pending. Delays in disbursing the funds have occurred because OLA has not established deadlines for completing internal processing of applications.

In addition to the delays, the SAB allocated funds to certain schools which have still not supplied required supporting documentation of asbestos problems. As a result, new applicants who can provide the necessary documentation cannot be funded because the money is still reserved to the former applicants.

The OLA has not recommended that the SAB rescind the funds reserved for those school districts which cannot provide supporting documentation. For example, on March 13, 1986, the OLA notified the Fremont Unified School District it did not qualify for funding. However, as of June 16, 1988, the OLA had not proposed that the SAB rescind the $249,000 reserved for this application.

OLA's executive officer told OAG staff that OLA administers its program at the direction of SAB, which did not adopt a policy of limiting the length of time during it would reserve funds until March 1988. However, in the past and at OLA's request, SAB did rescind funds for certain applications where funding had been reserved.

The OAG report makes the following recommendations:

-OLA should ensure that schools submit all necessary documentation on time by informing schools of the new time limits for reserving funds;

-OLA should develop and implement deadlines for review of applications;

-OLA should propose that the SAB rescind all funds it has apportioned to those schools which cannot provide documentation and apportion the money to eligible schools; and,

-in the future, OLA should meet all established federal guidelines to procure federal funds.

Report No. P-746 (May 1988) is an update on the City of Los Angeles' compliance with a federal court order to upgrade its Hyperion Sewage Treatment Plant.

Los Angeles is in the midst of a $1.1 billion construction project to improve its Hyperion Sewage Treatment Plant. Of these funds, $336 million has been spent on a new sludge processing plant, the Hyperion Energy Recovery System (HERS). The remaining $800 million will be spent on other improvements designed to enable the City to provide secondary treatment of all of its sewage by 1988, as required by a federal court order.

The Federal Water Pollution Control Act requires secondary treatment of all sewage before pumping it into the ocean. The Act also prohibits the discharging of sludge into the ocean. Because the City of Los Angeles failed to comply with these provisions, the U.S. Department of Justice filed a lawsuit against the City. To avoid litigation, the City entered into a consent decree in 1980, which was eventually amended to require the City to stop discharging sew-

age sludge into the ocean by December 31, 1987.

OAG reviewed the sewage treatment construction project and found that HERS has cost $77 million more than the original construction bids and will take 38.5 months longer to complete than originally planned. Moreover, the City, the state Water Resources Control Board, and the EPA participated in a five-year study of various sludge management alternatives before deciding to use the HERS to process the City's sludge.

The OAG Report concludes that the City has generally complied with the consent decree by stopping its intentional discharge of sewage sludge and by satisfying other requirements under the consent decree. However, it has violated the amended consent decree by not reporting accidental discharges of insufficiently-treated sewage into the ocean.

The City has established a master schedule for providing required secondary treatment of all municipal sewage by December 31, 1988, and is proceeding with projects to meet this requirement.

COMMISSION ON CALIFORNIA STATE GOVERNMENT ORGANIZATION AND ECONOMY (LITTLE HOOVER COMMISSION)

Executive Director: Robert O'Neill
Chairperson: Nathan Shapell
(916) 445-2125

The Little Hoover Commission was created by the legislature in 1961 and became operational in the spring of 1962. (Government Code sections 8501 *et seq.*) Although considered to be within the executive branch of state government for budgetary purposes, the law states that "the Commission shall not be subject to the control or direction of any officer or employee of the executive branch except in connection with the appropriation of funds approved by the Legislature." (Government Code section 8502.)

Statute provides that no more than seven of the thirteen members of the Commission may be from the same political party. The Governor appoints five citizen members, and the legislature appoints four citizen members. The balance of the membership is comprised of two Senators and two Assemblymembers.

This unique formulation enables the Commission to be California's only real, independent watchdog agency. However, in spite of its statutory independence, the Commission remains a purely advisory entity only empowered to make recommendations.

The purpose and duties of the Commission are set forth in Government Code section 8521. The Code states: "It is the purpose of the Legislature in creating the Commission, to secure assistance for the Governor and itself in promoting economy, efficiency and improved service in the transaction of the public business in the various departments, agencies, and instrumentalities of the executive branch of the state government, and in making the operation of all state departments, agencies, and instrumentalities and all expenditures of public funds, more directly responsive to the wishes of the people as expressed by their elected representatives...."

The Commission seeks to achieve these ends by conducting studies and making recommendations as to the adoption of methods and procedures to reduce government expenditures, the elimination of functional and service duplication, the abolition of unnecessary services, programs and functions, the definition or redefinition of public officials' duties and responsibilities, and the reorganization and or restructuring of state entities and programs.

MAJOR PROJECTS:

Coordination of Funding for Drug Abuse Programs in California (June 1988). An estimated $86.4 million in federal and state funds will have been spent in fiscal year 1987-88 to provide local assistance to community drug programs (not including alcohol abuse programs). Although state law "addresses the need for coordination of funding and other resources available for drug programs by designating the Department of Alcohol and Drug Programs as the State agency responsible for coordinating the State's response to drug abuse problems," the Little Hoover Commission's June report concludes that "in practice, administrative authority, funding and responsibility for drug programs is fragmented among several State departments. As a result, there is a lack of coordination and control...which undermines the success of the State's anti-drug efforts."

Coordination of drug program funding and services is not a new concern. Attempts to improve "coordination of resources available for the prevention and treatment of drug abuse and for the enforcement of State and local laws designed to restrict the supply of illegal drugs" began in 1972 when the local drug program planning process was codified in California Health and Safety Code section 11960 *et seq.* Under state policy, coordination is primarily a local responsibility.

Three state agencies have major responsibilities for the administration of federal and state anti-drug funds: the Department of Alcohol and Drug Programs, the Department of Education, and the Office of Criminal Justice Planning. In addition:

-the Department of Justice's Crime Prevention Center carries on a large number of state- and community-level coordination activities, although it does not allocate funds to local drug programs nor is it "specifically mandated to interact with other State agencies" regarding drug abuse;

-the Departments of Mental Health and Health Services fund drug-related community services; and

-several other state departments spend "unscheduled" amounts (that is, expenditures related to, but not necessarily budgeted for, anti-drug activities) on anti-drug programs.

The School-Community Primary Prevention Program (SCPPP) (Health and Safety Code section 11965 *et seq.*) was established as a model for drug program coordination and was to have been jointly administered by the Departments of Education and Alcohol and Drug Programs. Shared administrative authority between the agencies was "difficult", however, and so—beginning January 1, 1988—the Department of Alcohol and Drug Programs assumed full administrative responsibility for the SCPPP program.

The actual definition of the problem of drug abuse prevention (that is, whether it involves issues of general or health education, law enforcement/criminal justice, or treatment) affects the administrative model (and department) and kind of resources used (*e.g.*, Education, Health Services, Mental Health, Justice, or Alcohol and Drug Programs, respectively). Although "coordination and collaboration are essential to the goal of minimizing drug abuse," institutions organized around specialized foci and different priorities, target populations, and requirements often frustrate coordination.

The Commission made the following findings in its report:

-Existing requirements and mechanisms for coordinating drug programs are frequently ignored or underutilized.