

# **Kaiser Arbitration Oversight Board**

## **Board Comments on the Annual Report**

### **Introduction:**

It is a responsibility of the Arbitration Oversight Board to review and comment on the Annual Report of the Independent Administrator. For this purpose, members of the Board received a draft copy of the report in February 2015, and made consideration of the report a principal agenda item for discussion at the Board's Spring meeting in March. In Board discussion of the draft, members offered various comments, criticisms, edits and suggestions which the Independent Administrator took into account and incorporated, according to her best judgement, in the final draft.

The Annual Report provides detailed quantitative and qualitative information about the functioning of the Kaiser arbitration system during the past calendar year – with comparison of key metrics to those of previous years – to allow all interested parties and the public-at-large to determine how well goals for fair, timely and cost-effective operation of the Kaiser arbitration system were being met. Review of the Annual Report also presents an opportunity for the Board and Independent Administrator to gain, together, a comprehensive look at developments and accomplishments of the year that has passed, with a view to the years ahead.

### **Developments During the Year:**

As described briefly in the Annual Report, 2014 was, in many respects, an especially eventful year for the arbitration system. There were major changes in key personnel. A new website-based recording system was introduced to meet new legislative requirements for reporting on arbitrations. Expanded disclosure and notification requirements, called for in update Judicial Council Ethics Standards for Neutral Arbitrators, had to be implemented. A periodic independent audit of OIA data management and procures was completed. And, the Independent Administrator, as well as Board members, were invite to attend a discussion of the Kaiser arbitration system at a committee meeting of the National Academy of Science. These important developments of 2014 merit comment.

### **The Personnel Changes:**

During the year two esteemed members of the Board retired, and successors were chosen to join the Board. Mr. Kennedy Richardson, a consultant attorney, was asked by the Kaiser Health Plan to serve as its representative on the Oversight Board, on an interim basis, while a search was conducted for an individual to take the position in its organization formerly held by Charles Sabatino, who had retired in 2013. When that search was concluded in 2014, Mr. Richardson retired, as planned. During his short tenure, Mr. Richardson served with distinction, and his helping hand in Board matters was highly appreciated by the Board and OIA staff. The Kaiser Health Plan search resulted in the successful recruitment of Beong-Soo Kim as a new Vice President and Assistant General Counsel. And he became the Health Plan's new representative on the Oversight Board.

Ms. Sylvia Drew Ivie was chosen by the Board to succeed Ms. Lark Galloway-Gilliam. Ms. Galloway-Gilliam, a founding member of the Oversight Board who had retired in 2013 for reasons of health brought an extensive background in grass-roots community involvement to her work on the Board. It was the Board's belief that Ms. Ivie would, as well, provide valuable perspectives based on her considerable experience in community-based endeavors. (The Annual Report includes the resumes of Mr. Kim and Ms. Ivie in *Exhibit C.*)

The most notable personnel change, of course, related to the announced retirement of Ms. Sharon Oxborough, the long-standing Independent Administrator, effective March 29<sup>th</sup> 2015. When notified in the Fall of 2014 that Ms. Oxborough did not wish to renew her contract, the Board held a series of meetings about selection of a successor. In the end, Ms. Marcella Bell was chosen, by acclamation, and with much enthusiasm, and a three-year contract was negotiated with her. She was considered superbly qualified, having directed the day-to-day activities of the Office effectively for many years, as Ms. Oxborough's right-hand deputy. The Board has acknowledged Sharon Oxborough's remarkable contributions as the Independent Administrator, and the very high standards of excellence she leaves as a legacy.

### **The OIA/Kaiser Arbitration System Website:**

The OIA internet website was extensively revised during 2014 to accommodate new demands for public information about the arbitration system, and to enhance its utility for users of the system. The web-site is attractive, clear and user-friendly. One notable addition, responsive to new legislative requirements (AB 802) is the posting of an expanded body of information about the arbitrations administered by the OIA in a *sortable* format, in addition to its longstanding postings in *searchable* format. There were technical challenges to overcome in designing the *sortable* files so as not to be too cumbersome. Obviously, the website is a critical interface between the OIA and the public — the users of the Kaiser arbitration system and those who would like to learn more about the system, for one reason or another. The Oversight Board has, therefore, greatly encouraged and supported the website development, and views the results with considerable satisfaction.

### **The National Academy:**

In December 2014, the National Academy of Science’s committee on Science, Technology and the Law held an invitational conference in Washington, DC, in which the subject of discussion was “Arbitration as an Alternative to Litigation for Claims of Medical Malpractice: the Kaiser Permanente Experience.” Ms. Oxborough and members of the Oversight Board were invited participants. Alan B. Morrison, a professor of Law, presented a paper, in draft – describing and evaluating the Kaiser arbitration system, drawing extensively upon its Annual Reports. The conclusion of his draft report states, in part... “the Kaiser arbitration system is certainly less expensive for claimants and faster than court litigation, and neither its speed nor low cost seems to interfere with obtaining the fair outcomes...” A second draft of the paper, incorporating suggestions from the forum, will be available for further comment in the Spring of 2015. It is not clear, as yet, where and under what auspices, the final draft will be published. Were it under the auspices of the National Academy’s committee, it could be an influential document.

### **Audit of the OIA:**

Another noteworthy event of 2014 was an exhaustive independent audit of the OIA’s data handling and management — examining each step in the process, from the initial claim to the final closure. The focus was on the accuracy and integrity of the system from initial receipt of claims and paper entries, transcription to computer files, through to electronic

data processing, analyses and printed reports. The audit also examined the security procedures use to protect the safety and privacy of the files. The auditors found the data management and analyses were exceedingly accurate; indeed, they found virtually no errors. The audit thus assures that the data provided in the Annual Report are highly reliable.

**Measures of Performance in the Annual Report:**

The Board receives reports on the performance of the arbitration system at its quarterly meetings. The accumulated performance metrics for the entire year are detailed in the Annual Report. Close attention is paid to the time it takes to resolve cases since that had been a cause for criticism in the past, before independent administration of the system. Even when accommodating allowable delays owing to postponements and disqualifications, or both, the reported data shows that the Office does an admirable job of keeping the arbitration process on track and on time.

The size of the OIA pool of neutral arbitrators has remained ample, well-distributed geographically, relatively stable in terms of turn-over, and fairly balanced. Work is very widely distributed among the arbitrators. A significant fraction of the arbitrator are retired judges; a significant percentage devote full-time to arbitration. Applications, updating their experience, must be renewed every two years. The arbitrators, in the main, continue to receive favorable ratings from parties responding to evaluation questionnaires. The evaluations serve a further purpose: they are kept on file and made available to new parties, to help them in their arbitrator selection decisions. For the most part, parties utilize the OIA's pool of arbitrators, whether by a strike and rank process or by joint selection. There is a continuous effort to increase the gender, racial and ethnic diversity of the arbitrator pool.

Arbitrators and participating attorneys, plaintiff and defense, generally give high ratings to the OIA in its administration of the arbitrations, comparing experience in OIA cases very favorably to their experience in Court.

The way in which cases close in the Kaiser arbitration system has not changed very greatly over the years. Of interest is the large percentage (46%) that close by a settlement, and the relatively small percentage (9% in 2014) that close after a full hearing. In the full

hearings, the judgments were for Kaiser in 62% of the cases and for the claimant in 38%.

**Concluding Comments:**

In the Board's view, the Annual Report provides a thorough account of the operation of the Kaiser arbitration system during 2014, with useful comparisons to data for previous years. The constructive new developments, and excellent ratings in measures of performance — as detailed in the Report — give good evidence that the independently administered Kaiser arbitration system is striving successfully, on a model of continuous improvement, to meet goals of fair, timely, and cost-effective arbitrations.

The Board takes this opportunity to acknowledge the significant contributions of Board members who have retired, to express appreciation for the fine work of the OIA staff — and to issue a very special commendation to Sharon Oxborough as she retires as the Independent Administrator. Everyone involved in the world of arbitration, medical malpractice arbitration in particular, recognizes her exceptional ability and the unique role she has played as the Independent Administrator. Her work will stand as a model of excellence in the field..

**Addendum:**

**Essential Elements of a Model Arbitration System**

At an earlier time, the Oversight Board sought to identify the hallmarks of an exemplary arbitration system. What were the essential elements or attributes of a model system? The following were thought to be essential elements. It is still useful to have these features of a model system in mind when reading the Annual Report and reviewing the Kaiser arbitration system.

INDEPENDENT ADMINISTRATION: The system is administered by a neutral entity, independent of the parties involved, and empowered to achieve desired goals for fair, timely, and cost-effective arbitration.

RULES: An explicit, written set of rules governs the system, to assure that it is fair. All parties must abide by the rules. The rules are periodically reviewed and modified, as necessary, based on experience, to improve the system.

**OVERSIGHT:** The system has oversight and governance by a body that reflects the diverse perspectives of interested parties, and the public interest.

**ACCESSIBILITY:** The system is readily accessed by claimants and their claims are entered into the system promptly.

**QUALIFIED ARBITRATORS, FAIRLY SELECTED:** The system provides well-qualified and experienced arbitrators who are selected through a process consciously designed to avoid bias. Parties evaluate the arbitrators, anonymously, in questionnaire surveys.

**TIMELINESS:** Deadlines are established to move the arbitration process along as expeditiously as possible, with appropriate safeguards for extenuating circumstances. They must be respected. The meeting of deadlines is monitored and enforced.

**PERFORMANCE MEASURES:** Accurate and verifiable data are collected systematically to permit objective review of the processes and outcomes of the arbitration system.

**EVALUATION:** The performance of the system is routinely evaluated by surveys of its participants conducted with appropriate anonymity. Arbitrators are routinely evaluated by the parties.

**COST EFFECTIVENESS:** The costs of arbitrations are tracked wherever possible. Costs to claimants are kept reasonably low.

**CONVENIENCE:** Arbitration meetings and hearings are scheduled at times, and in locations, that are convenient for the parties.

**CLARITY:** Basic information about the arbitration system and its procedures is provided in easily understood, non-technical language.

**AUDIT:** The data recorded and reported by administrator of the system are periodically checked by an independent auditor.

**TRANSPARENCY:** Detailed information about the operation and performance of the arbitration system is published, and readily available to interested parties and the public-at-large.

**CULTURAL SENSITIVITY:** The system seeks diversity in its arbitrator pool. Information to claimants is provided in multiple languages and in non-technical vocabulary. Interpreters are provided without charge if needed.

**CONTINUOUS IMPROVEMENT:** Administration of the arbitration system strives for continuous improvement, guided by the evaluations conducted, the performance measures collected, and constructive oversight.