
A BILL FOR AN ACT

RELATING TO MEDICAL TORTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 26-9, Hawaii Revised Statutes, is
2 amended by amending subsection (o) to read as follows:
3 "(o) Every person licensed under any chapter within the
4 jurisdiction of the department of commerce and consumer affairs
5 and every person licensed subject to chapter 485A or registered
6 under chapter 467B shall pay upon issuance of a license, permit,
7 certificate, or registration a fee and a subsequent annual fee
8 to be determined by the director and adjusted from time to time
9 to ensure that the proceeds, together with all other fines,
10 income, and penalties collected under this section, do not
11 surpass the annual operating costs of conducting compliance
12 resolution activities required under this section. The fees may
13 be collected biennially or pursuant to rules adopted under
14 chapter 91, and shall be deposited into the special fund
15 established under this subsection. Every filing pursuant to
16 chapter 514E or section 485A-202(a)(26) shall be assessed, upon
17 initial filing and at each renewal period in which a renewal is
18 required, a fee that shall be prescribed by rules adopted under



1 chapter 91, and that shall be deposited into the special fund
2 established under this subsection. Any unpaid fee shall be paid
3 by the licensed person, upon application for renewal,
4 restoration, reactivation, or reinstatement of a license, and by
5 the person responsible for the renewal, restoration,
6 reactivation, or reinstatement of a license, upon the
7 application for renewal, restoration, reactivation, or
8 reinstatement of the license. If the fees are not paid, the
9 director may deny renewal, restoration, reactivation, or
10 reinstatement of the license. The director may establish,
11 increase, decrease, or repeal the fees when necessary pursuant
12 to rules adopted under chapter 91. The director may also
13 increase or decrease the fees pursuant to section 92-28.

14 There is created in the state treasury a special fund to be
15 known as the compliance resolution fund to be expended by the
16 director's designated representatives as provided by this
17 subsection. Notwithstanding any law to the contrary, all
18 revenues, fees, and fines collected by the department shall be
19 deposited into the compliance resolution fund. Unencumbered
20 balances existing on June 30, 1999, in the cable television fund
21 under chapter 440G, the division of consumer advocacy fund under
22 chapter 269, the financial institution examiners' revolving



1 fund, section 412:2-109, the special handling fund, section 414-
2 13, and unencumbered balances existing on June 30, 2002, in the
3 insurance regulation fund, section 431:2-215, shall be deposited
4 into the compliance resolution fund. This provision shall not
5 apply to the drivers education fund underwriters fee, [~~section~~]
6 sections 431:10C-115 and 431:10G-107, insurance premium taxes
7 and revenues, revenues of the workers' compensation special
8 compensation fund, section 386-151, the captive insurance
9 administrative fund, section 431:19-101.8, the insurance
10 commissioner's education and training fund, section 431:2-214,
11 the medical malpractice patients' compensation fund as
12 administered under section 5 of Act 232, Session Laws of Hawaii
13 1984, and fees collected for deposit in the office of consumer
14 protection restitution fund, section 487-14, the real estate
15 appraisers fund, section 466K-1, the real estate recovery fund,
16 section 467-16, the real estate education fund, section 467-19,
17 the contractors recovery fund, section 444-26, the contractors
18 education fund, section 444-29, the condominium management
19 education fund, section 514A-131, and the condominium education
20 trust fund, section 514B-71. Any law to the contrary
21 notwithstanding, the director may use the moneys in the fund to
22 employ, without regard to chapter 76, hearings officers and



1 attorneys[-] , and the executive director and hearing officer of
2 the medical claims conciliation office. All other employees may
3 be employed in accordance with chapter 76. Any law to the
4 contrary notwithstanding, the moneys in the fund shall be used
5 to fund the operations of the department. The moneys in the
6 fund may be used to train personnel as the director deems
7 necessary and for any other activity related to compliance
8 resolution.

9 As used in this subsection, unless otherwise required by
10 the context, "compliance resolution" means a determination of
11 whether:

- 12 (1) Any licensee or applicant under any chapter subject to
13 the jurisdiction of the department of commerce and
14 consumer affairs has complied with that chapter;
- 15 (2) Any person subject to chapter 485A has complied with
16 that chapter;
- 17 (3) Any person submitting any filing required by chapter
18 514E or section 485A-202(a)(26) has complied with
19 chapter 514E or section 485A-202(a)(26);
- 20 (4) Any person has complied with the prohibitions against
21 unfair and deceptive acts or practices in trade or
22 commerce; or



1 (5) Any person subject to chapter 467B has complied with
2 that chapter;
3 and includes work involved in or supporting the above functions,
4 licensing, or registration of individuals or companies regulated
5 by the department, consumer protection, and other activities of
6 the department.

7 The director shall prepare and submit an annual report to
8 the governor and the legislature on the use of the compliance
9 resolution fund. The report shall describe expenditures made
10 from the fund including non-payroll operating expenses."

11 SECTION 2. Chapter 671, Hawaii Revised Statutes, is
12 amended as follows:

13 1. By amending the title of part II to read:

14 "**PART II. MEDICAL ~~[CLAIM]~~ CLAIMS CONCILIATION OFFICE"**

15 2. By amending section 671-11 to read:

16 "**§671-11 Medical ~~[claim]~~ claims conciliation ~~[panels]~~**
17 **office; ~~[composition, selection, compensation]~~ establishment.**

18 (a) There ~~[are]~~ is established in the department of commerce
19 and consumer affairs for administrative purposes a medical
20 ~~[claim]~~ claims conciliation ~~[panels which shall review and~~
21 ~~render findings and advisory opinions on the issues of liability~~
22 ~~and damages]~~ office that shall conduct administrative hearings



1 and issue binding opinions in medical tort claims against health
2 care providers filed pursuant to section 671-12.

3 ~~[(b) A medical claim conciliation panel shall be formed~~
4 ~~for each claim filed pursuant to section 671-12 and after each~~
5 ~~panel renders its decision or the claim is otherwise disposed of~~
6 ~~it shall be disbanded. Each medical claim conciliation panel~~
7 ~~shall consist of one chairperson selected from among persons who~~
8 ~~are familiar with and experienced in the personal injury claims~~
9 ~~settlement process, one attorney licensed to practice in the~~
10 ~~courts of the State and experienced in trial practice, and one~~
11 ~~physician, osteopathic physician, or surgeon licensed to~~
12 ~~practice under chapter 453. The chairperson shall be appointed~~
13 ~~by the director of the department of commerce and consumer~~
14 ~~affairs from a list of eligible persons approved by the chief~~
15 ~~justice of the supreme court of Hawaii. The attorney shall be~~
16 ~~appointed by the chairperson from a list of not less than~~
17 ~~thirty five attorneys experienced in trial practice submitted~~
18 ~~annually by the supreme court. The physician, osteopathic~~
19 ~~physician, or surgeon shall be appointed by the chairperson and~~
20 ~~shall be currently licensed and in good standing under chapter~~
21 ~~453.~~



1 ~~(c) The chairperson shall preside at the meetings of the~~
2 ~~panel. The chairperson, all panel members, and any consultant~~
3 ~~called by the panel to appear before the panel shall be~~
4 ~~compensated at the rate of \$300 per claim which will become~~
5 ~~payable when the decision of the panel is submitted. At the~~
6 ~~discretion of the director, the chairperson, panel members, and~~
7 ~~any consultant called by the panel to appear before the panel,~~
8 ~~may be compensated at one half the amount of compensation~~
9 ~~specified in this section, if the claim is disposed of by any~~
10 ~~means prior to the hearing by the panel. The chairperson, all~~
11 ~~panel members, and any consultant called by the panel to appear~~
12 ~~before the panel also shall be paid allowances for travel and~~
13 ~~living expenses which may be incurred as a result of the~~
14 ~~performance of their duties on or for the panel. These costs~~
15 ~~shall be paid by the department of commerce and consumer affairs~~
16 ~~from the filing fees paid by the parties.]~~

17 (b) The medical claims conciliation office shall be headed
18 by an executive director who shall be appointed by the director
19 of commerce and consumer affairs and shall be exempt from
20 chapters 76 and 89. The executive director shall serve in a
21 full-time capacity and shall perform such duties and exercise



1 such powers and authority as may be delegated to the executive
2 director by the director of commerce and consumer affairs.

3 (c) There shall be a medical claims conciliation hearing
4 officer who shall handle proceedings and hold hearings on
5 medical claims. The hearing officer shall be appointed by the
6 director of commerce and consumer affairs and shall be exempt
7 from chapters 76 and 89. The director shall develop the
8 qualifications for the hearing officer and shall provide
9 training in administrative hearings and legal proceedings and
10 training in the medical field, including in-classroom clinical
11 training and a program in which the hearing officer shadows
12 physicians in different health care settings.

13 ~~[(d) The claimant shall pay a filing fee of \$450 to the~~
14 ~~department upon the filing of the claim and the failure to do so~~
15 ~~shall result in the claim being rejected for filing. Each~~
16 ~~health care provider and other parties to the claim shall pay a~~
17 ~~filing fee of \$450 to the department within twenty days of being~~
18 ~~served with the claim. Each party to a claim shall be assessed~~
19 ~~a non-refundable processing fee by the department in the amount~~
20 ~~of \$50. The non-refundable processing fee shall be retained~~
21 ~~from each party's filing fee, and shall be used to defray the~~



1 ~~administrative costs of the medical claims conciliation panel~~
2 ~~program.~~

3 ~~(c) After the panel has made a final decision on a claim,~~
4 ~~or after a final disposition of the claim has been made without~~
5 ~~a hearing before the panel, the department shall return any~~
6 ~~moneys remaining after all panel costs have been paid, to the~~
7 ~~respective parties on a pro rata basis.]~~

8 ~~[(f)]~~ (d) The office and ~~[meeting]~~ administrative hearing
9 space, secretarial and clerical assistance, office equipment,
10 and office supplies for the ~~[panel]~~ medical claims conciliation
11 office shall be furnished by the department of commerce and
12 consumer affairs. The ~~[chairperson]~~ medical claims conciliation
13 hearing officer may designate any alternative meeting place or
14 site for the hearing.

15 ~~[(g) The Hawaii medical board shall prepare a list of~~
16 ~~physicians, osteopathic physicians, surgeons, and podiatrists,~~
17 ~~as the case may be, along with their respective specialties.~~
18 ~~These physicians, osteopathic physicians, and surgeons shall be~~
19 ~~eligible to serve as consultants to the panel in their~~
20 ~~respective fields. Panel members may consult with other legal,~~
21 ~~medical, and insurance specialists.]"~~



1 SECTION 3. Section 671-11.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[~~f~~]**\$671-11.5**[+] Medical claims; Filing fee; Waiver of
4 filing fee. (a) For each claim filed pursuant to this part,
5 the claimant shall pay a filing fee to the department of
6 commerce and consumer affairs, the amount of which shall be
7 established by the executive director. Failure to pay the
8 filing fee shall result in the claim's being rejected for filing
9 unless it is accompanied by a motion made pursuant to subsection
10 (b). Each health care provider and other parties to the claim,
11 other than the claimant, shall pay a filing fee of \$450 to the
12 department of commerce and consumer affairs within twenty days
13 of being served with the claim. Filing fees shall be non-
14 refundable and shall be deposited into the compliance resolution
15 fund.

16 [~~a~~] (b) If any party to a claim cannot pay the required
17 filing fee, the party may file [~~with the director~~] with the
18 executive director a motion to waive the filing fee. The motion
19 to waive the filing fee shall be accompanied by an affidavit in
20 a format prescribed by the department of commerce and consumer
21 affairs, showing in detail:

22 (1) The party's inability to pay the filing fee;



1 (2) The party's belief that the party is entitled to
2 redress; and

3 (3) A statement of the issues that the party intends to
4 present at the hearing before a medical claims
5 conciliation [~~panel~~] hearing officer.

6 [~~(b)~~] (c) The filing of a motion to waive the filing fee
7 shall toll the time limitation in section 671-18. The executive
8 director shall decide on the motion to waive the filing fee as
9 expeditiously as possible, and no oral arguments shall be
10 permitted.

11 [~~(e)~~] (d) If the executive director grants the motion to
12 waive the filing fee, the [~~party may~~] claim shall proceed
13 [~~without further application to the director or panel, and~~
14 ~~without payment of the filing fee~~]. If the motion is denied,
15 the executive director shall state the reasons for the denial in
16 writing. The executive director shall promptly provide [~~the~~
17 ~~party with a filed~~] a copy of the [director's] order granting or
18 denying the motion to the claimant.

19 [~~(d)~~] (e) If a motion to waive the filing fee is denied by
20 the executive director, the party may seek judicial review under
21 section 91-14.



1 ~~(e)~~ (f) If the executive director denies a party's
2 motion to waive the filing fee, the party shall pay the filing
3 fee within thirty days after the denial of the motion, unless
4 the party has filed an appeal under section 91-14. If the party
5 has filed an appeal under section 91-14, the party may proceed
6 without payment of the filing fee, until such time as a final
7 judicial determination is rendered on the appeal.

8 ~~(f)~~ (g) If the party files an appeal under section 91-
9 14, and the court upholds the executive director's denial of the
10 ~~[aggrieved]~~ party's motion to waive the filing fee, the party
11 shall pay the filing fee within thirty days after the court's
12 affirmation of the denial. If the court determines that the
13 party's motion for waiver of the filing fee was improperly
14 denied, the party shall be entitled to proceed without payment
15 of the filing fee."

16 SECTION 4. Section 671-12, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§671-12 Review by ~~[panel]~~ office required; notice;**
19 **presentation of claims; request for a more definite statement of**
20 **the claim.** (a) ~~[Effective July 1, 1976, any]~~ Any person or the
21 person's representative claiming that a medical tort has been
22 committed shall submit a statement of the claim to the medical



1 ~~[claim]~~ claims conciliation ~~[panel]~~ office before a suit based
2 on the claim may be commenced in any court of this State.
3 Claims shall be submitted to the medical ~~[claim]~~ claims
4 conciliation ~~[panel]~~ office in writing. The claimant shall set
5 forth facts upon which the claim is based and shall include the
6 names of all parties against whom the claim is or may be made
7 who are then known to the claimant.

8 (b) Within five business days thereafter the ~~[panel]~~
9 medical claims conciliation office shall give notice of the
10 claim and the statement of the claim, by certified mail, to all
11 health care providers and others who are or may be parties to
12 the claim and shall furnish copies of written claims to such
13 persons. Such notice shall set forth a date, not more than
14 twenty days after mailing the notice, within which any health
15 care provider against whom a claim is made shall file a written
16 response to the claim, and a date and time, not less than five
17 days following the last date for filing a response, for a
18 hearing ~~[of the panel]~~ by the medical claims conciliation
19 hearing officer. Such notice shall describe the nature and
20 purpose of the ~~[panel's]~~ proceedings and shall designate the
21 place of the meeting. The times originally set forth in the
22 notice may be enlarged by ~~[the chairperson]~~ by the medical



1 claims conciliation hearing officer, on due notice to all
2 parties, for good cause.

3 (c) If the statement of the claim in the notice is so
4 vague or ambiguous that any party receiving notice of the claim
5 cannot reasonably be required to frame a written response, the
6 party may submit a written request to the director of commerce
7 and consumer affairs for a more definite statement before filing
8 the written response. Copies of the request shall be provided
9 to the [~~panel~~] medical claims conciliation office and the
10 medical claims conciliation hearing officer, the claimant, and
11 other affected parties. The request, which shall be ex parte
12 and stay the proceedings of the [~~panel~~] hearing officer until
13 notice of the director's decision is given to the [~~panel~~]
14 office, the hearing officer, and all parties, shall specify the
15 defects complained of and the details desired. The director may
16 deny, grant, or modify the request at the director's own
17 discretion, without the necessity of a hearing, although the
18 director may reach a decision after consulting with the [~~panel~~]
19 hearing officer or the claimant. The director shall provide
20 notice of the decision to the [~~panel~~] office, the hearing
21 officer, the claimant, and other affected parties. If the
22 request is granted and the claimant fails to provide a more



1 definite statement of the claim within five days after notice of
2 the decision, the [~~panel~~] the hearing officer may make such
3 order as it deems just. This subsection shall not be used as a
4 tactic to delay the proceedings."

5 SECTION 5. Section 671-12.5, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "~~[§671-12.5]~~ **Certificate of consultation.** (a) Any
8 claim filed with the medical [~~claim~~] claims conciliation [~~panel~~]
9 office under this chapter shall be accompanied by a certificate
10 which declares one of the following:

11 (1) That the claimant or the claimant's attorney has
12 consulted with at least one physician who is licensed
13 to practice in this State or any other state, and who
14 is knowledgeable or experienced in the same medical
15 specialty as the health care professional against whom
16 the claim is made, and that the claimant or claimant's
17 attorney has concluded on the basis of such
18 consultation that there is a reasonable and
19 meritorious cause for filing the claim. If the
20 claimant or the claimant's attorney is not able to
21 consult with a physician in the same medical specialty
22 as the health care professional against whom the claim



1 is made, the claimant or claimant's attorney may
2 consult with a physician who is licensed in this State
3 or in any other state who is knowledgeable and
4 experienced in a medical specialty that is as closely
5 related as practicable to the medical specialty of the
6 health care professional against whom the claim is
7 made. The physician or physicians consulted by the
8 claimant or the claimant's attorney may not be a party
9 to the case, nor be compelled to testify or otherwise
10 participate in the hearing before the medical ~~[claim]~~
11 claims conciliation ~~[panel]~~ hearing officer;

- 12 (2) That the claimant or the claimant's attorney was
13 unable to obtain the consultation required by
14 paragraph (1) because a statute of limitations would
15 impair the action and that the certificate required by
16 paragraph (1) could not be obtained before the
17 impairment of the action. If a certificate is
18 executed pursuant to this paragraph, the certificate
19 required by paragraph (1) shall be filed by the
20 claimant or the claimant's attorney within ninety days
21 after filing the claim; or



1 (3) That the claimant or the claimant's attorney was
2 unable to obtain the consultation required by
3 paragraph (1) after the claimant or the claimant's
4 attorney had made a good faith attempt to obtain such
5 consultation and the physician contacted would not
6 agree to such a consultation. For purposes of this
7 paragraph, "good faith attempt" refers to the
8 responsibility of a claimant or claimant's attorney to
9 make reasonable efforts to contact a physician for the
10 purpose of reviewing the circumstances upon which a
11 claim is based. The claimant or claimant's attorney
12 may contact physicians by letter, telephone,
13 facsimile, or other electronic means of communication.
14 If the physician does not respond within a reasonable
15 time, the claimant or claimant's attorney may submit
16 its claim to the medical [~~claim~~] claims conciliation
17 [~~panel~~] office along with a certificate declaring such
18 nonresponse to claimant's good faith attempt. A "good
19 faith attempt" shall ultimately be evaluated in light
20 of the goal of having a qualified physician assist the
21 claimant or claimant's attorney in understanding the



1 basis of the claim, and such determination shall
2 depend upon the circumstances of each individual case.

3 (b) Where a claimant or the claimant's attorney intends to
4 rely solely on a failure to inform of the consequences of a
5 procedure (informed consent), this section shall be
6 inapplicable. The claimant or the claimant's attorney shall
7 certify upon filing of the claim that the claimant or the
8 claimant's attorney is relying solely on the failure to inform
9 of the consequences of a procedure and for that reason is not
10 filing a certificate as required by this section.

11 (c) For the purposes of this section, the claimant or the
12 claimant's attorney shall not be required to disclose the names
13 of any physician consulted to fulfill the requirements of
14 subsection (a) to any of the other parties to the claim. The
15 ~~[medical claim conciliation panel]~~ office may require the
16 claimant or the claimant's attorney to disclose the name of any
17 physician consulted to fulfill the requirements of subsection
18 (a). No disclosure of the name of any physician consulted to
19 fulfill the requirements of subsection (a) shall be made to any
20 of the other parties to the claim; provided that the medical
21 ~~[claim]~~ claims conciliation ~~[panel]~~ office may contact any such



1 physician to determine if the requirements of subsection (a)
2 were met.

3 (d) Unless a certificate is filed pursuant to subsection
4 (a) or (b), the claim shall not be received for filing by the
5 medical ~~[claim]~~ claims conciliation ~~[panel]~~ office."

6 SECTION 6. Section 671-13, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§671-13 Medical ~~[claim]~~ claims conciliation ~~[panel]~~**
9 **office hearing; fact-finding; evidence; voluntary settlement.**

10 Every claim of a medical tort shall be heard by the medical
11 ~~[claim]~~ claims conciliation ~~[panel]~~ hearing officer within
12 thirty days after the last date for filing a response. No
13 persons other than the ~~[panel]~~ hearing officer, witnesses, and
14 consultants called by the ~~[panel]~~ hearing officer, and the
15 persons listed in section 671-14 shall be present except with
16 the permission of the ~~[chairperson]~~ hearing officer. The
17 ~~[panel]~~ hearing officer may, in ~~[its]~~ the hearing officer's
18 discretion, conduct an inquiry of a party, witness, or
19 consultant without the presence of any or all parties.

20 ~~[The hearing shall be informal. Chapters 91 and 92 shall~~
21 ~~not apply.]~~ The ~~[panel]~~ hearing officer may require a
22 stenographic record of all or part of ~~[its]~~ the proceedings for



1 ~~the~~ use ~~of~~ by the ~~panel,~~ hearing officer, but such record
2 shall not be made available to the parties. The ~~panel~~ hearing
3 officer may receive any oral or documentary evidence.
4 Questioning of parties, witnesses, and consultants may be
5 conducted by the ~~panel~~ hearing officer, and the ~~panel~~
6 hearing officer may, in ~~its~~ his discretion, permit any party,
7 or any counsel for a party to question other parties, witnesses,
8 or consultants. The ~~panel~~ hearing officer may designate who,
9 among the parties, shall have the burden of going forward with
10 the evidence with respect to such issues as ~~it~~ the hearing
11 officer may consider, and unless otherwise designated by the
12 ~~panel~~ hearing officer, when medical and hospital records have
13 been provided to the claimant for the claimant's proper review,
14 such burden shall initially rest with the claimant at the
15 commencement of the hearing.

16 The ~~panel~~ hearing officer shall have the power to require
17 by subpoena the appearance and testimony of witnesses and the
18 production of documentary evidence. When such subpoena power is
19 ~~utilized,~~ used, notice shall be given to all parties. The
20 testimony of witnesses may be taken either orally before the
21 ~~panel,~~ hearing officer, or by deposition. In cases of refusal
22 to obey a subpoena issued by the ~~panel~~ hearing officer, the



1 ~~[panel]~~ hearing officer may invoke the aid of any circuit court
2 in the State, which may issue an order requiring compliance with
3 the subpoena. Failure to obey such order may be punished by the
4 court as a contempt thereof. ~~[Any member of the panel,]~~ The
5 hearing officer, the director of the department, or any person
6 designated by the director of the department may sign subpoenas.
7 ~~[Any member of the panel]~~ The hearing officer may administer
8 oaths and affirmations, examine witnesses, and receive evidence.
9 Notwithstanding such powers, the ~~[panel]~~ hearing officer shall
10 attempt to secure the voluntary appearance, testimony, and
11 cooperation of parties, witnesses, and consultants without
12 coercion.

13 At the hearing of the ~~[panel]~~ hearing officer and in
14 arriving at ~~[its]~~ an opinion, the ~~[panel]~~ hearing officer shall
15 consider, but not be limited to, statements or testimony of
16 witnesses, hospital and medical records, nurses' notes, x-rays,
17 and other records kept in the usual course of the practice of
18 the health care provider without the necessity for other
19 identification or authentication, statement of fact, or opinion
20 on a subject contained in a published treatise, periodical,
21 book, or pamphlet, or statements of experts without the
22 necessity of the experts appearing at the hearing. The ~~[panel]~~



1 hearing officer may, upon the application of any party or upon
2 its own decision, appoint as a consultant, an impartial and
3 qualified physician, surgeon, physician and surgeon, or other
4 professional person or expert to testify before the [~~panel~~]
5 hearing officer or to conduct any necessary professional or
6 expert examination of the claimant or relevant evidentiary
7 matter and to report to or testify as a witness thereto. Such a
8 consultant shall not be compensated or reimbursed except for
9 travel and living expenses [~~to be paid as provided in section~~
10 ~~671-11~~]. Except for the production of hospital and medical
11 records, nurses' notes, x-rays, and other records kept in the
12 usual course of the practice of the health care provider,
13 discovery by the parties shall not be allowed.

14 During the hearing and at any time prior to the [~~rendition~~]
15 rendering of an advisory decision pursuant to section 671-15,
16 the [~~panel~~] hearing officer may encourage the parties to settle
17 or otherwise dispose of the case voluntarily.

18 Except as otherwise provided in this section, medical
19 claims conciliation hearings shall be conducted in accordance
20 with chapter 91."

21 SECTION 7. Section 671-14, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "**§671-14 Same; persons attending hearings of [~~panel~~**
2 **medical claims conciliation hearing officer**. Unless excluded or
3 excused by the [~~panel,~~] medical claims conciliation hearing
4 officer, the following persons shall attend hearings before the
5 [~~panel~~] hearing officer:

- 6 (1) The party or parties making the claim;
7 (2) The health care provider or providers against whom the
8 claim is made or representatives thereof, other than
9 counsel, authorized to act for such health care
10 provider or providers;
11 (3) Counsel for the parties, if any."

12 SECTION 8. Section 671-15, Hawaii Revised Statutes, is
13 amended by amending subsections (a), (b), and (c) to read as
14 follows:

15 "(a) Within thirty days after the completion of a hearing,
16 the medical [~~claim~~] claims conciliation [~~panel~~] hearing officer
17 shall file a written [~~advisory~~] decision with the insurance
18 commissioner, who shall thereupon mail copies to all parties
19 concerned, their counsel, and the representative of each health
20 care provider's liability insurance carrier authorized to act
21 for such carrier, as appropriate. The insurance commissioner
22 [~~also~~] shall also mail copies of the [~~advisory~~] decision to the



1 department of commerce and consumer affairs, if the claim is
2 against a physician, osteopathic physician, or surgeon licensed
3 under chapter 453 or a podiatrist licensed under chapter 463E.
4 The ~~[panel]~~ medical claims conciliation hearing officer shall
5 decide the issue of liability and shall state ~~[its]~~ the hearing
6 officer's conclusions in substantially the following language:
7 "[We] I find the health care provider was actionably negligent
8 in his or her care and treatment of the patient and ~~[we]~~ I,
9 therefore, find for the claimant"; or "[We] I find the health
10 care provider was not actionably negligent in his or her care
11 and treatment of the patient and ~~[we]~~ I, therefore, find for the
12 health care provider".

13 (b) After a finding of liability, the medical ~~[claim]~~
14 claims conciliation ~~[panel]~~ hearing officer shall decide the
15 amount of damages, if any, which should be awarded in the case.
16 The decision as to damages shall include in simple, concise
17 terms a division as to which portion of the damages recommended
18 are attributable to economic losses and which to noneconomic
19 losses; provided the ~~[panel]~~ hearing officer may not ~~[recommend]~~
20 award punitive damages.

21 (c) The decisions shall be signed by ~~[all members of]~~ the
22 medical ~~[claim]~~ claims conciliation ~~[panel]~~ hearing officer [+



1 ~~provided that any member of the panel may file a written~~
2 ~~concurring or dissenting opinion]."~~

3 SECTION 9. Section 671-15.5, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[~~+~~§671-15.5~~+~~] **Expungement of records; malpractice**
6 **insurance rates.** (a) Upon a decision by the medical [~~e~~claim]
7 claims conciliation [~~panel~~] hearing officer's finding for the
8 health care provider pursuant to section 671-15(a), the health
9 care provider may apply to the [~~panel~~] hearing officer for
10 expungement of all records of the related proceedings. The
11 [~~panel~~] hearing officer shall expunge all records if [~~a majority~~
12 ~~of the panel~~] the hearing officer finds that the complaint is
13 fraudulent or frivolous.

14 (b) No insurer providing professional liability insurance
15 for a health care provider shall increase any premium rate for
16 the health care provider on the basis of the filing of a medical
17 tort claim against the health care provider that is determined
18 by the medical [~~e~~claim] claims conciliation [~~panel~~] hearing
19 officer to be fraudulent or frivolous."

20 SECTION 10. Section 671-16, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§671-16 Subsequent litigation; excluded evidence. [The
2 claimant may institute litigation based upon the claim in an
3 appropriate court only after a party to a medical claim
4 conciliation panel hearing rejects the decision of the panel, or
5 after the twelve month period under section 671-18 has expired.]

6 (a) Within twenty days after the decision of the medical
7 claims conciliation hearing officer is served upon the parties,
8 any party may file with an appropriate court of this State and
9 serve on the other parties and the executive director of the
10 medical claims conciliation office, a written notice of appeal
11 and request for trial de novo of the action. This period may be
12 extended to a period of not more than forty days after the
13 decision of the hearing officer is served upon the parties by
14 stipulation signed by all parties remaining in the action.
15 After the filing and service of written notice of appeal and
16 request for trial de novo, the case shall be set for trial
17 pursuant to applicable court rules.

18 (b) If after twenty days after the award is served upon
19 the parties, no party has filed a written notice of appeal and
20 request for trial de novo, the court shall, upon notification by
21 the hearing officer, enter the award as a final judgment of the
22 court. This period may be extended to a period of not more than



1 forty days after the award is served upon the parties by written
2 stipulation. Said award shall have the same force and effect as
3 final judgment of the court in a civil action but may not be
4 appealed.

5 (c) The prevailing party in a trial de novo is the party
6 who:

7 (1) Appealed and improved upon the award by seventy per
8 cent or more; or

9 (2) Did not appeal and the appealing party failed to
10 improve upon the award by seventy per cent or more.

11 For the purposes of this subsection "improve" or "improved"
12 means to increase the award for the appealing party or to
13 decrease the award for the non-appealing party.

14 (d) After the verdict is received and filed, or the
15 court's decision rendered in a trial de novo, the trial court
16 may impose sanctions as set forth below against the non-
17 prevailing party whose appeal resulted in the trial de novo:

18 (1) Reasonable costs and fees (other than attorney's fees)
19 actually incurred by the party but not otherwise
20 taxable under the law including expert witness fees,
21 travel costs, and deposition costs;

22 (2) Costs of jurors; and



1 (3) Attorney's fees.

2 (e) No statement made in the course of the hearing of the
3 ~~[medical claim conciliation panel]~~ hearing officer shall be
4 admissible in evidence either as an admission, to impeach the
5 credibility of a witness, or for any other purpose in any trial
6 of the action; provided that such statements may be admissible
7 for the purpose of section 671-19, hereof. No decision,
8 conclusion, finding, or recommendation of the medical ~~[claim]~~
9 claims conciliation ~~[panel]~~ hearing officer on the issue of
10 liability or on the issue of damages shall be admitted into
11 evidence in any subsequent trial, nor shall any party to the
12 ~~[medical claim conciliation panel]~~ hearing, or the counsel or
13 other representative of such party, refer or comment thereon in
14 an opening statement, an argument, or at any other time, to the
15 court or jury; provided that such decision, conclusion, finding,
16 or recommendation may be admissible for the purpose of section
17 671-19, hereof."

18 SECTION 11. Section 671-16.5, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "~~{~~**§671-16.5**~~}~~ **Arbitration; subsequent litigation.** Any
21 person or the person's representative claiming that a medical
22 tort has been committed or any health care provider against whom



1 a claim has been made may elect to bypass the court annexed
2 arbitration program under section 601-20 after the claim has
3 been submitted to the medical [~~claim~~] claims conciliation
4 [~~panel~~] office and [~~panel~~] the medical claims conciliation
5 hearing officer has rendered a decision or has not reached a
6 decision within the tolling period of the statute of limitations
7 under section 671-18."

8 SECTION 12. Section 671-16.6, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "~~[§671-16.6]~~ **Submission of claim to an alternative**
11 **dispute resolution provider.** (a) Any claim initially filed
12 with the medical [~~claim~~] claims conciliation [~~panel~~] office may
13 be subsequently submitted to an alternative dispute resolution
14 provider upon the written agreement of all of the parties to the
15 claim and with the written approval of the executive director of
16 the office. The executive director shall approve the
17 alternative dispute resolution provider and the alternative
18 dispute resolution procedures.

19 (b) The parties shall comply with the procedures
20 established by the alternative dispute resolution provider and
21 approved by the executive director. If a party does not comply
22 with those procedures, any other party may file a motion with



1 the executive director to have the claim resubmitted to the
2 medical [~~claim~~] claims conciliation [~~panel~~] office.

3 (c) Within thirty days after the completion of the
4 alternative dispute resolution process, the alternative dispute
5 resolution provider shall notify all parties concerned, their
6 counsel, and the representative of each health care provider's
7 liability insurance carrier authorized to act for the carrier,
8 as appropriate, that the alternative dispute resolution process
9 has been completed.

10 (d) The claimant may institute litigation based upon the
11 claim in an appropriate court only if:

12 (1) The parties were not able to resolve the entire claim
13 through the alternative dispute resolution process and
14 the matter has not been resubmitted to the medical
15 [~~claim~~] claims conciliation [~~panel~~] office pursuant to
16 subsection (b) of this section; or

17 (2) The claim has not been resolved through the
18 alternative dispute resolution process after twelve
19 months from the date the claim was filed with the
20 approved alternative dispute resolution provider.

21 (e) No statement made in the course of the approved
22 alternative dispute resolution process shall be admissible in



1 evidence as an admission, to impeach the credibility of a
 2 witness, or for any other purpose in any trial of the action.
 3 No decision, conclusion, finding, or recommendation of the
 4 approved alternative dispute resolution provider on the issue of
 5 liability or on the issue of damages shall be admitted into
 6 evidence in any subsequent trial, nor shall any party to the
 7 approved alternative dispute resolution hearing, their counsel,
 8 or other representative of such party, refer or comment thereon
 9 in an opening statement, in an argument, or at any time, to the
 10 court or jury."

11 SECTION 13. Section 671-17, Hawaii Revised Statutes, is
 12 amended to read as follows:

13 "~~{f}~~§671-17~~{f}~~ Immunity ~~[of panel members]~~ from liability.

14 No member of [a] the medical ~~[claim]~~ claims conciliation ~~[panel]~~
 15 office shall be liable in damages for libel, slander, or other
 16 defamation of character of any party to medical ~~[claim]~~ claims
 17 conciliation ~~[panel]~~ office ~~[proceeding]~~ proceedings for any
 18 action taken or any decision, conclusion, finding, or
 19 recommendation made by the ~~[member]~~ medical claims conciliation
 20 hearing officer while acting within the ~~[member's]~~ hearing
 21 officer's capacity ~~[as a member of a medical claim conciliation~~
 22 ~~panel]~~ under this ~~[Act.]~~ Chapter."



1 SECTION 14. Section 671-18, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§671-18 Statute of limitations tolled.** The filing of the
4 claim with the medical [~~claim~~] claims conciliation [~~panel~~]
5 office or with an approved alternative dispute resolution
6 provider shall toll any applicable statute of limitations, and
7 any such statute of limitations shall remain tolled until sixty
8 days after the date the decision of the panel or the
9 notification of completion from the approved alternative dispute
10 resolution provider is mailed or delivered to the parties. If a
11 decision by the medical [~~claim~~] claims conciliation [~~panel~~]
12 hearing officer is not reached within twelve months, or the
13 alternative dispute resolution process is not completed within
14 twelve months, the statute of limitations shall resume running
15 and the party filing the claim may commence a suit based on the
16 claim in any appropriate court of this State. The [~~panel~~]
17 hearing officer or the approved alternative dispute resolution
18 provider shall notify all parties in writing of this provision."

19 SECTION 15. Section 671-19, Hawaii Revised Statutes, is
20 amended to read as follows:

21 **"§671-19 Duty to cooperate; assessment of costs and fees.**
22 It shall be the duty of every person who files a claim with the



1 medical [~~claim~~] claims conciliation [~~panel~~] office, every health
2 care provider against whom the claim is made, and every
3 insurance carrier or other person providing medical tort
4 liability insurance for the health care provider, to cooperate
5 with the [~~medical claim conciliation panel~~] office for the
6 purpose of achieving a prompt, fair, and just disposition or
7 settlement of the claim, provided that cooperation shall not
8 prejudice the substantive rights of those persons.

9 Any party may apply to the [~~panel~~] medical claims
10 conciliation hearing officer to have the costs of the action
11 assessed against any party for failure to cooperate with the
12 [~~panel~~] hearing officer. The [~~panel~~] hearing officer may award
13 costs, or a portion thereof, including attorney's fees[~~τ~~];
14 witness fees, including those of expert witnesses[~~τ~~]; filing
15 fees[~~τ~~]; and costs of the medical claim conciliation [~~panel~~]
16 hearing to the party applying therefor.

17 In determining whether any person has failed to cooperate
18 in good faith, the [~~panel~~] hearing officer shall consider, but
19 is not limited to, the following:

20 (1) The attendance of the persons at the medical claims
21 conciliation hearing [~~of the medical claim~~
22 ~~conciliation panel~~];



- 1 (2) The extent to which representatives of parties and
2 counsel representing parties [~~came to panel~~] attended
3 hearings with knowledge of the claims and defenses and
4 authority to negotiate a settlement or other
5 disposition of the claim;
- 6 (3) The [~~testimony of members of the panel as to the~~]
7 facts of the person's participation in the [~~panel~~]
8 hearing;
- 9 (4) The extent of the person's cooperation in providing
10 [~~the panel with~~] documents and testimony called for by
11 the [~~panel~~] hearing officer;
- 12 (5) The reasons advanced by the person so charged for not
13 fully cooperating or negotiating; and
- 14 (6) The failure of the person to submit any required fees
15 to the department of commerce and consumer affairs, as
16 required by this chapter.

17 The party against whom costs are awarded may appeal the
18 award to the circuit court. The court may affirm or remand the
19 case with instructions for further proceedings; or it may
20 reverse or modify the award if the substantial rights of the
21 petitioners may have been prejudiced because the award is
22 characterized as abuse of discretion."



1 SECTION 16. Section 671-20, Hawaii Revised Statutes, is
2 amended to read as follows:

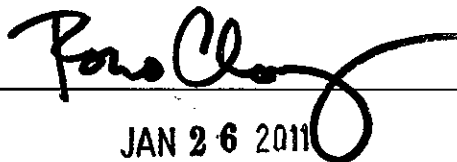
3 "[+]§671-20[+] **Annual report.** The director of commerce
4 and consumer affairs shall prepare and submit to the legislature
5 [~~annually~~], at least twenty days prior to the convening of each
6 regular session, [~~a~~] an annual report containing the director's
7 evaluation of the operation and effects of this chapter. The
8 report shall include a summary of the claims brought before the
9 medical [~~claim~~] claims conciliation [~~panel~~] office and the
10 disposition of such claims, a description and summary of the
11 work of the [~~panel~~] medical claims conciliation hearing officer
12 under this chapter, an appraisal of the effectiveness of this
13 chapter in securing prompt and fair disposition of medical tort
14 claims, a review of the number and outcomes of claims brought
15 under section 671-12 and recommendations for changes,
16 modifications or repeal of this chapter or parts thereof with
17 accompanying reasons and data."

18 SECTION 17. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 18. This Act shall take effect upon its approval.

21

INTRODUCED BY:



JAN 26 2011



Report Title:

Medical Torts

Description:

Establishes the Medical Claims Conciliation Office and the positions of executive director and hearing officer. Directs the hearing officer to conduct hearings on medical claims in accordance with the administrative procedure act. Makes opinions issued by the hearing officer binding upon the parties. Allows for any party to a decision of the Medical Claims Conciliation Office to file an appeal and request a trial de novo. Requires the party filing the appeal and request for trial de novo to pay the attorney's fees and other costs under certain conditions.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

