
A Guide to the Medical Inquiry and Conciliation Panel

The Medical Inquiry and Conciliation Panel
Office of Administrative Hearings
Department of Commerce
and Consumer Affairs
State of Hawai'i

**THIS GUIDE IS INTENDED TO ASSIST PARTIES IN THE MICP PROCESS BUT
IS NOT TO BE CONSIDERED LEGAL ADVICE OR STATEMENTS BINDING ON
THE STATE OF HAWAII, ITS DEPARTMENTS, AGENCIES OR EMPLOYEES**

JANUARY 2013

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1. *What is the MICP?*

The Medical Inquiry and Conciliation Panel (“MICP”) was established in 2012 by Act 296, changing the focus of Hawai‘i Revised Statutes (“HRS”) §671-11, et seq., from rendering non-binding advisory decisions of liability and damages to facilitating the resolution of inquiries regarding the rendering of professional services by health care providers that involve injury, death, or other damages to a patient for all potential medical tort lawsuits in the State of Hawai‘i.

2. *What is the purpose of the MICP?*

The MICP process is designed to help patients and their families obtain information regarding adverse events that they associate with medical treatment. The MICP process is intended to provide a non-adversarial forum for patients and their families to facilitate the conveying of information rather than assigning blame. The MICP process is also intended to narrow and define claims when complete resolution cannot be achieved and approach issues of liability, causation or damages in the context of conciliation and mediation. This process should better assist the parties in fully understanding the nature of claims, defenses, and damages and encourage parties to reach a voluntary settlement.

3. *Can the MICP be bypassed?*

Yes. Pursuant to HRS § 671-16.6(c), a lawsuit for medical negligence can be filed against a physician, surgeon, osteopath (D.O.), physician assistant, podiatrist (DPM) or health care facility (or health care facility staff) licensed to practice or operate in the State of Hawai‘i without first filing an inquiry with the MICP if the parties agree in writing to submit the dispute to an alternate dispute resolution process.

4. *Can an inquiry be filed with the MICP, but not set a hearing date?*

Generally, no. Pursuant to HRS §671-12, once an inquiry is filed, the MICP will set a date for the inquiry to be heard and send a notice to the parties involved.

5. *Who should file an inquiry?*

Anyone wishing to bring a lawsuit for medical malpractice against a physician, surgeon, physician assistant, osteopath (D.O.), podiatrist (D.P.M.), or health care facility licensed to practice or operate in the State of Hawaii, or an employee of these, must first file an inquiry with the MICP before filing a lawsuit.

6. *What kinds of inquiries should not be filed with the MICP?*

Generally, the jurisdiction of the MICP does not cover inquiries against the following kinds of health care professionals: dentists (including oral surgeons), chiropractors, naturopaths, or psychologists. A lawsuit against these types of health care professionals may be filed directly with the appropriate court.

7. *How are inquiries filed with the MICP, and is there a filing fee?*

Inquiries may be filed by using the MICP Inquiry Form or by an inquiry letter that must include the following information: (1) the complete names and addresses of the health care providers that are the subject of the inquiry, and (2) description of the alleged malpractice such as what, when, where, which health care provider(s) was (were) responsible for the alleged negligence, and the alleged negligent acts or omissions which the party believes fell below the standard of care. If the inquiry is not sufficiently clear, the health care provider may ask for a more detailed statement of the inquiry.

Additionally, before an inquiry can be filed with the MICP, HRS § 671-12.5 requires that the party or the party's attorney have the inquiry evaluated by a qualified physician, or make a good faith effort to consult with a qualified physician. ***If an inquiry is submitted to the MICP without the required certificate of consultation, the inquiry will not be accepted for filing.***

Lastly, all parties initiating the inquiry must **each** submit a filing fee of \$450.00 or a request to waive the filing fee (See No. 9, below) at the time the inquiry is filed. Each health care provider identified in the inquiry will also be required to submit at \$450.00 filing fee when they file their responses to the inquiry.

Inquiries may be submitted to the MICP to: **Medical Inquiry and Conciliation Panel; P.O. Box 541; Honolulu, Hawai'i 96809**. For hand delivery, our street address is 335 Merchant Street, Suite 100; Honolulu, Hawai'i 96813. We are located in the King Kalakaua Building at the corner of Merchant and Richards Street, next door to the Downtown Branch of the Post Office.

8. *What happens to the filing fee?*

The filing fees submitted by the parties to an inquiry are placed in an account to pay for panel expenses. Additionally, \$50.00 from each filing fee is retained by the MICP for administrative costs. After Panel costs are paid and the administrative fee retained, any remaining balances are returned to the parties on a proportionate basis.

9. *What if a party cannot afford to pay the filing fee?*

If any party cannot afford to pay the required filing fee, the party may submit a request to waive the filing fees. The MICP utilizes the same financial guidelines used by the courts in determining whether a party is qualified to have judicial costs waived. The request to waive the filing fee must be filed with the inquiry form/letter. The request to waive the filing fee is reviewed by the Director of the Department of Commerce and Consumer Affairs, and the Director will make the final decision as to whether the filing fee should be waived. The party requesting the waiver will be informed of the Director's decision. A denial of the request to waive the filing fee can be appealed to the circuit court.

10. *What happens if a party doesn't submit a filing fee or a request for waiver?*

If an inquiry is submitted to the MICP without the required filing fee or a request to waive the filing fee, the inquiry will not be accepted for filing. The rejection of an inquiry for filing with the MICP also means that the applicable statute of limitations is not tolled. (See No. 11, below).

11. *What happens to the statute of limitations when an inquiry is filed?*

Pursuant to HRS §671-18, once an inquiry is filed with the MICP, the applicable statute of limitations is tolled for 60 days following the mailing of the notice of termination, **or** for a maximum of 12 months from the filing of the inquiry, **whichever occurs first**. Consequently, it is very important for the party filing the inquiry to keep track of how much time remains under the applicable statute of limitations as of the time the inquiry is filed with the MICP because that will be the amount of time remaining after the applicable statute of limitations resumes running.

12. *What happens after an inquiry is filed?*

A Notice will be sent to the parties informing them of the date of the proceeding and the deadlines for submitting required documents to the MICP. Generally the hearing takes place within three to five months from the time the inquiry is received. In some circumstances, we may be able to expedite the processing of an inquiry, particularly in cases involving ongoing serious medical conditions or complications.

13. *Who will be on the Panel?*

Panels consist of two members: a chairperson and a physician. The chairperson is an attorney licensed to practice in the courts of the State appointed by the Director of DCCA from a list of individuals who are familiar with and experienced in trial practice and the personal injury claims settlement process. The Chairperson selects the physician panel member who is licensed and in good standing. The physician member of the Panel is generally chosen from the same specialty as the health care provider named in the inquiry. If several health care providers are named in the inquiry, the Panel physician chosen will be from a specialty that can best evaluate the case.

14. *How is the proceeding conducted?*

The Panel will conduct proceedings in a manner appropriate to the circumstances of the inquiry and to facilitate resolution of the matter. The Panel will conduct proceedings in a non-adversarial manner consistent with the primary purpose of conciliation.

15. What kind of decision will be rendered?

The Panel or the Director of the Department of Commerce and Consumer Affairs will issue a written notice of termination that may state whether any party or parties failed to meet the requirements of the MICP statute or meaningfully participate in panel proceedings. There will be no determination of liability or damages.

16. Can a lawsuit be filed in court if the inquiry is not heard by a Panel?

In very unusual situations, there have been cases that do not proceed to hearing, either at the request of both parties, or for some other procedural reason. However, if the MICP proceeding is not concluded within 12 months from the filing date of the inquiry, the MICP will advise the parties that the 12 months have elapsed, that any applicable statute of limitations has resumed running, and that parties are free to file in court. The MICP will then close its files on the matter.

17. Can an inquiry be withdrawn or amended to dismiss or add parties?

The MICP will only accept written withdrawals of inquiries or amendments to original inquiries. To withdraw an inquiry, simply write to the MICP advising us of your wish to withdraw the inquiry.

Similarly, if you wish to amend your inquiry to add additional health care providers or dismiss certain health care providers from your inquiry prior to the hearing, you must submit your written request to the MICP.

18. How can documents or witnesses be subpoenaed?

The Panel and the MICP have the authority to subpoena documentary evidence and to require the appearance and testimony of witnesses, pursuant to HRS §671-13. In order to have subpoenas issued, the requesting party is required to follow the language of HRS §671-13, since that section also limits discovery by parties to medical records and notes kept in connection with the practice of the health care provider.

Usually, the party or the party's attorney does not need to subpoena the party's medical records. Generally, a written request to the health care provider is sufficient. Once the inquiry is filed with the MICP and a defense attorney is assigned to represent the health care provider, the defense counsel may be willing to assist the party with obtaining the records as a professional courtesy.

On the other hand, if a party requests the MICP to issue a subpoena, the requesting party is responsible for: 1) preparing (filling out) the subpoena; 2) having the subpoena served; and 3) any other appearance fees and costs related to the production of the documents. Generally, it is unnecessary to subpoena the health care provider(s) named in your inquiry to appear at the hearing because HRS §671-14 requires their presence at the hearing unless excused by the Panel.

19. *Who must attend the MICP hearing?*

HRS §671-14 requires that the party submitting the inquiry and the health care provider(s) appear at the hearing, along with their counsel, if any. A party's attorney sometimes asks if their client may be excused if the client no longer lives in this state. Every Panel makes that decision on a case by case basis. Generally, the Panel requires the initiating party and health care provider(s) to be present even if they no longer reside in the state because unlike judicial proceedings, the purpose of the MICP is conciliation, which usually requires the presence of all parties to the inquiry.

However, HRS §671-14 does provide the Panel with the authority to excuse parties from attendance at the hearing, and you may make such a request of the Panel in advance of the hearing.

20. *Are there other requirements before the proceeding?*

After the inquiry is processed, the MICP will advise the parties in writing of the deadlines to submit the relevant medical records and the pre-hearing statements.

Medical Records: The initiating party will be instructed to submit one of the two required paginated sets of the relevant medical records within 20 days after the Notice of Inquiry is sent to the parties. The other set must be provided to the physician panel member when he/she is appointed by the chairperson. If there are extensive medical records, it may be advisable for a party to start requesting and copying those records when the party files the inquiry, if not sooner. Generally, there should be very few, if any problems in a party obtaining his/her own medical records from the health care provider. If any problems are encountered, a phone call to opposing counsel generally takes care of the problem.

Proceeding Statement: Approximately 5 to 6 weeks prior to the hearing, the inquiring party should submit an original and 2 copies of their proceeding statement to the MICP. Two (2) weeks from receipt of the inquiring party's proceeding statement, the health care provider should submit an original and 2 copies of their responsive proceeding statement. In addition, the parties are required to exchange proceeding statements.

21. *Does the MICP have any authority to impose sanctions?*

Yes. Any party may apply to the MICP to have the costs of the proceedings assessed against another party because that party failed to cooperate with the Panel and meaningfully participate in panel proceedings. The panel has the authority to assess costs of the hearing, including the costs of expert witnesses and Panel stipends to a party who does not cooperate with the MICP or meaningfully participate in panel proceedings. For examples of non-cooperation, see HRS § 671-19. If the party does not agree with the assessment of costs, the party may appeal the assessment to circuit court.

22. *Are there any other options to the MICP?*

Yes. HRS § 671-16.6 authorizes the parties involved in a MICP inquiry to submit the inquiry to an alternative dispute resolution provider that is selected by all of the parties. All filing fees, less a processing fee of \$50 shall be refunded to the appropriate parties if the panel was

not constituted or had not taken any action related to the inquiry prior to the submission of the inquiry to an alternative dispute resolution provider.

HRS § 671-16.6 also allows any inquiry to be submitted directly to an alternative dispute resolution process upon written agreement of all parties without first submitting the inquiry to a MICP Panel.

23. *Other considerations:*

A. Bring the inquiry against the correct health care provider(s). If an inquiry is filed against the wrong health care provider, the statute of limitations could expire prior to the filing of a second inquiry against the correct health care provider(s)--a situation for which the MICP has no remedy. Obviously, too, filing a second inquiry regarding the same incident is a waste of time and resources.

B. Get help if you need it. Medical malpractice litigation is a very technical, time-consuming, and costly experience. Health care providers and health care facilities are usually represented by legal counsel, who are very experienced and prepared when they come to MICP proceedings, including bringing expert testimony either in person, by letter or by telephone. Because the MICP and its staff cannot provide legal advice to initiating parties, they should seriously consider retaining an attorney to represent them throughout the MICP proceedings.

C. Present expert testimony. Under Hawai'i law, it is the inquiring party's responsibility to show through expert testimony that the health care provider(s) care or conduct fell below the standard of care. Therefore, the inquiring party must present evidence to show the applicable standard of care, that the health care provider's conduct fell below the applicable standard of care, and that the health care provider's breach of the applicable standard of care caused harm to the patient.

At the MICP hearings, a party may present expert testimony by letter, telephone, or in person. (Please note that if a party plans to present expert testimony by telephone, the Panel and the MICP should be informed in advance so arrangements can be made to provide a room with a conference telephone.)

24. *How to contact the MICP:*

Medical Inquiry Conciliation Panel
Office of Administrative Hearings
Department of Commerce and Consumer Affairs
335 Merchant Street, Suite 100
Honolulu, Hawai'i 96813

Telephone: (808) 586-2823
Fax: (808) 586-3097
E-mail: micp@dcca.hawaii.gov

Forms are available on the internet at www.dcca.hawaii.gov/oah/forms/micp_/

INDIVIDUALS WITH SPECIAL NEEDS

This publication can be made available for individuals with special needs in Braille, large print, or audio tape. Individuals who may require special accommodations for the proceeding (e.g. sign language interpreter, large print, taped materials, etc.), are invited to call the MICP at 586-2823 at least five (5) days in advance of the hearing.

Flowchart of the MICP Process

