

**THE MEDICAL CLAIMS  
CONCILIATION PANEL**

and

**THE DESIGN CLAIMS  
CONCILIATION PANEL**

**Report to the  
Twenty-Fifth State Legislature**

Submitted by

**The Department of Commerce & Consumer Affairs  
State of Hawai'i**

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## **I. INTRODUCTION**

The *MCCP and DCCP Annual Report to the Twenty-Fifth State Legislature* is submitted pursuant to Hawai'i Revised Statutes ("HRS") §§671-20 and 672B-17, respectively, and covers the period of January 1, 2009, through November 1, 2009.

### **A. The Medical Claims Conciliation Panel**

The Medical Claims Conciliation Panel ("MCCP") is a program 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, HRS §671-11.

The MCCP program is responsible for conducting informal conciliation hearings on claims against health care providers before such claims can be filed as lawsuits. The MCCP's 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 program is achieved when the parties make conscientious and thorough presentations to the Panel. In such cases, the decisions rendered by the Panel 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 program also provides 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.

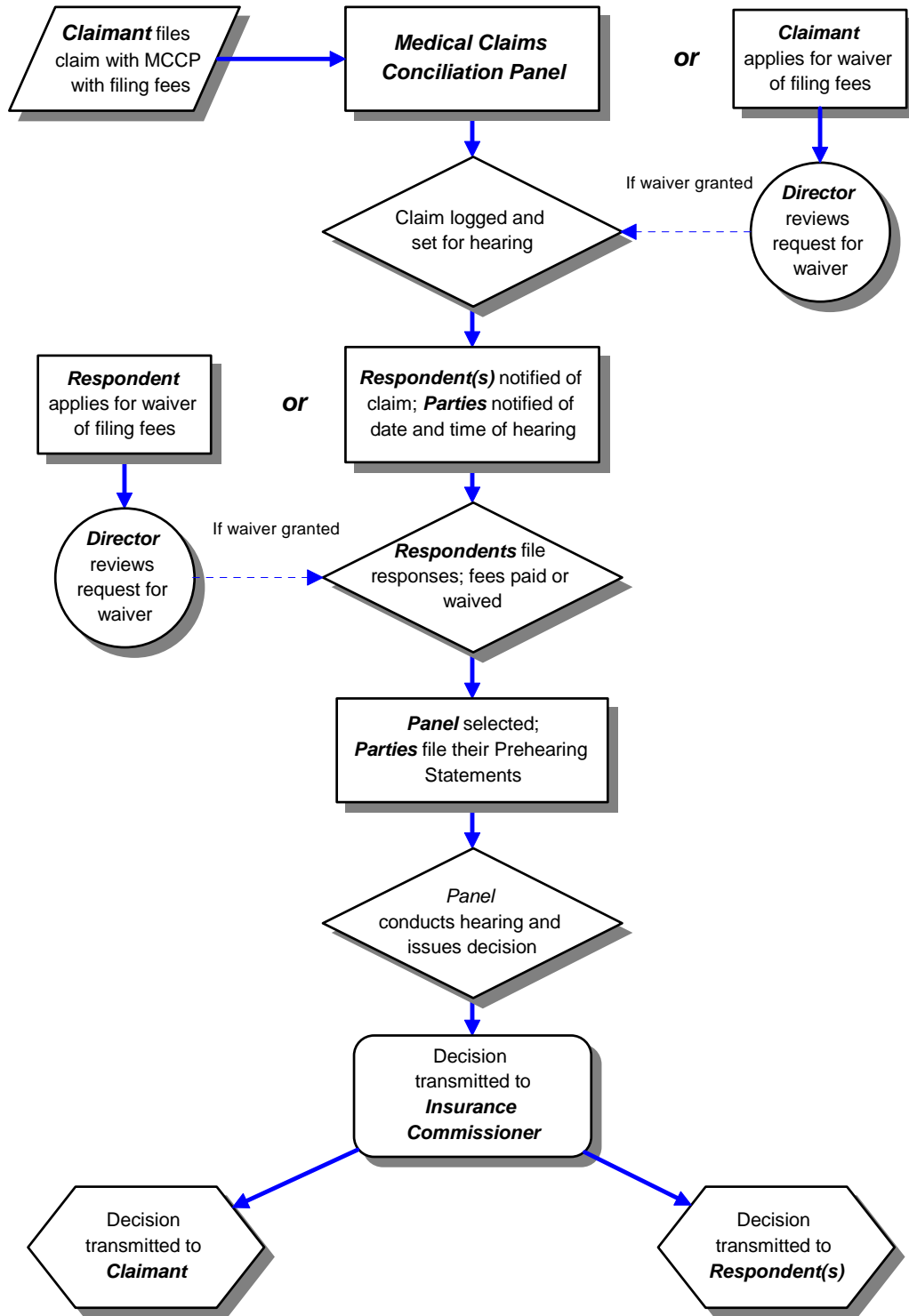
Finally, the requirements of exchanging information between the parties, and making conscientious and thorough presentations to the Panel, discourage the pursuit of frivolous or fraudulent claims, prior to further legal proceedings being taken by the parties.

### **B. The Design Claims Conciliation Panel**

Pursuant to Act 207, 2007 Session Laws of Hawai'i, starting on January 1, 2008, all malpractice claims against design professionals must be submitted to the Design Claims Conciliation Panel ("DCCP") program.

The DCCP is modeled on the MCCP and operates under the same procedures and guidelines.

**Flowchart of the MCCP Process**



## **II. THE MEDICAL CLAIMS CONCILIATION PANEL PROGRAM**

### **A. The Year in Review**

In 2009, 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 have 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: [http://hawaii.gov/dcca/oah/forms/mccp\\_/](http://hawaii.gov/dcca/oah/forms/mccp_/).

### **B. 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.

Although the MCCP Fast Track Filing System continues to be available to the parties, in 2009, there were no claims filed under the expedited claims process.

#### **2. Electronic Filing of Documents**

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

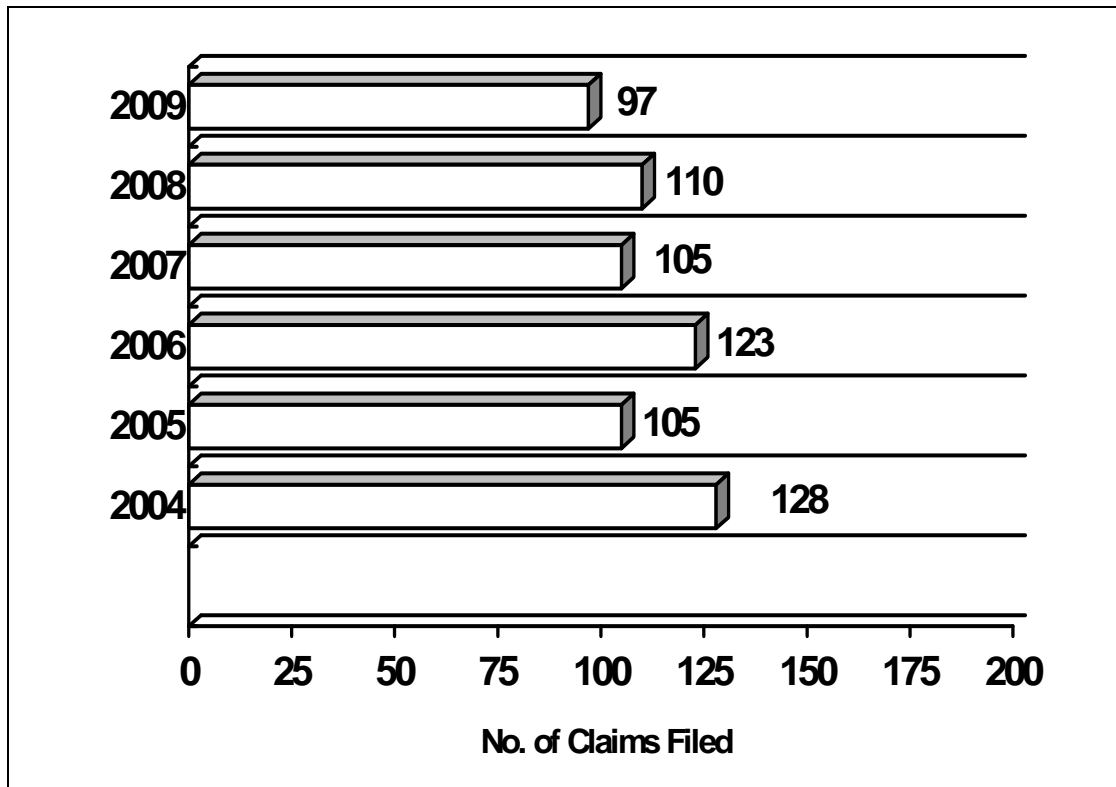
Technologically capable parties have been utilizing this electronic filing option more frequently, including submitting voluminous records, documents, and graphics via CD or DVD.

**C. Statistical Overview of the MCCP Program**

**1. Number of Claims Filed in 2009**

As of November 1, 2009, there were 97 claims filed with the MCCP program, involving 159 claimants, and 330 respondents. It should be noted that although there were 159 different claimants, **there were not 330 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.

**Figure 1: Claims Filed from 2004 through November 1, 2009**



In regards to parties who are unable to pay the required filing fees, in 2009, 47 requests to waive the MCCP filing fees were granted by the Director.<sup>1</sup>

<sup>1</sup> The MCCP utilizes the same financial guidelines to determine a party's eligibility for waiver of MCCP filing fees as the courts use in determining whether a party can proceed *in forma pauperis* in a judicial proceeding.

Also, in 2009, 26 MCCP claims were filed by claimants that were not represented by attorneys.

Finally, two (2) claims were rejected because they were not accompanied by certificates of consultation as required by HRS §671-12.5.

**2. Disposition of Claims Heard in 2009**

As of November 1, 2009, there were 51 cases heard by the MCCP, involving a total of 97 claimants and 198 respondents. Once again, it should be pointed out that although these statistics indicate that 97 different claimants were involved in the claims heard, there were not 198 different health care professionals or facilities involved.

Of the cases heard by the MCCP in 2009: 1) there were two cases in which the claimants were not represented by attorneys (*pro se* claimants); and 2) there was one case in which the Panel found the underlying claim to be frivolous (palpably without merit).

Overall, the MCCP found actionable negligence on the part of all or some of the respondents in 17 cases, and rendered advisory determinations of damages ranging from \$15,000 to \$4,750,000.

The following table provides a statistical overview of the disposition of cases heard by the MCCP in 2009.

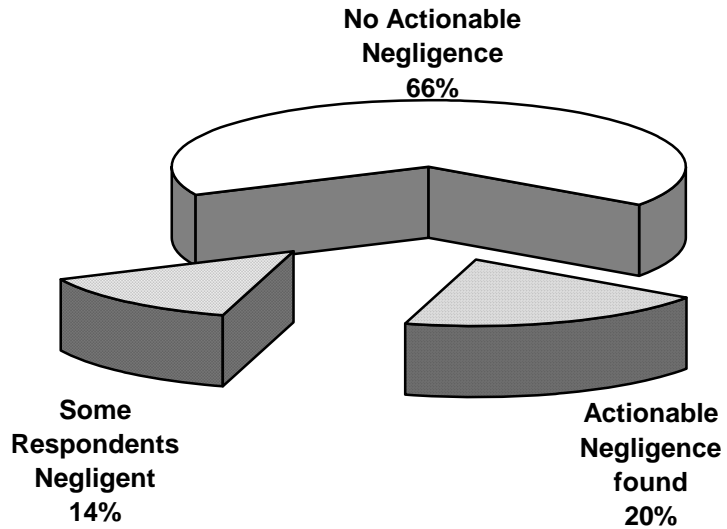
**Figure 2: Disposition of Claims Heard in 2009**

|  |            |
|--|------------|
| <b>Total number of parties in cases heard:</b> | <b>295</b> |
| Total number of Claimants                      | 97         |
| Total number of Respondents                    | 198        |

|   |                     |
|---|---------------------|
| <b>Total number of hearings conducted:</b>              | <b>51</b>           |
| Actionable negligence found                             | 10                  |
| Some Respondents negligent                              | 7                   |
| No negligence found                                     | 35                  |
|   |                     |
| <b>Total Damages Recommended by Panels:<sup>2</sup></b> | <b>\$ 8,310,000</b> |

<sup>2</sup> 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 2009**



**Figure 4: Disposition of Claims Closed Without Hearings**

|  |           |
|--|-----------|
| <b>Total claims closed without hearings:</b> | <b>36</b> |
| Rejected – no certificate of consultation    | 2         |
| Dismissed                                    | 3         |
| Mediation/ADR                                | 4         |
| Settled                                      | 1         |
| Terminated by Director                       | 16        |
| Tolling period lapsed                        | 4         |
| Withdrawn                                    | 5         |
| Other  | 1         |



### III. DCCP ANNUAL REPORT

#### A. Creation of the DCCP

The DCCP was created by the 2007 Legislature effective January 1, 2008 (Act 207, 2007 Session Laws of Hawai'i).

**Figure 5: Disposition of DCCP Claims**

|                                    |          |
|------------------------------------|----------|
| <b>Total claims filed in 2009:</b> | <b>7</b> |
|------------------------------------|----------|

|  |            |
|--|------------|
| <b>Total number of hearings conducted:</b> | <b>4</b>   |
| Actionable negligence found                | 0          |
| Some Respondents negligent                 | 0          |
| No negligence found                        | 4          |
| <b>Total Damages Recommended by Panel</b>  | <b>N/A</b> |

|                                       |   |
|---------------------------------------|---|
| <b>Disposition of claims in 2009:</b> |   |
| Withdrawn/dismissed                   | 1 |
| Settled                               | 0 |
| Unsuitable                            | 0 |
| Tolling period lapsed                 | 0 |
| Pending                               | 6 |

### IV. CONCLUSION

We are continuing to work with the parties and participants of the MCCP and DCCP 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 DCCP processes to allow for maximum access by the parties and the expedited processing of claims.