

THE MEDICAL INQUIRY AND
CONCILIATION PANEL

and

THE DESIGN CLAIM
CONCILIATION PANEL

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

Submitted by

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

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I. INTRODUCTION

The *MICP and DCCP Annual Report to the Twenty-Ninth State Legislature* is submitted pursuant to Hawai'i Revised Statutes ("HRS") §§671-20 and 672B-17, respectively, and covers the period of January 1, 2016, through November 30, 2016.

A. *The Medical Inquiry and Conciliation Panel*

The Medical Inquiry and Conciliation Panel ("MICP") is a program of the Department of Commerce and Consumer Affairs ("DCCA"), State of Hawai'i. The MICP was established by Act 296, 2012 Session Laws of Hawai'i, HRS §671-11. Effective January 1, 2013, it replaced the former Medical Claim Conciliation Panel ("MCCP") program that had been in existence since 1976.

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 potential claims when complete resolution cannot be achieved, and approaches to issues of liability, causation or damages in the context of conciliation and mediation.

Panels are still free to consider and discuss liability, causation, and/or damages, but they now do so in the course of the new focus on conciliation or advisory efforts. The proceedings no longer culminate in the issuance of an advisory decision, and the word "claim" has been eliminated from the MICP vocabulary.

The new MICP program changes the focus from the former requirement of rendering non-binding advisory decisions on liability and damages to a program designed to facilitate 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 Hawaii.

The primary purpose of the MICP program is achieved when the parties make conscientious and thorough presentations to the Panel. In such cases, the proceedings before the Panel provide the parties with more helpful interactions and more accurate views by the Panel of the relative merits of the inquiry, which should assist the parties in evaluating whether the inquiry should be pursued as a claim through the judicial system.

The MICP 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 potentially meritorious inquiries through additional conciliation and/or mediation services outside of the MICP Panel prior to any 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 inquiries prior to further legal proceedings being taken by the parties.

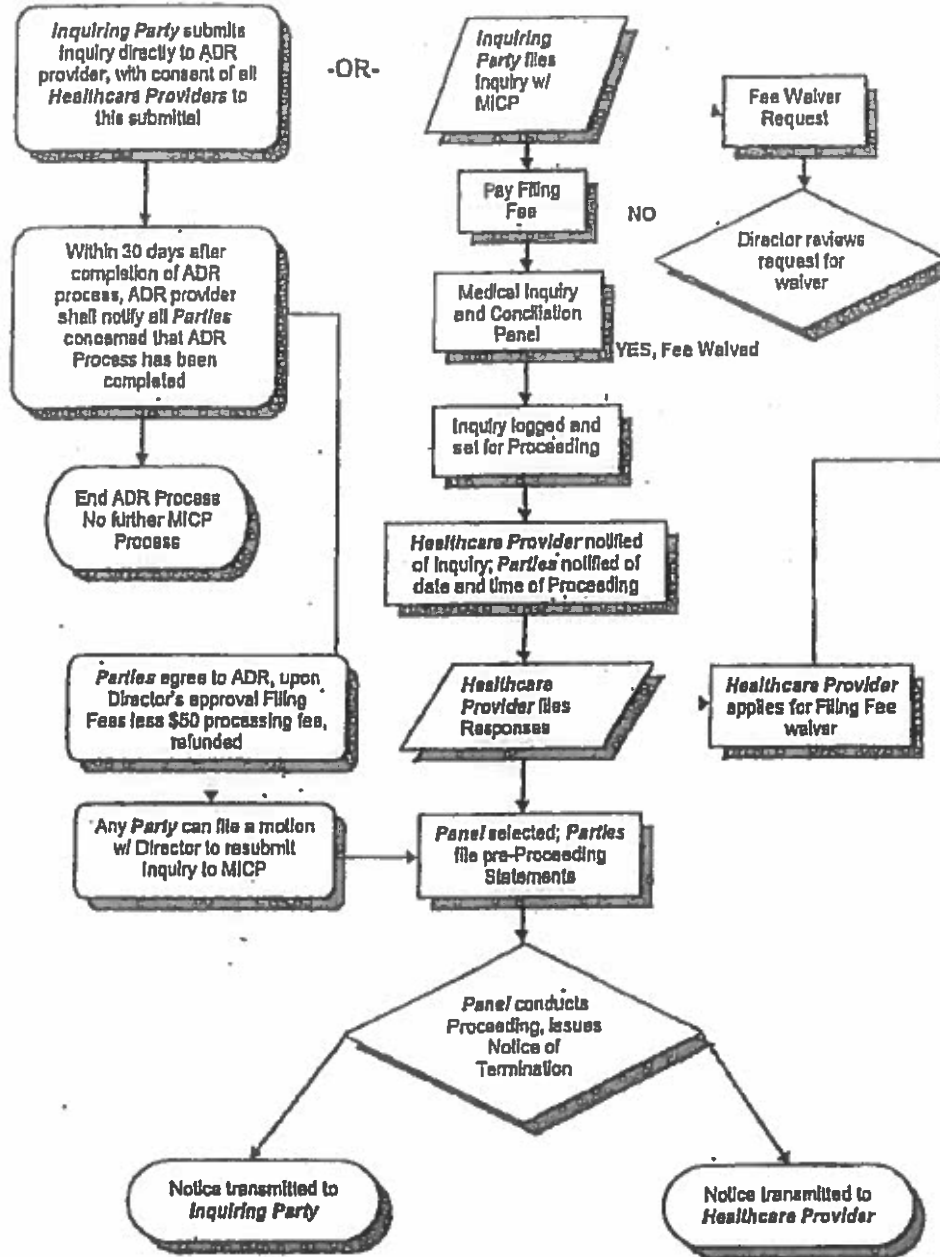
B. The Design Claim Conciliation Panel

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 Claim Conciliation Panel ("DCCP") program.

The DCCP is modeled on the former MCCP program and operates under the same procedures and guidelines that governed that program.

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

Flowchart of the MICP Process



II. THE MEDICAL INQUIRY AND CONCILIATION PANEL PROGRAM

A. Program Information

Prior to the January 1, 2013 effective date of the MICP program, we had in place on our website a guide to the new program as well as all necessary forms to be used in connection with inquiries for processing by the program. To expedite the process for both inquiring and responding parties, the forms were “fillable” so that they could be prepared online.

In addition, two training programs for program participants were held. In December of 2012, a program designed for attorneys was presented to a maximum capacity audience in a conference room at the Medical School. It was attended by MCCC panelists who wanted to serve on the new MICP panels as well as attorneys who represented both plaintiffs and defendants in medical malpractice cases. In April of 2013, another training program was held, under the auspices of the Medical School, for medical professionals who wanted to be educated about the new process as well as serve as panelists in the future.

Both of these programs were videotaped and can be viewed without charge. The entire first program can be found at (<http://www.ahec.hawaii.edu/?p=1385>). Alternatively, the two parts of the first program can be viewed individually—part 1 at (<https://vimeo.com/84061623>) and part 2 at (<https://vimeo.com/84061622>). The 2013 program can be viewed at (<https://vimeo.com/80302763>).

DCCA has also continued its prior efforts at pre-screening cases to eliminate those that should not be brought before the MICP. 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 MICP statutes.

MICP informational materials and forms are available to parties and interested persons in various formats and media, including access via DCCA’s internet web page:

cca.hawaii.gov/oah/forms/micp_/.

B. The Operations of the MICP

1. Expedited Inquiry 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 had 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 former MCCP Fast Track Filing System has been incorporated into the new MICP procedures and thus continues to be available to the parties. In 2016, there were seven (7) inquiries filed under the expedited inquiry process.

2. Electronic Filing of Documents

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

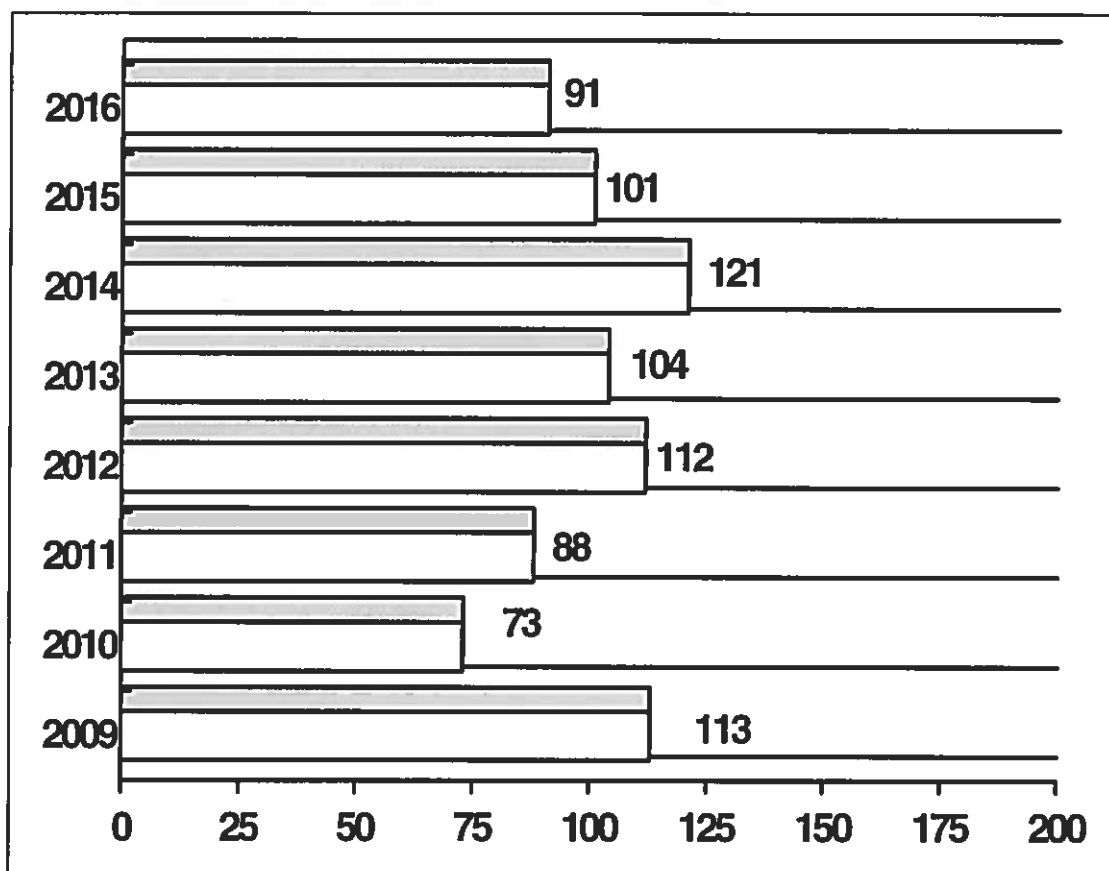
Technologically capable parties have been utilizing this electronic filing option more frequently, including submitting voluminous records, documents, and graphics via CD or DVD.

C. Statistical Overview of the MICP Program

1. Number of Inquiries Filed in 2016

As of November 30, 2016, there were 91 inquiries filed with the MICP program. This figure can be compared to the number of claims filed in previous years under the MICP and the former MCCP program.

Figure 1: Claims and Inquiries Filed from 2009 through 2016 ¹



In regards to parties who are unable to pay the required filing fees, in 2016, 28 requests to waive the MICP filing fees were granted by the Director. ²

¹ The number of claims for years prior to 2016 is for the entire calendar year. Due to reporting deadlines necessary for timely submission of this Report, the number of inquiries for 2016 listed in the text of the report refers to the first eleven (11) months of the year.

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

Also in 2016, 25 MICP inquiries were filed by parties that were not represented by attorneys.

Finally, two inquiries were rejected in 2016 because they were not accompanied by a certificate of consultation as required by HRS §671-12.5.

2. Disposition of Inquiries Heard in 2016

As of November 30, 2016, 35 inquiries were heard by the MICP. In addition, a total of 13 inquiries were dismissed, withdrawn or otherwise terminated. Six inquiries resulted in the parties entering into a formal mediation conducted outside of the MICP program.

Of the inquiries heard by the MICP in 2016, eight (8) were proceedings in which the inquiring parties were not represented by attorneys (*pro se* inquiring parties).

Because the MICP panels do not issue opinions on actionable negligence, we do not report on the substantive disposition of inquiries under the MICP program.

III. DESIGN CLAIM CONCILIATION PANEL ANNUAL REPORT

A. Creation of the DCCP

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

Figure 2: Disposition of DCCP Claims

Total claims filed in 2016:	5
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Total number of hearings conducted:	1
Actionable negligence found	1
Some Respondents negligent	1
No negligence found	0
Total Damages Recommended by Panel	None

Disposition of claims in 2016:	
Withdrawn/dismitted	2
Settled	0
Mediation/ADR	0
Tolling period lapsed	0

The two remaining claims not represented on this Figure were still pending as of the close of the reporting period.

IV. CONCLUSION

The new MICP program began in January of 2013. During that year, the Office of Administrative Hearings (“OAH”) coordinated the completion of a significant number of cases filed the previous year under the old program. In addition, there was a “learning period” that year for all participants in the new program.

By the end of 2016, the new MICP program will have been in operation for three full years, which is a reasonable time after which to consider the program’s effectiveness in terms of meeting the expectations behind the 2012 legislation.

During 2016, OAH received far fewer complaints about the operation of the program. It appeared that panelists had become more comfortable with the new mediation/conciliation mode and that this translated into more satisfied participants.

Also during 2016, there was a noticeable and welcome increase in the number of medical professionals willing to serve as the medical member of the panels. Unfortunately, the number of attorney members declined during 2016. OAH is planning an attorney recruitment drive in 2017 similar to one that was successful in 2013. OAH will then hold a training session for the new recruits that will also operate as a “refresher” for current panelists.