



MEDICAL INQUIRY AND CONCILIATION PANEL GUIDE

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 HAWAI'I, ITS DEPARTMENTS, AGENCIES OR EMPLOYEES

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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 they associate with medical treatment. It provides a non-adversarial forum to facilitate the exchange of information rather than assign blame. Additionally, the MICP process aims to narrow and define claims when complete resolution is not possible, addressing issues of liability, causation, or damages through conciliation and mediation. This approach helps all parties fully understand the nature of claims, defenses, and damages, while encouraging 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 proceeding date?*

Generally, no. Pursuant to HRS § 671-12, once an inquiry is filed, the MICP will schedule 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 file a lawsuit for medical malpractice against a physician, surgeon, physician assistant, osteopath (D.O.), podiatrist (D.P.M.), or a licensed health care facility in the State of Hawai‘i, or an employee thereof, must first submit an inquiry with the MICP before proceeding with 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 healthcare 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 using the MICP Inquiry Form or an inquiry letter that must include the following information:

1. The complete names and addresses of the health care providers involved.
2. A description of the alleged malpractice, including details such as what happened, when and where it occurred, which health care provider(s) were responsible, and the alleged negligent acts or omissions that are believed to have fallen below the standard of care.

If the inquiry is not sufficiently clear, the health care provider may request a more detailed statement.

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

Filing Fees:

- Each party initiating the inquiry must submit a **\$450.00 filing fee** or a **request for a fee waiver** at the time of filing.
- Each health care provider identified in the inquiry must also submit a **\$450.00 filing fee** when filing their response.
- Checks should be made payable to the Department of Commerce and Consumer Affairs (“DCCA”)

Requirements for Processing:

- Inquiry
- Certificate of Consultation
- Filing Fee or Ex Parte Motion to Waive Filing Fee (must be notarized)

Submission Methods:

Inquiries may be submitted **via mail, hand delivery, or electronically:**

- **Mail to:**
Department of Commerce & Consumer Affairs
Medical Inquiry and Conciliation Panel
P.O. Box 541
Honolulu, Hawai'i 96809
- **Hand deliver to:**
335 Merchant Street, Suite 100
Honolulu, Hawai'i 96813
(King Kalākaua Building, corner of Merchant and Richards Street, next to the Downtown Post Office)
- **Electronic filing:**
Email: micp@dcca.hawaii.gov
 - If filing electronically, the filing fee check must be **postmarked within two (2) days** of submission.
 - If the filing fee check is not received within **five business days**, the inquiry will be rejected.

8. *What happens to the filing fee?*

The filing fees submitted by the parties to an inquiry are placed in an account to cover 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 is retained, any remaining balances will be returned to the parties on a proportionate basis.

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

If any party is unable to afford the required filing fee, they may submit a request to waive the filing fees. The MICP follows the same financial guidelines used by the courts to determine whether a party qualifies for a waiver of judicial costs. The request to waive the filing fee must be filed with the inquiry form/letter and must be notarized.

The request will be reviewed by the Director of the Department of Commerce and Consumer Affairs, who will make the final decision on whether the filing fee should be waived. The party requesting the waiver will be informed of the Director's decision. If the request to waive the filing fee is denied, the decision may 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, it will not be accepted for filing. The rejection of an inquiry for filing with the MICP also means that the applicable statute of limitations continues to run and 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*.

Therefore, it is crucial for the party filing the inquiry to carefully track how much time remains under the applicable statute of limitations at the time of filing. This is because once the tolling period ends, the statute of limitations will resume running with only the remaining time left from the original limitation period.

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 proceeding takes place within four to six 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 and is appointed by the Director of DCCA from a list of individuals with experience in trial practice and personal injury claims settlement.
- The Chairperson selects the Physician Panel Member, who must be licensed and in good standing.

The Physician Panel Member is generally chosen from the same specialty as the health care provider named in the inquiry. If multiple health care providers are named, the selected physician 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 aimed at facilitating resolution of the matter. Proceedings will be conducted in a non-adversarial manner, consistent with the Panel's 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, which may indicate whether any party 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 rare circumstances, some cases may not proceed to a hearing, either at the request of both parties or due to other procedural reasons.

However, if the MICP proceeding is not concluded within 12 months from the inquiry's filing date, the MICP will notify the parties that:

- The 12-month period has elapsed.
- Any applicable statute of limitations has resumed running.
- The parties are free to file in court.

At that point, the MICP will close its files on the matter. If a Panel has been assigned, Panel Members will be paid, and administrative fees will be retained. Any remaining balances will be returned to the parties on a proportionate basis.

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

The MICP will only accept written requests for withdrawing or amending inquiries. If you wish to withdraw an inquiry, please write to the MICP indicating your intent to do so.

Similarly, if you need to amend your inquiry—whether by adding additional health care providers or removing certain ones prior to the proceeding—you must submit your request in writing to the MICP.

18. *How can documents or witnesses be subpoenaed?*

The Panel and the MICP have the authority to subpoena documentary evidence and require the appearance and testimony of witnesses, in accordance with HRS § 671-13. To request the issuance of subpoenas, the requesting party must adhere to the requirements outlined in HRS § 671-13, which also limits discovery to medical records and notes related to the practice of the health care provider.

Typically, the party or their attorney does not need to subpoena the medical records of the health care provider. A written request to the provider is generally 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 assist the party in obtaining the records as a professional courtesy.

However, if the requesting party asks the MICP to issue a subpoena, the party is responsible for: 1) preparing and filling out the subpoena; 2) ensuring the subpoena is served; and 3) covering any appearance fees and costs associated with the production of the documents. Generally, there is no need to subpoena the health care provider(s) named in your inquiry to appear at the hearing, as HRS § 671-14 mandates their attendance unless excused by the Panel.

19. *Who must attend the MICP hearing?*

HRS § 671-14 mandates that both the party submitting the inquiry and the health care provider(s) must appear at the hearing, along with their counsel, if applicable. Occasionally, a party's attorney may inquire whether their client can be excused from attendance if they no longer reside in the state. The decision to excuse a party is made on a case-by-case basis by the Panel. In general, the Panel requires the initiating party and health care provider(s) to attend the hearing, even if they no longer live in the state, as the primary purpose of the MICP is conciliation, which typically necessitates the presence of all parties involved in the inquiry.

That said, HRS § 671-14 does grant the Panel the authority to excuse parties from attending the hearing, and you may submit a request to the Panel in advance if you wish to seek such an exemption.

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

After the inquiry is processed, the MICP will notify the parties in writing of the deadlines for submitting the relevant medical records and pre-hearing statements.

Medical Records:

- The initiating party must submit a paginated set of relevant medical records to the **Chairperson *within 10 days*** after the Medical Inquiry and Conciliation Panel (MICP) appoints the Chairperson.
- A second set must be provided to the **Physician Panel Member *within 10 days*** of their appointment by the Chairperson.

If the medical records are extensive, the party should begin requesting and copying them when the inquiry is filed or earlier to ensure timely submission. Generally, parties should have minimal difficulty obtaining their own medical records from healthcare providers. If issues arise, a phone call to opposing counsel typically resolves the matter. Adhering to these instructions ensures a smooth and efficient review process.

Proceeding Statement:

About 30 days prior to the proceeding, the inquiring party must submit their proceeding statement to the MICP. Upon receipt of the inquiring party's proceeding statement, the health care provider has two weeks to submit their proceeding statement. Additionally, both parties are required to exchange their proceeding statements to ensure transparency and facilitate the review process.

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 the parties. All filing fees, minus a \$50 processing fee, shall be refunded to the appropriate parties if the Panel was not constituted or had not taken any action related to the inquiry before the inquiry was submitted 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 may expire before a second inquiry can be filed against the correct provider(s), a situation for which the MICP offers no remedy. Additionally, filing a second inquiry for the same incident results in unnecessary expenditure 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 proceeding, a party may present expert testimony by letter, virtually, by telephone, or in person. If a party plans to present expert testimony via telephone or virtual mean, the Panel and the MICP should be informed 2 weeks prior to the proceeding date so that arrangements can be made to provide a room with capabilities.

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

Individuals requiring an auxiliary aid, service, or other accommodation due to disability are encouraged to contact the MICP at (808) 586-2823 or via email at micp@dcca.hawaii.gov at least ten (10) days before the proceeding.

If a request is received less than the ten (10) days before the proceeding, every effort will be made to arrange the requested accommodation; however, we cannot guarantee that the request will be fulfilled.

Upon request, this notice can be provided in alternative formats such as Braille, large print, or electronic copy.

Please submit your request to MICP at (808) 586-2823 or micp@dcca.hawaii.gov.

Flowchart of the MICP Process

