

THE MEDICAL CLAIMS
CONCILIATION PANEL

and

THE DESIGN CLAIMS
CONCILIATION PANEL

**Report to the
Twenty-Seventh 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-Seventh State Legislature* is submitted pursuant to Hawai'i Revised Statutes ("HRS") §§671-20 and 672B-17, respectively, and covers the period of January 1, 2012, through October 31, 2012.

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.

Starting January 1, 2013, the MCCP program will be changed to the Medical Inquiry and Conciliation Panel ("MICP") program. Pursuant to Act 296 of the 2012 Legislature, the program's focus will shift away from its adversarial aspects and, instead, emphasize conciliation in an advisory context.

Panels will still be free to consider and discuss liability, causation, and/or damages, but they will now do so in the course of the new focus on conciliation or advisory efforts. The proceedings will no longer culminate in

the issuance of an advisory decision, and the word “claim” has been eliminated from the MICP vocabulary.

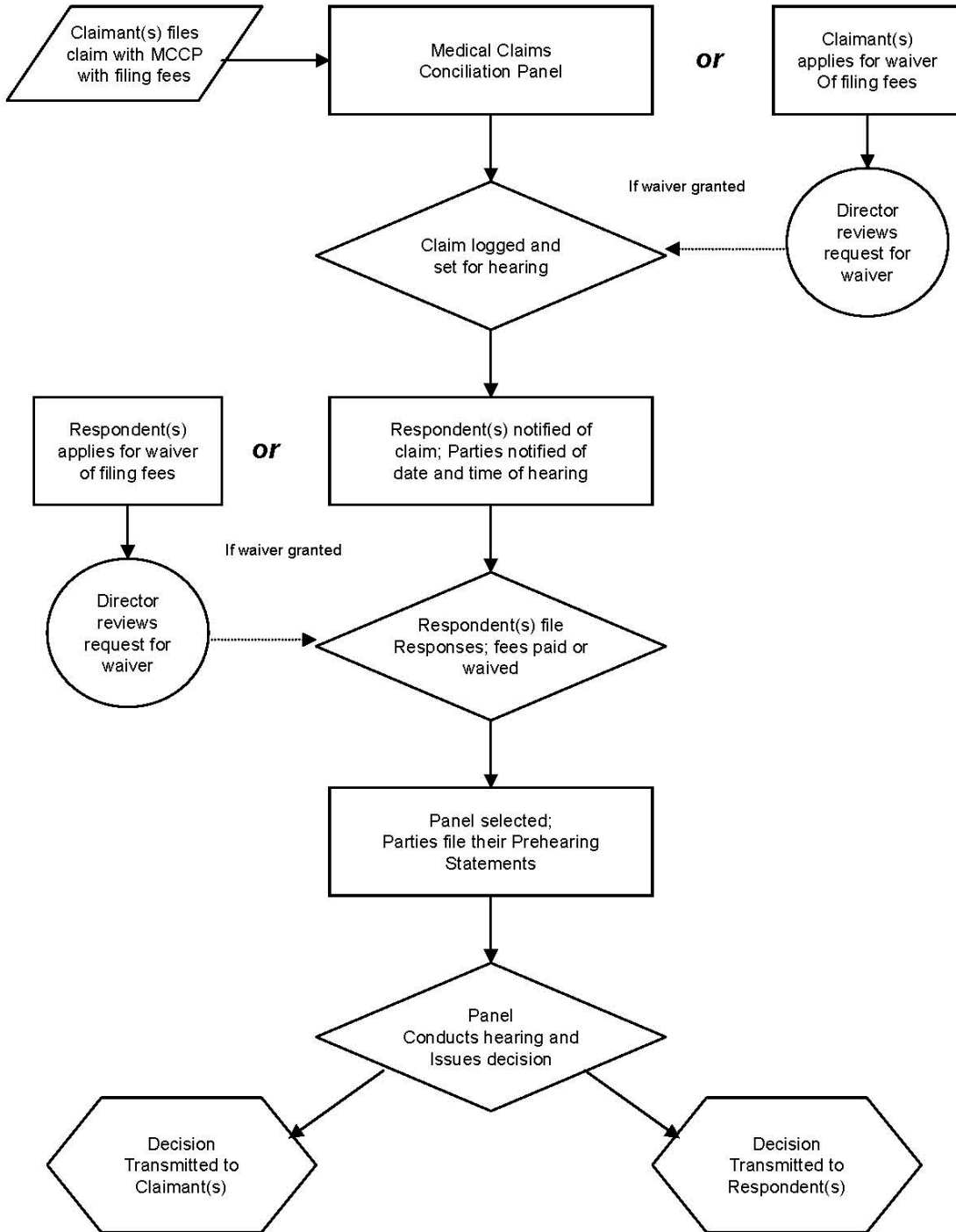
B. The Design Claims Conciliation Panel

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.

The DCCP program will not be affected by the implementation of the new MICP program in 2013.

Flowchart of the MCCP Process



II. THE MEDICAL CLAIMS CONCILIATION PANEL PROGRAM

A. The Year in Review

In 2012, 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 continued our efforts to reduce the amount of time, and paper, involved in handling medical records, which are sometimes voluminous, in order to decrease storage and transmission time and the costs associated with those activities. We have continued a more rigorous process introduced in 2011 to require timely verification of claims of immunity from the MCCP process due to exclusive federal jurisdiction.

We have also increased our efforts at pre-screening cases to eliminate those that should not be brought before the MCCP. Such cases involve, for example, claims brought on behalf of Hawaii prisoners serving out their sentences in Arizona against health care providers in Arizona that are not Hawaii licensees. Another example of such cases are those brought against pharmaceutical manufacturers who are not defined as health care providers by the MCCP statutes.

The recent decision of the Intermediate Court of Appeals in Campos v. Marrhey Care Home, LLC, issued on September 27, 2012, has provided clarification of what constitutes a “medical tort” within the scope of the MCCP program.

MCCP informational materials and forms are 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_/.

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, the MCCP program has 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 available to the parties. In 2012, there were three (3) claims filed under the expedited claims process.

2. Electronic Filing of Documents

The MCCP program provides an optional electronic filing process that allows participating parties to file, distribute, and receive documents electronically.

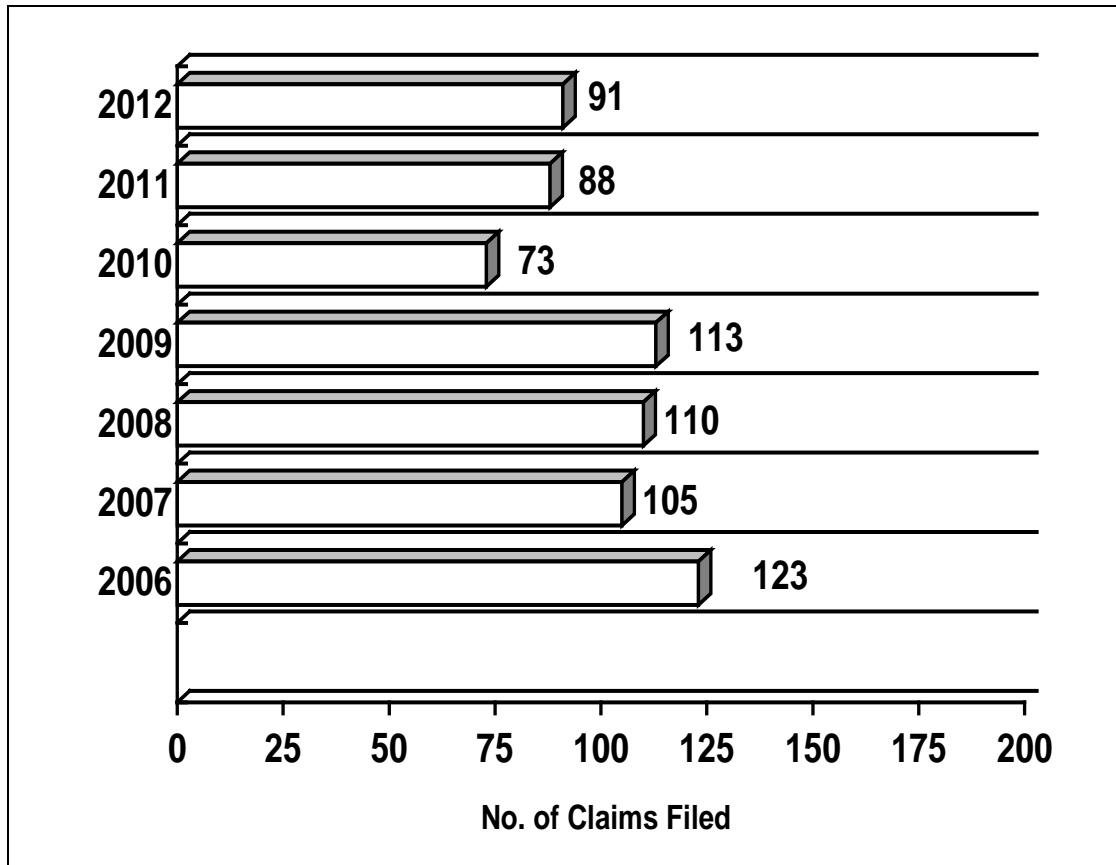
Technologically capable parties have been utilizing this electronic filing option more frequently, including submitting voluminous records, documents, and graphics via CD or DVD.

C. Statistical Overview of the MCCP Program

1. Number of Claims Filed in 2012

As of October 31, 2012, there were 91 claims filed with the MCCP program.

Figure 1: Claims Filed from 2006 through October 31, 2012 ¹



In regards to parties who are unable to pay the required filing fees, in 2012, 31 requests to waive the MCCP filing fees were granted by the Director. ²

¹ The number of claims for years prior to 2012 is for the entire calendar year. Due to reporting deadlines necessary for timely submission of this Report, the number of claims for 2012 refers to the first ten (10) months of the year.

² 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 2012, 28 MCCP claims were filed by claimants that were not represented by attorneys.

Finally, three (3) 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 2012

As of October 31, 2012, 51 cases were heard by the MCCP.

Of the cases heard by the MCCP in 2012, fifteen (15) were cases in which the claimants were not represented by attorneys (*pro se* claimants).

Overall, the MCCP found actionable negligence on the part of all or some of the respondents in seven (7) cases, and rendered an advisory determination of damages totaling \$5,477,419.00.

The following table provides a statistical overview of the disposition of cases heard by the MCCP in 2012.

Figure 2: Disposition of Claims Heard in 2012

Total number of hearings conducted:	51
All Respondents negligent	5
Some Respondents negligent	2
No negligence found	44
Total Damages Recommended by Panels:³	\$ 5,477,419

³ In four (4) of the cases in which Panels found actionable negligence on the part of some or all 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 2012

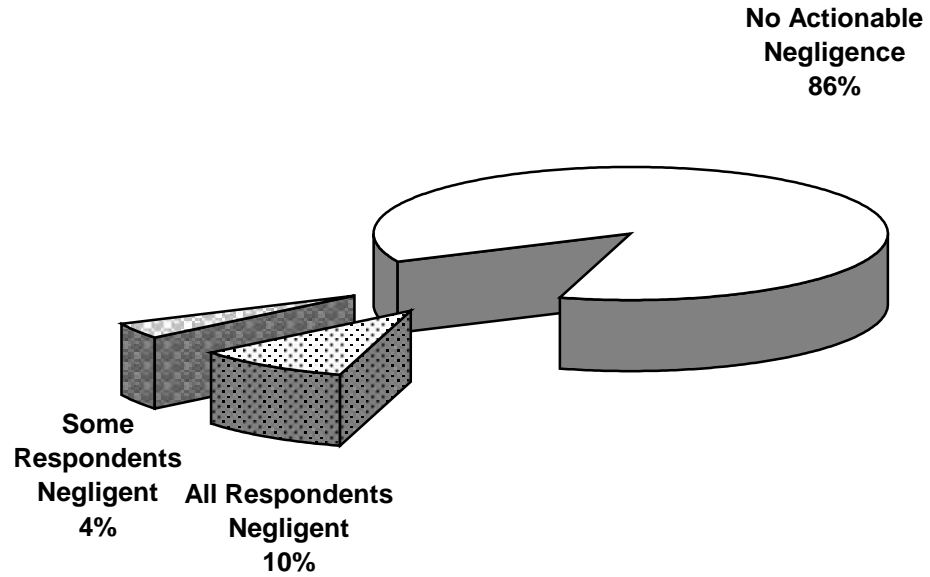


Figure 4: Disposition of Claims Closed Without Hearings

Total claims closed without hearings:	34
Rejected – no certificate of consultation	3
Dismissed	7
Mediation/ADR	11
Settled	1
Terminated by Director	4
Tolling period lapsed	2
Withdrawn	6

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

Total claims filed in 2012:	3
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Total number of hearings conducted:	5
Actionable negligence found	0
Some Respondents negligent	0
No negligence found	5
Total Damages Recommended by Panel	None

Disposition of claims in 2012:	
Withdrawn/dismissed	3
Settled	1
Mediation/ADR	0
Tolling period lapsed	0

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. Our particular focus in the coming year will be the implementation of the new MICP program.

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.