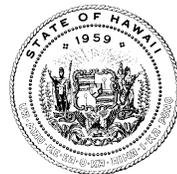


**THE MCCP & DPCP
ANNUAL REPORT TO
THE 2004 LEGISLATURE**



STATE OF HAWAII
Department of Commerce
and Consumer Affairs

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I. INTRODUCTION

The Medical Claims Conciliation Panel (“MCCP”) and the Design Professional Conciliation Panel (“DPCP”), are programs of the Department of Commerce and Consumer Affairs (“DCCA”), State of Hawai‘i. The MCCP was established by Act 219, 1976 Session Laws of Hawai‘i, Hawai‘i Revised Statutes (“HRS”) §671-11, and the DPCP was established by Act 228, 1981 Session Laws of Hawai‘i, HRS Chapter 672.

The MCCP and DPCP programs are responsible for conducting informal conciliation hearings on claims against health care providers and design professionals, respectively, before such claims can be filed as lawsuits. The Panels’ decisions are advisory in nature and are not binding on the parties, in the event that any party still wishes to pursue the matter via the courts.

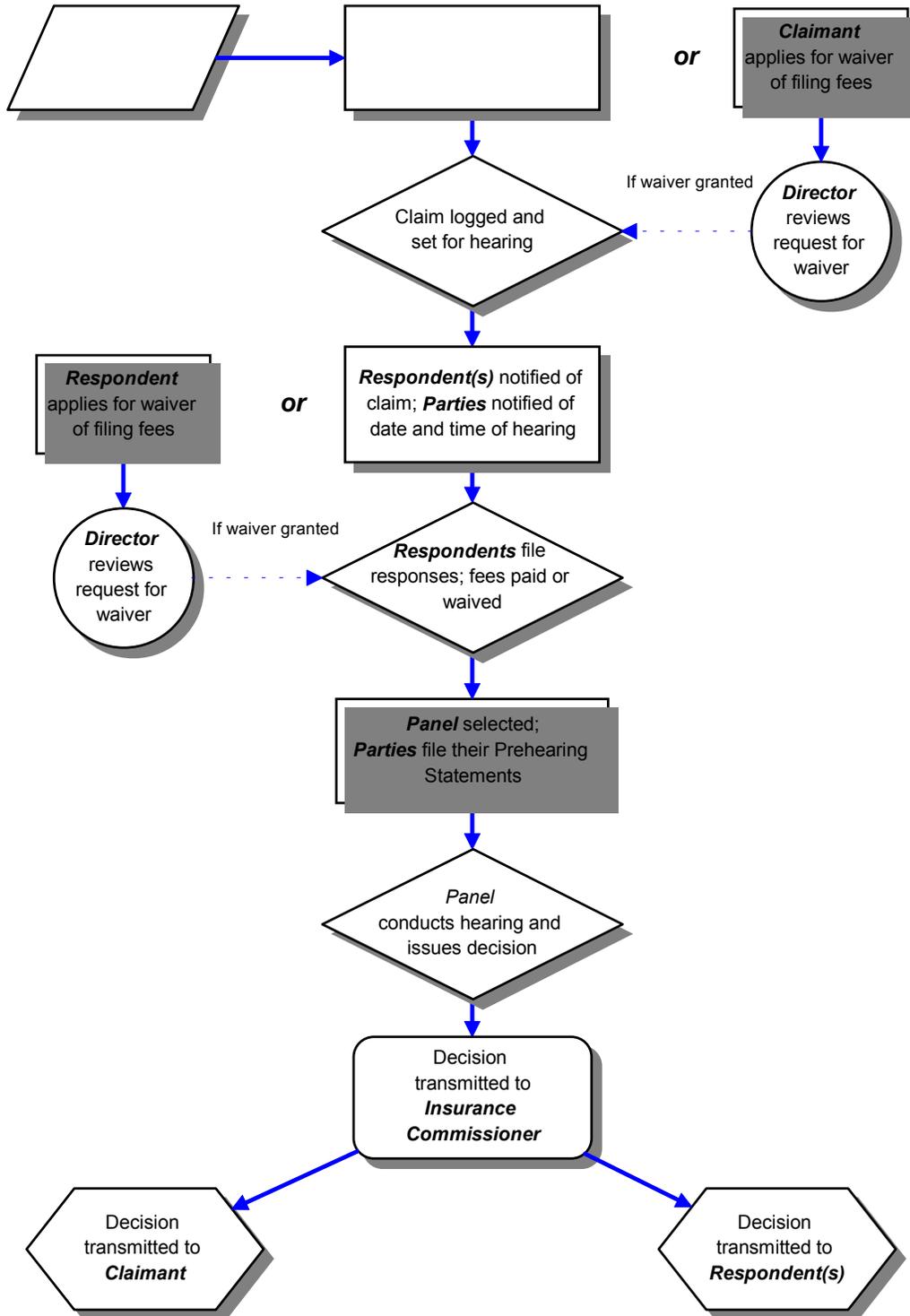
The primary purpose of the MCCP and DPCP programs is achieved when the parties make conscientious and thorough presentations to the Panels. In such cases, the decisions rendered by the Panels provide the parties with fairly accurate advisory determinations of the relative merits of the claims, which should assist the parties in evaluating whether the claims should be pursued through the judicial system.

The MCCP and DPCP programs also provide opportunities for the parties to exchange information in a relatively expedited and inexpensive manner, which in turn provides for opportunities for the parties to explore the conciliation of meritorious claims prior to such claims being brought before the courts.

Lastly, the requirements of exchanging information between the parties, and making conscientious and thorough presentations to the Panels, discourage the pursuit of frivolous or fraudulent claims, prior to further legal proceedings being taken by the parties.

The *MCCP and DPCP Annual Report to the 2004 Legislature* covers the period of January 1, 2003, through November 30, 2003.

Flowchart of the MCCP Process



II. THE MEDICAL CLAIMS CONCILIATION PANEL PROGRAM

A. The Year in Review

In 2003, we continued to improve the processing and hearing of MCCP claims, as well as streamlining the MCCP procedures to minimize unnecessary costs and procedural requirements.

We also updated all of the MCCP informational materials and forms and made them available to parties and interested persons in various formats and media, including access via DCCA's internet web page: www.state.hi.us/dcca/oah.

B. Legislative Changes

In 2003, Hawai'i, along with many other States, had to face serious issues regarding medical malpractice. Pursuant to Governor Linda Lingle's directive to develop effective strategies to address the causes and effects of medical malpractice, the MCCP conducted a review of the kinds of cases filed with the MCCP over the last several years.

We observed a growing number of claims filed with the MCCP that reflected an incomplete understanding on the part of a growing number of claimants, of the medical and legal issues involved in the claims. This problem was most prevalent with claimants who were not represented by attorneys, and with some attorneys who were not experienced or familiar with medical tort claims. The health care professionals and health care facilities that were involved in these claims were ultimately found not to have been actionably negligent by the MCCP. However, the filing of such claims with the MCCP resulted in increased costs and expenses for the health care providers and health care facilities that had to respond to such claims. In essence, for these kinds of cases, the MCCP process was being utilized as a means for the claimants to develop a better understanding of the legal and medical issues involved in their claims, at the expense of the other parties.

As part of Governor Lingle's efforts to address the causes for medical malpractice and to help stabilize medical malpractice insurance premiums, Senate Bill No. 1324 was drafted and subsequently became Act 211, 2003 Sessions Laws of Hawai'i.

The passage of Act 211 represents the first substantive change in the MCCP statute since its inception in 1976.

Act 211 will reduce the filing of non-meritorious medical malpractice claims against physicians, and health care facilities by requiring a claimant or the claimant's attorney to have the claim evaluated by a qualified physician, or make a good faith effort to consult with a qualified physician before the claim can be filed with the MCCP.

Additionally, Act 211 also provides the parties to a medical malpractice claim with the option of submitting the claim to an alternative dispute resolution provider instead of the MCCP, if the parties believe that it would be more beneficial or meaningful to have the claim presented to an alternative dispute resolution provider.

Lastly, in keeping with Governor Lingle's comprehensive directive to reduce the processing time for all matters submitted to state agencies for disposition, Act 211 reduces the processing time for MCCP claims by 33%, from 18 months to 12 months.

C. *The Operations of the MCCP*

1. Expedited Claims Filing Process

In 1997, the MCCP program initiated the MCCP Fast Track Filing System, which allowed a claim to be heard within four (4) months from the date the claim is filed with the MCCP program, or even sooner, if all of the parties agree. Additionally, because these expedited cases utilized other facilities to host the hearings, we have been able to schedule more hearings for claims brought under the regular MCCP filing process, because of the increased availability of the MCCP hearings room.

The MCCP Fast Track Filing System continues to be utilized by the parties. In 2003, five (5) new claims were filed utilizing the expedited claims process, and five (5) claims were heard on an expedited basis.

2. MCCP Evaluation Process

As a result of the evaluations collected in 2002 and 2003, we have been able to identify areas of the MCCP process that are functioning appropriately, as well as identifying areas that need additional support.

Overall, every Panel member received acceptable levels of evaluations, and some Panel members consistently received “good” to “excellent” on their evaluations from the parties.

Additionally, the MCCP process as well as the MCCP staff received evaluations indicating that the parties found the MCCP process/staff to be more than adequate, with some areas ranking higher.

3. Appointment of MCCP Chairpersons

In the past, the substantial majority of the MCCP chairpersons have been attorneys; however, starting in 2000, we have also sought qualified chairpersons who are not attorneys.¹

In 2003, there were seven (7) qualified MCCP chairpersons who were not attorneys: two individuals with extensive mediation and dispute resolution experience, and five physicians who have previously served on Panels as physician members, and who have distinguished themselves by their medical expertise and their understanding of the MCCP process.

4. Electronic Filing of Documents

In latter part of 2001, the MCCP program inaugurated an optional electronic filing process that allows participating parties to file, distribute, and receive documents electronically.

We expect that technologically capable parties will be utilizing this electronic filing option more frequently in the future.

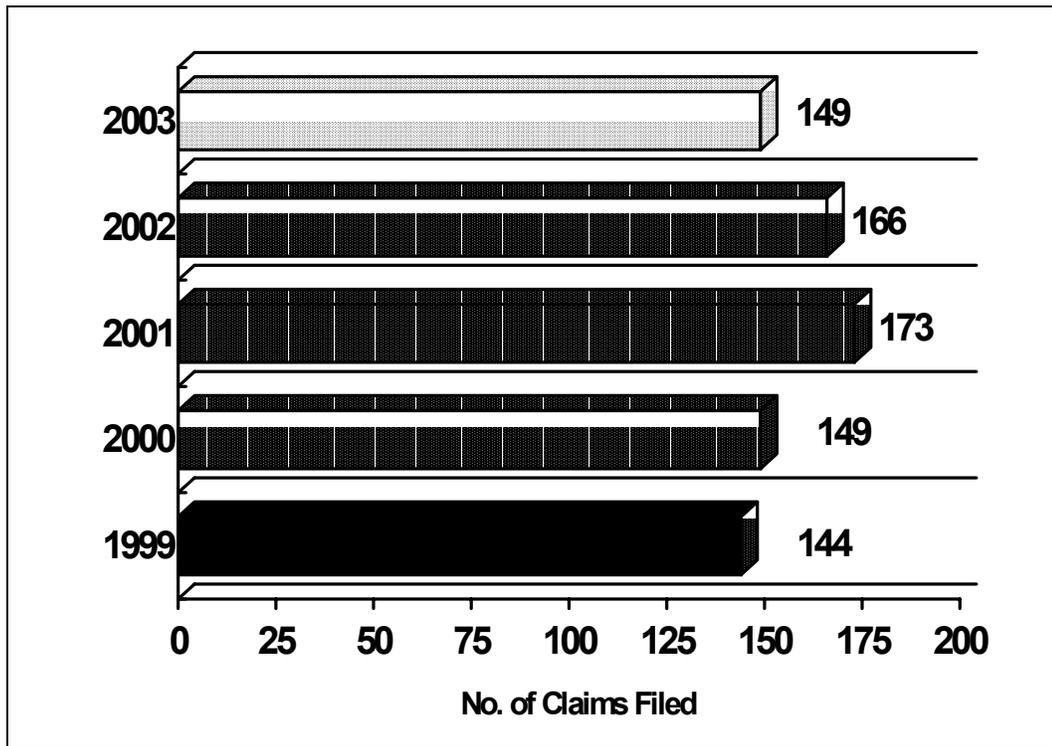
D. Statistical Overview of the MCCP Program

1. Number of Claims Filed in 2003

As of November 30, 2003, there were 149 cases filed with the MCCP program, involving 223 claimants, and 374 respondents. It should be noted that although there were 223 different claimants, ***there were not 374 different*** health care professionals and facilities named as Respondents. However, each case requires the same individualized processing effort, even if some of the cases involve some or all of the same respondents.

¹ HRS §671-11(b), requires that the MCCP chairperson be “familiar with and experienced in the personal injury claims settlement process.”

Figure 1: Claims Filed in 1999 Through November 30, 2003



In regards to parties who are unable to pay the required filing fees, in 2003, 38 waiver requests were granted by the Director.²

Lastly, in 2003, 31 claims were filed with the MCCP in which the claimants were not represented by attorneys.

2. Disposition of Claims Heard in 2003

As of November 30, 2003, there were 101 cases heard by the MCCP, involving a total of 170 claimants and 343 respondents. Once again, it should be pointed out that although these statistics indicate that 170 different claimants were involved in the claims heard, there were not 343 different health care professionals or facilities involved.

Of the cases heard by the MCCP in 2003: 1) there were 36 cases in which the claimants were not represented by attorneys (*pro se* claimants); and 2) in one of the 101 claims heard by the MCCP, the Panel found the underlying claim to be frivolous (palpably without merit).

² The MCCP utilizes the same financial guidelines to determine a party's eligibility to waive the MCCP filing fees as the courts use in determining whether a party can proceed *in forma pauperis* in a judicial proceeding.

Overall, the MCCP found actionable negligence on the part of all or some of the respondents in 13 cases, and rendered advisory determinations of damages ranging from \$5,000.00 to \$1,100,000.00.

The following table provides a statistical overview of the disposition of cases heard by the MCCP in 2003.

Figure 2: Disposition of Claims Heard in 2003

Total number of parties in cases heard:	513
Total number of Claimants	170
Total number of Respondents	343

Total number of hearings conducted:	101
Actionable negligence found:	13
No negligence found:	76
Panel decision pending:	7
Dismissed by Panel:	5
Total Damages Recommended by Panels:³	\$3,160,000.00

³ In six (6) of the cases in which Panels found actionable negligence on the part of some of the respondents, the Panels were either not able to make determinations of damages, or were requested not to make determinations as to damages.

Figure 3: Comparative Disposition of Claims Heard in 2003

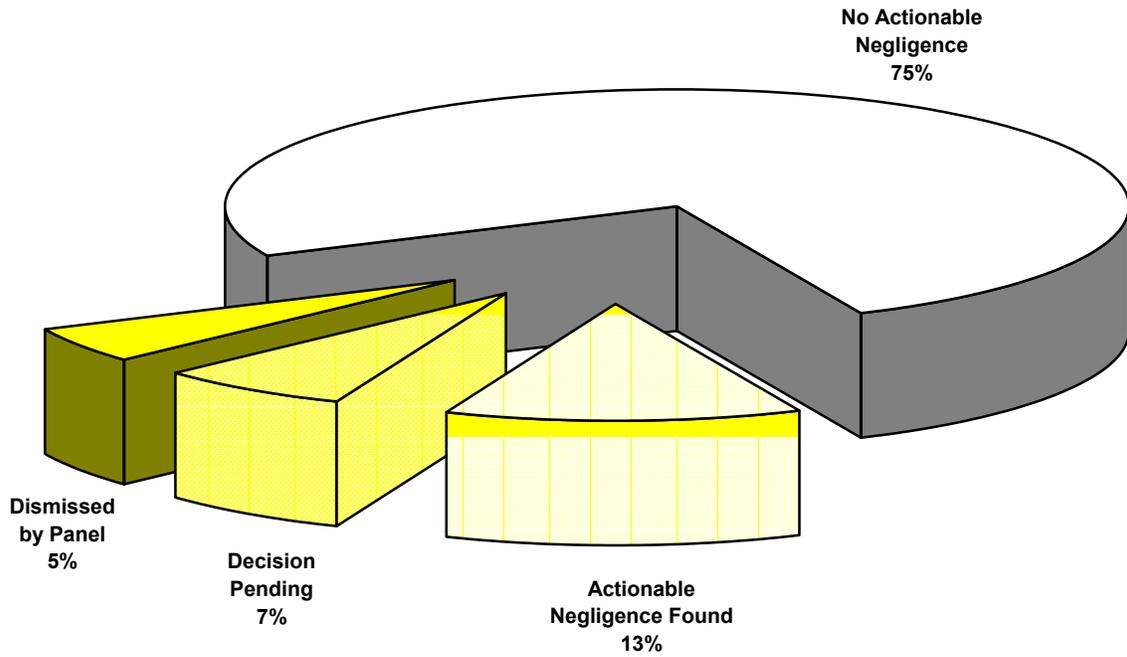


Figure 4: Disposition of Claims Closed Without Hearings

Total claims closed without hearings:	35
Withdrawn:	19
Settled prior to hearing:	4
Dismissed by Stipulation:	3
Statute tolled:	1
Terminated:	11

III. DPCP ANNUAL REPORT

A. Statistical Overview DPCP

As of November 30, 2003, there were 8 DPCP claims filed in 2003, and one DPCP claim proceeded to hearing.

Figure 5: Disposition of DPCP Claims

Total claims filed in 2003:	8
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Total number of hearings conducted:	1
Actionable negligence found	0
Some Respondents negligent	0
No negligence found	1
Total Damages Recommended by Panel	N/A

Disposition of claims in 2003:	
Withdrawn/dismissed	1
Settled	1
Unsuitable	3
Tolling period lapsed	0
Pending	2

IV. CONCLUSION

We are continuing to work with the parties and participants of the MCCP and DPCP programs to find new ways to allow these programs to fulfill their statutory and philosophical obligations.

We are also very committed to modernizing every appropriate component of the MCCP and DPCP processes to allow for maximum access by the parties and the expedited processing of claims.

Respectfully submitted,

MARK E. RECKTENWALD
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