

THIRTY-FIRST LEGISLATURE
REGULAR SESSION OF 2021

**Annual Report on the
Medical Inquiry and Conciliation Panel
and
Design Claim Conciliation Panel**

OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

Submitted December 2020

INTRODUCTION

The **Annual Report on the Medical Inquiry and Conciliation Panel and Design Claim Conciliation Panel** is submitted pursuant to Hawaii Revised Statutes (HRS) sections 671-20 and 672B-17, respectively, and covers the period of January 1, 2020, through November 30, 2020.

MEDICAL INQUIRY AND CONCILIATION PANEL

A. Program Information

Established pursuant to HRS section 671-11, the Medical Inquiry and Conciliation Panel (MICP) is a program of the Department of Commerce and Consumer Affairs (DCCA) that facilitates the resolution of inquiries regarding the rendering of professional services by health care providers that involve injury, death, or other damages to a patient.¹ A patient's inquiry² is submitted to the MICP in writing, and panel proceedings are conducted in a non-adversarial manner consistent with the primary purpose of conciliation.

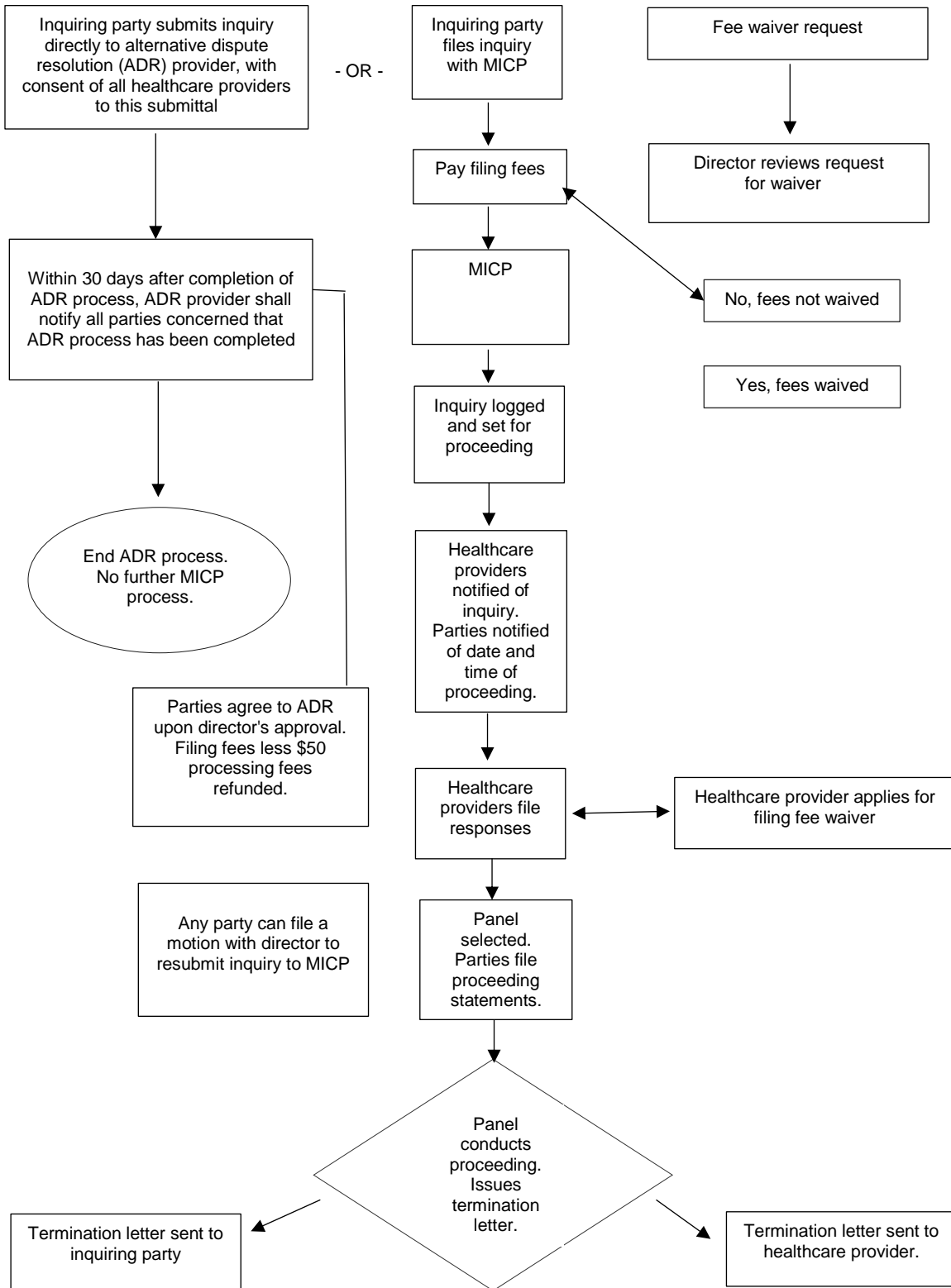
During the MICP proceedings, the parties make conscientious and thorough presentations to the panel, which consists of one chairperson (an attorney licensed to practice in the courts of the State and appointed by the DCCA director from a list of individuals who are experienced in trial practice and the personal injury claims settlement process) and one physician, osteopathic physician, or surgeon licensed to practice in Hawaii. The panel may also call a consultant to appear at the proceeding to provide expertise in the relevant field.

In lieu of issuing a non-binding advisory decision, the MICP narrows and defines potential claims when complete resolution cannot be achieved, and it employs approaches to liability, causation, or damages in the context of conciliation and mediation. The MICP also helps the parties evaluate whether the inquiry should be pursued as a judicial claim or through additional conciliation and mediation outside of the MICP. By providing the parties with helpful interactions and accurate views of the merits of the inquiry, the MICP discourages parties from pursuing frivolous or fraudulent legal inquiries.

¹ Effective January 1, 2013, the MICP replaced the Medical Claim Conciliation Panel (MCCP) that had been in existence since 1976.

² Due to the conciliatory nature of the MICP, the word "claim" has been eliminated from the MICP vocabulary.

Flowchart of the MICP Process



MICP contact information:

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

Phone: (808) 586-2823
Fax: (808) 586-3097
Email: micp@dcca.hawaii.gov

MICP forms and publications are available at: cca.hawaii.gov/oah/forms/micp/.

B. Operations

1. Expedited Inquiry Filing Process

For parties who prefer an expedited filing of their inquiry, the MICP Fast Track Filing System allows an inquiry to be heard within four months of the filing of the inquiry with the panel, or even sooner if all parties agree. In 2020, two inquiries were filed under the expedited inquiry process.

2. Electronic Filing of Documents

The MICP provides an optional electronic filing process that allows participating parties to file, distribute, and receive documents electronically. Technologically capable parties have been using this electronic filing option more frequently, including submitting voluminous records, documents, and graphics via CD or DVD. As a result of the COVID-19 pandemic and social distancing concerns, electronic filing has become the primary method for parties to submit their inquiries, claims, and other documents.

3. Revised Filing Fee Process

In the past, the MICP routinely issued refund checks to the parties once their inquiries were terminated. These refunds represented the balance of the parties' filing fees after compensating panel members and applying processing fees. This process of requesting, processing, and issuing refund checks to the parties after each inquiry placed an undue burden on MICP staff. Accordingly, in 2018, the MICP began calculating and charging each party its revised filing fee at the beginning of each inquiry, thereby eliminating the need to issue refund checks.

4. Impact of COVID-19 on MICP Operations

As a direct result of the public health emergency caused by COVID-19, the MICP closed its doors to the public beginning March 20, 2020, and arranged for its employees to work remotely. However, the MICP remained accessible to the public during this time by conducting all conferences and proceedings by telephone or videoconference and by allowing parties to submit their inquiries, briefs, motions, responses, medical records, and other documents, along with any questions, to the Office of Administrative Hearings (OAH) by email. In August, the MICP reopened its office to walk-in traffic on an abbreviated schedule. However, in September, the MICP was again forced to close its office to the public and have its employees resume teleworking due to a surge in infections.

Notwithstanding its office closure, the MICP has been able to continue its operations after making several adjustments to its procedures. These adjustments include devising a system that has allowed the parties to submit their cases and pleadings electronically. In addition, the panel members were trained in conducting proceedings and conferences remotely, and the MICP's case management system allowed the MICP to track cases, assign tasks, generate calendars and schedules, and issue decisions—all electronically. As a result, the daily operations of the MICP have experienced minimal interruption by the pandemic.

In early 2020, the Chief Justice of the Hawaii Supreme Court approved an additional five licensed attorneys to serve as panel chairs. However, due to the ongoing COVID-19 pandemic, several experienced chairs were no longer willing or able to serve on the panel. As a result, the OAH has undertaken another campaign to recruit experienced chairs and panel members.

C. Statistical Overview

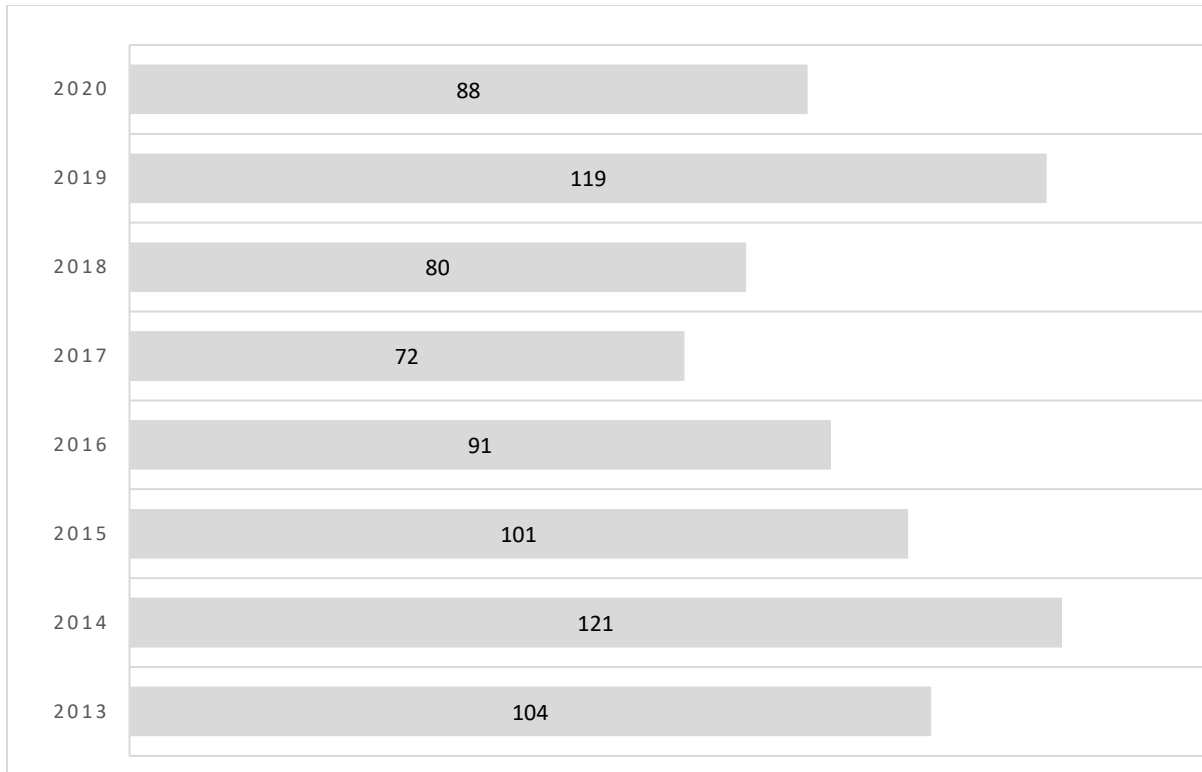
1. Number of Inquiries Filed in 2020

As of November 30, 2020, 88 inquiries were filed with the MICP. Of these 88 inquiries: the DCCA director granted 14 requests to waive the MICP filing fees for parties unable to pay³; 18 inquiries were filed by parties who were not represented by attorneys (i.e., *pro se* inquiring parties); and the panel rejected one inquiry because it was not accompanied by a certificate of consultation as required by HRS section 671-12.5.

³ The MICP uses the same financial guidelines to determine a party's eligibility for waiver of MICP filing fees as the courts in determining whether a party can proceed *in forma pauperis* in a judicial proceeding.

See Figure 1: Claims and Inquiries Filed from 2013 through 2020 on the next page to compare the MICP's number of filed inquiries with those filed in previous years.

Figure 1: Claims and Inquiries Filed from 2013 through 2020⁴



2. Disposition of Inquiries Heard in 2020

As of November 30, 2020: the MICP heard 30 inquiries; 3 inquiries were dismissed, withdrawn, or otherwise terminated; and 35 inquiries resulted in the parties entering formal mediation outside of the MICP program.

Of the 30 inquiries the MICP heard in 2020, eight were proceedings involving *pro se* inquiring parties.

Because the MICP does not issue opinions on actionable negligence, the DCCA does not report on the substantive disposition of MICP inquiries.

⁴ The number of claims for years preceding 2020 is for the entire calendar year. Due to the deadline to submit this report, the number of inquiries for 2020 listed in this report refers to the first 11 months of the year.

DCCP ANNUAL REPORT

A. Program Information

Established pursuant to HRS section 672B-3, the Design Claim Conciliation Panel (DCCP) is a program of the DCCA that reviews and renders findings and advisory opinions on liability and damages in tort claims against design professionals licensed to practice under HRS chapter 464.

Pursuant to HRS section 672B-5, effective January 1, 2008, all malpractice claims against design professionals must first be submitted to the DCCP before any suit based on the claim may be commenced in any court of this state. The DCCP is modeled after the former MCCP and operates under the same procedures and guidelines. The DCCP was not affected by the establishment of the MICP in 2013.

DCCP contact information:

Design Claim Conciliation Panel
Office of Administrative Hearings
Department of Commerce and Consumer Affairs
335 Merchant Street, Suite 100
Honolulu, HI 96813

Phone: (808) 586-2823
Fax: (808) 586-3097
Email: dccp@dcca.hawaii.gov

DCCP forms and publications are available at: cca.hawaii.gov/oah/forms/dccp_forms/.

B. Operations

1. Panel Composition

DCCP panels consist of a chairperson, an attorney member, and a design professional member. Both the chairperson and attorney member are appointed from a list approved by the Hawaii Supreme Court, and the design professional member must be licensed in the State and in good standing. Because of the technical nature of the claims submitted to the panels, the DCCP requires and is constantly seeking qualified design professionals willing to serve on the panels, and, consequently, active recruitment of prospective panel members is ongoing.

2. Decisions Aid Conciliation Efforts

The decisions rendered by the DCCP panels provide the parties with fairly accurate advisory determinations of the relative merits of their claims; this helps

the parties evaluate whether their claims should be pursued through the judicial system. The DCCP also provides an opportunity for the parties to exchange information expeditiously and inexpensively, which in turn allows the parties to explore the conciliation of meritorious claims prior to those claims being brought before the courts. In addition, the requirements of exchanging information between the parties and making conscientious and thorough presentations to the expert panels discourage the pursuit of frivolous claims and encourage a realistic assessment of those claims.

3. Impact of COVID-19 on DCCP Operations

As a direct result of the public health emergency caused by COVID-19, the DCCP closed its doors to the public beginning March 20, 2020, and arranged for its employees to work remotely. However, the DCCP remained accessible to the public during this time by conducting all conferences and proceedings by telephone or videoconference and by allowing parties to submit their inquiries, briefs, motions, responses, medical records, and other documents, along with any questions, to the OAH by email. In August, the DCCP reopened its office to walk-in traffic on an abbreviated schedule. However, in September, the DCCP was again forced to close its office to the public and have its employees resume teleworking due to a surge in infections.

Notwithstanding its office closure, the DCCP has been able to continue its operations after making several adjustments to its procedures. These adjustments include devising a system that has allowed the parties to submit their cases and pleadings electronically. In addition, the panel members were trained in conducting proceedings and conferences remotely, and the DCCP's case management system allowed the MCCP to track cases, assign tasks, generate calendars and schedules, and issue decisions—all electronically. As a result, the daily operations of the DCCP have experienced minimal interruption by the pandemic.

C. Statistical Overview

1. Number of Claims Filed in 2020

As of November 30, 2020, 10 claims were filed with the DCCP. In contrast, in 2019 and 2018, respectively, five claims were filed, and in 2017, four claims were filed.

2. Disposition of Claims Heard in 2020

As of November 30, 2020, no claims were heard by the DCCP. The parties in four of the cases agreed to submit their disputes to mediation or arbitration. See Figure 2: Disposition of DCCP Claims in 2020. The remaining claims filed in 2020 have been scheduled for hearing in early 2021.

Figure 2: Disposition of DCCP Claims in 2020

Total claims filed in 2020	10
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Total number of hearings conducted	0
Liability found	0
Some Respondents liable	0
No liability found	0
Total damages recommended by panel	\$0

Disposition of claims in 2020	
Withdrawn/dismissed	0
Settled	0
Mediation/alternative dispute resolution	4
Tolling period lapsed	0

CONCLUSION

By the end of 2020, the MICP will have been operating for approximately eight years. Based on panelist interviews and participant feedback, both panelists and the attorneys representing the parties have become more comfortable with the new mediation and conciliation program, and this has resulted in more satisfied participants. These interviews have also confirmed the success of the MICP in bringing parties together for a frank discussion of their inquiries, with the assistance of a neutral medical expert, before deciding whether to pursue medical claims in the court system.

Similarly, the DCCP has provided parties an accessible and informal forum to meet, exchange information, clarify questions and misunderstandings, and ultimately, receive the benefit of neutral expert opinions on the merits of tort claims against design professionals. As a result, the parties leave the hearing process with a better understanding of their claims, defenses, and potential exposure. This, in turn, allows for a realistic evaluation of the case while encouraging the parties to reach a fair and acceptable compromise.