ANNUAL REPORT

of the

OFFICE OF THE INDEPENDENT ADMINISTRATOR

of the

KAISER FOUNDATION HEALTH PLAN, INC. MANDATORY ARBITRATION SYSTEM

for

DISPUTES WITH HEALTH PLAN MEMBERS

January 1, 2014 - December 31, 2014

Table of Contents

Page

Table of Contents i

Exhibits vi

Charts and Tables vi

Report Summary viii

A Note About Numbers xiv

I. INTRODUCTION & OVERVIEW 1

A. Goals of the Arbitration System Between Members and Kaiser 2

B. Format of This Report 2

II. DEVELOPMENT AND CHANGES IN THE SYSTEM IN 2014 4

A. Change in Membership of AOB 4

B. Sharon Oxborough Informed AOB that She Would Not Renew her Contract to Serve as Independent Administrator; Marcella Bell to Serve Beginning March 29, 2015 4

C. Audit of OIA Resulted in Positive Findings 4

D. OIA Implemented California Assembly Bill AB 802 4

E. The OIA Implemented Changes to the Ethics Standards 5

F. AOB Amends Arbitration Rules 5

G. The Independent Administrator and AOB Members and Kaiser Executives Commented on Draft Article on OIA and Attended a Meeting Held by the National Academy to Discuss it 5

III. POOL OF NEUTRAL ARBITRATORS 6

A. Turnover in 2014 and the Size of the Pool at Year-End 6

B. Practice Background of Neutral Arbitrators 6

C. How Many in the Pool of Arbitrators Served in 2014? 8

1. The Number of Neutral Arbitrators Named on a List of Possible Arbitrators in 2014 8

2. The Number Who Served in 2014 8

3. The Number Who Wrote Awards in 2014 9

4. The Number Who Have Served After Making a Large Award 9

5. Comparison of Cases Closed by Neutral Arbitrators Selected Ten or More Times in 2014 with Cases Closed by Other Neutral Arbitrators 10

IV. DEMANDS FOR ARBITRATION SUBMITTED BY KAISER TO THE OIA 11

A. Types of Claims 11

B. Length of Time Kaiser Takes to Submit Demands to the OIA 12

C. Claimants With and Without Attorneys 13

V. SELECTION OF THE NEUTRAL ARBITRATORS 13

A. How Neutral Arbitrators are Selected 14

B. Joint Selections vs. Strike and Rank Selections 15

C. Cases with Postponements of Time to Select Neutral Arbitrators 16

D. Cases with Disqualifications 18

E. Length of Time to Select a Neutral Arbitrator 19

1. Cases with No Delays 20

2. Cases with Postponements 20

3. Cases with Disqualifications 21

4. Cases with Postponements and Disqualifications 21

5. Average Time for All Cases 21

F. Cases With Party Arbitrators 22

VI. MAINTAINING THE CASE TIMETABLE 23

A. Neutral Arbitrator's Disclosure Statement 23

B. Arbitration Management Conference 24

C. Mandatory Settlement Meeting 24

D. Hearing, Award, and the Aftermath 24

E. Status of Open Cases Administered by the OIA on December 31, 2014 25

VII. THE CASES THAT CLOSED 25

A. How Cases Closed 28

1. Settlements – 46% of Closures 28

2. Withdrawn Cases – 24% of Closures 29

3. Abandoned Cases – 4% of Closures 29

4. Dismissed Cases – 3% of Closures 29

5. Summary Judgment – 13% of Closures 29

6. Cases Decided After Hearing – 9% of Closures 30

a. Who Won 30

b. How Much Claimants Won 30

c. How Long It Took 30

B. Cases Using Special Procedures 30

1. Expedited Procedures – Less Than 1% of Closures 30

2. Complex Procedures – 3% of Closures 31

3. Extraordinary Procedures – 2% of Closures 31

4. Rule 28 Extensions of Time to Close Cases – 10% of Closures 32

VIII. THE COST OF ARBITRATIONS IN THE OIA SYSTEM 32

A. What Fees Exist in OIA Arbitrations 32

B. Mechanisms Claimants Have to Avoid These Fees 33

1. How to Waive Only the $150 Arbitration Filing Fee 33

2. How to Waive Both the Arbitration Filing Fee and the Neutral Arbitrators' Fees and Expenses 33

3. How to Waive Only the Neutral Arbitrators' Fees and Expenses 34

C. Number of Cases in Which Claimants Have Shifted Their Fees 34

1. The $150 Arbitration Filing Fee 34

2. The $150 Arbitration Filing Fee and the Neutral Arbitrators' Fees and Expenses 34

3. The Neutral Arbitrators' Fees and Expenses 34

D. The Fees Charged by Neutral Arbitrators 35

IX. ANALYSIS OF LIEN CASES (abridged) 36

A. Demands for Arbitration Submitted by Kaiser to the OIA 36

B. Selection of the Neutral Arbitrators 36

C. Maintaining the Case Timetable 37

D. The Cases That Closed 37

E. The Cost of Lien Arbitrations in the OIA System 39

X. EVALUATIONS OF NEUTRAL ARBITRATORS AND THE OIA SYSTEM 39

A. The Parties Evaluate the Neutral Arbitrators 39

B. The Neutral Arbitrators Evaluate the OIA System 41

C. The Parties Evaluate the OIA System and Ease of Obtaining Medical Records 43

XI. TRENDS AND DATA OVER THE YEARS OF OPERATION OF THE OIA 45

A. The Number of Demands for Arbitration Resumed Pattern of Slight Decline.. . . . 45

B. The Number of Neutral Arbitrators Has Stayed Relatively Stable 46

C. Claims Primarily Allege Medical Malpractice 47

D. Twenty-Five Percent of Claimants Do Not Have an Attorney 47

E. The Parties Select the Neutral Arbitrators by Strike and Rank in Almost Seventy Percent of the Cases 47

F. Half of the Claimants Use Procedures Contained in OIA Rules and State Law to Delay Selecting the Neutral Arbitrator, While Time to Select Remains Timely 47

G. The Parties Consistently Close Most Cases Themselves 49

H. The Results After a Hearing 50

I. Cases Close in Less Than a Year 50

J. Claimants Shift Cost of Arbitration to Kaiser in Vast Majority of Cases 51

K. Neutral Arbitrators and the OIA System Receive Positive Evaluations 51

XII. THE ROLE OF THE ARBITRATION OVERSIGHT BOARD 52

A. Membership 52

B. Activities 53

XIII. CONCLUSION 54

Exhibits

Exhibit A: Description of OIA Staff 56

Exhibit B: Rules for Kaiser Permanente Member Arbitrations Administered by the Office of the Independent Administrator, Amended as of January 1, 2015, redlined 58

Exhibit C: Resumes of New AOB Board Members 83

Exhibit D: Audit Results 91

Exhibit E: Lists of Neutral Arbitrators on the OIA Panel as of December 31, 2014 94

Exhibit F: Qualifications for Neutral Arbitrators 102

Exhibit G: List of 2014 Awards to Claimants 103

Exhibit H: *Pro Per* and Attorney Evaluations of Neutral Arbitrators 104

Exhibit I: Neutral Arbitrator Evaluations of OIA Procedures and Rules 110

Exhibit J: *Pro Per* and Attorney Evaluations of OIA Procedures and Rules 116

Exhibit K: Kaiser Arbitration Oversight Board Comments on the Annual Report for 2014 121

Exhibit L: Statement from Independent Administrator 128

Charts And Tables

1. Table 1 Number of Neutral Arbitrators by Region 6

2. Table 2 Percentage of Practice Spent As a Neutral Arbitrator 7

3. Table 3 Percentage of Practice Spent As an Advocate 7

5. Chart 1 Subsequent Service of NAs Who Made Large Awards 10

6. Table 4 Comparison of Cases Closed with Neutral Arbitrators Selected Ten or More Times in 2014 vs. Cases Closed with Other Neutral Arbitrators 11

7. Chart 2 Types of Claims 12

8. Chart 3 Claimants With and Without Attorneys 13

9. Chart 4 How Neutral Arbitrators Were Chosen 16

10. Chart 5 Status of Selection in Cases with Postponements 17

11. Chart 6 Status of Selection in Cases with Disqualifications 19

12. Chart 7 Parties' Use of Options During Selection 20

13. Chart 8 Average Days to Select a Neutral Arbitrator – OIA and Old Kaiser Systems Compared 22

14. Chart 9 Status of Open Cases on December 31, 2014 25

15. Chart 10 How Cases Closed 26

16. Chart 11 Average Days for Cases to Close, by Manner of Disposition 27

17. Chart 12 Length of Time to Close Cases by Type of Procedure 28

18. Chart 13 Who Paid Neutral Arbitrators' Fees 35

19. Chart 14 How Lien Cases Closed 38

20. Chart 15 Parties Would Recommend Their Arbitrator to Another Person 41

21. Table 5 Neutral Arbitrators' Opinions Regarding OIA System 42

22. Chart 16 Neutrals Compare Cases at OIA & in Superior Court 43

23. Chart 17 Parties Compare Cases at OIA & in Superior Court 44

24. Chart 18 Year to Year Comparison of Number of Demands Received by the OIA 46

25. Chart 19 Year to Year Comparison of Percentage of Neutral Arbitrators Selected Without Delay vs. Neutral Arbitrators Selected With Only A Postponement 48

26. Table 6 Year to Year Comparison of No Delay vs. Delays: Percentage and Average Number of Days to Select Neutral Arbitrators 49

27. Table 7 Year to Year Comparison of How Cases Closed 49

28. Table 8 Year to Year Comparison of Average Number of Days to Close, by Disposition 50

REPORT SUMMARY

This is the annual report the Office of the Independent Administrator (OIA) for 2014. It discusses the arbitration system between Kaiser Foundation Health Plan and its affiliated groups of physicians and hospitals (collectively Kaiser) and its members.[1] Since 1999, the OIA has administered such arbitrations. Sharon Oxborough is the Independent Administrator. From the data and analyses in this report, readers may gauge how well the OIA system meets its goals of providing arbitration that is fair, timely, lower in cost than litigation, and protective of the privacy of the parties. In brief:

- In 2014, the OIA received 630 demands, a decrease of 27 from the prior year. This resumed the pattern of more than a decade during which the number of demands for arbitration declined.

- In 25 percent of the cases, the claimants did not have attorneys.

- Cases closed, on average, in less than 12 months; hearings completed, on average, in less than 17 months.

- Three-quarters of the cases closed through action by the parties (settlement, withdrawal, or abandonment), while the other quarter were decided by the neutral arbitrator (after a hearing, summary judgment, or dismissal).

- With the consent of claimants, Kaiser paid the neutral arbitrators' fees in 90% of the cases.

- Parties who responded to OIA questionnaires expressed satisfaction with the neutral arbitrators and would recommend them to others, with an average rating of 3.9 on a 5 point scale.

- Almost 50% of the responding parties and attorneys reported that the OIA administered arbitration system was better than going to court, another 42% reported that it was the same, 10% reported it was worse.

These and other factors are discussed in greater detail below and in the report.

[1]Kaiser has arbitrated disputes with its California members since 1971. In the 1997 *Engalla* case, the California courts criticized Kaiser's arbitration system, saying that it fostered too much delay in the handling of members' demands and should not be self-administered.

Status of Arbitration Demands

The total number of demands for arbitration decreased by 27 from the previous year. Almost all of the claims were for medical malpractice. Twenty-five percent of claimants were not represented by counsel.

1. **Number of Demands for Arbitration.** In 2014, the OIA received 630 demands. This 27 less than the OIA received in the prior year. See pages 11 and 45.

2. **Types of Claims.** Ninety-three percent of the OIA administered cases in 2014 involved allegations of medical malpractice. Slightly more than one percent presented benefit and coverage allegations. Lien cases made up just over one percent. The remaining cases were based on allegations of premises liability and other torts. The percentage of cases involving medical malpractice allegations has been consistent since the OIA began operations. See pages 11 and 47. Because lien cases differ significantly from cases brought by members, the statistics in this summary, and most of the statistics in the report, exclude lien cases. They are reported separately in Section IX.

3. **Proportion of Claimants Without Attorneys.** A quarter of the claimants in 2014 were not represented by counsel. See pages 13 and 47.

How Cases Closed

The purpose of an arbitration is to resolve a claim. The parties themselves resolved the majority of cases in the system. Neutral arbitrators decided the remaining cases, almost always with a single neutral arbitrator.

4. **Three-Quarters of Cases Closed by the Parties' Action.** During 2014, the parties settled 46% of the closed cases. Claimants withdrew 24% and abandoned another 4% by failing to pay the filing fee or get the fee waived. See pages 28 – 29.

5. **One-Quarter Closed by Decision of Neutral Arbitrator.** Nine percent of cases closed after an arbitration hearing, thirteen percent were closed through summary judgment, and three percent were dismissed by neutral arbitrators. In the cases that went to an arbitration hearing, claimants prevailed in 32%. See pages 29 – 30.

6. **Almost Half of Claimants Received Some Compensation.** Claimants receive compensation either when their cases settle or when they are successful after a hearing. The most common way cases closed (46%) was by the parties settling the dispute. An additional three percent of all claimants won after a hearing. The

average award was $597,342, the median was $250,000, and the range was from $7,000 to $2,181,375. See page 30 and Exhibit G.

7. **All Cases Heard by a Single Neutral Arbitrator Instead of a Panel.** All of the hearings in 2014 involved a single neutral arbitrator rather than a panel composed of one neutral and two party arbitrators. See page 22.

Meeting Deadlines

The timely selection of the neutral arbitrator is crucial to the timely resolution of the case. Nevertheless, the desire for efficiency must be balanced by the needs of the parties in particular cases. The OIA *Rules* allow the parties to delay the selection process and extend the completion date. Even with such delays, the process was expeditious.

8. **Almost Half of Neutral Arbitrator Selections Proceeded Without any Delay; the Other Neutral Selections Had Delays Requested by Claimants.** Almost half (47%) of the neutral arbitrators were selected without the parties exercising options that delay the process. In the other cases, the selection deadline was postponed (46%), a neutral arbitrator was disqualified (3%), or both (4%). Claimants requested all but three of the postponements. They also made 68% of the disqualifications. See pages 20 – 21.

9. **Average Length of Time to Select Neutral Arbitrator Increased Slightly.** The time to select a neutral with a 90 day postponement stayed the same as in 2013. It increased by a day in cases with no delay, seven days with only a disqualification, and 16 days with both a postponement and disqualification. In comparison with the time described in the *Engalla* case, the 71 days to select a neutral arbitrator is more than nine times faster. See pages 21 – 22.

10. **Cases Closed, on Average, in Less than Twelve Months.** In 2014, cases closed, on average, in 323 days, or 11 months, slightly less than 2013's 325 days. No case closed late. Nearly 90% of the cases closed within 18 months (the deadline for most cases) and 67% closed in a year or less. Fifteen percent of the cases that closed in 2014 were designated complex or extraordinary or had their 18 month deadline extended by the neutral arbitrator. See pages 25 - 28 and Table 8.

11. **Hearings Completed, on Average, Within Seventeen Months.** Cases that were decided by a neutral arbitrator making an award after a hearing closed on average in 510 days (17 months). This average includes cases that were designated complex or extraordinary or that received a Rule 28 extension because they needed extra time. "Regular cases" closed in 422 days (14 months). See page 30 and Table 8.

OIA's Pool of Neutral Arbitrators

A large and balanced pool of neutral arbitrators, among whom work is distributed, is a crucial ingredient to a fair system. It minimizes the likelihood of a captive pool of neutral arbitrators, beholden to Kaiser for their livelihood. The two methods of selecting a neutral arbitrator – strike and rank or joint selection – allow parties the choice to select anyone they collectively want. The majority of neutral arbitrators the parties jointly selected were from the OIA pool.

12. **Size of the Neutral Arbitrator Pool.** The OIA has 281 neutral arbitrators in its pool. Thirty-nine percent of them, or 110, are retired judges. See page 6.

13. **Neutral Arbitrator Backgrounds.** The applications filled out by the members of the OIA pool show that 151 arbitrators, or 54%, spend all of their time acting as neutral arbitrators. The remaining members divide their time by representing plaintiffs and defendants, though not necessarily in medical malpractice litigation. More than 90% of the neutral arbitrators report having medical malpractice experience. See pages 6 – 7.

14. **Fifty-Three Percent of Arbitrators Served on a Case.** Fifty-three percent of the neutral arbitrators in the OIA pool served on a case in 2014. Arbitrators averaged two assignments each in 2014. Fifty-four different neutrals, including arbitrators not in the OIA pool, decided the 56 awards (including lien awards) made in 2014. See pages 8 – 9.

15. **Sixty-Nine Percent of Neutral Arbitrators Selected by Strike and Rank.** The parties chose 69% of neutral arbitrators through the strike and rank process, and jointly selected the remaining 31%. Eighty-four percent of the arbitrators jointly selected were members of the OIA pool. In the other cases, the parties chose a neutral arbitrator who was not a member of the OIA pool. See pages 15 – 16.

Neutral Arbitrator Fees

While the OIA arbitration fee is less than the comparable court filing fee, claimants in arbitration can be faced with neutral arbitrator fees, which do not exist in court. These fees, however, can be shifted to Kaiser.

16. **Kaiser Paid the Neutral Arbitrators' Fees in 90% of Cases Closed in 2014.** Claimants can choose to have Kaiser pay the entire cost of the neutral arbitrator. For the cases that closed in 2014, Kaiser paid the entire fee for the neutral arbitrators in 90% of those cases that had fees. See pages 34 – 35.

17. **Cost of Arbitrators.** Hourly rates charged by neutral arbitrators range from $150/hour to $800/hour, with an average of $434. For the 485 cases that closed in

2014 and for which the OIA has information, the average fee charged by neutral arbitrators was $6,604.43. In some cases, neutral arbitrators reported that they charged no fees. Excluding cases where no fees were charged, the average was $7,024.45 The average fee in cases decided after a hearing was $28,113.67. See page 35.

Evaluations

When cases are concluded, the OIA sends the parties or their attorneys questionnaires asking them about the OIA system and, if the cases closed by neutral arbitrator action, an evaluation of the neutral arbitrators. Of those responding, the parties gave their neutral arbitrators and the OIA system positive evaluations. When cases close by neutral arbitrator action, the OIA sends the neutral arbitrators a questionnaire about the OIA system. The neutral arbitrators reported that the OIA system works well. Almost all of the neutral arbitrators returned theirs, while the response rate is 30% for the parties evaluating the OIA and 46% for the neutral arbitrator evaluation.

18. **Positive Evaluations of Neutral Arbitrators by Parties.** The neutral arbitrator evaluation asks if they would recommend their neutral arbitrator to another individual with a similar case. On a 5 point scale, the average for Kaiser's counsel is 4.6 and the average for claimants' counsel is 2.9. See pages 39 – 41.

19. **Positive Evaluations of the OIA by Neutral Arbitrators.** Fifty-three percent said that the OIA experience was better than a court system, and 43% said it was about the same. See pages 41 – 43.

20. **Positive Evaluations of the OIA by Parties.** Forty-eight percent of attorneys and unrepresented claimants said that the OIA system was better than the court system, and 42% said it was the same. See pages 43 – 45.

Developments in 2014

While the system has been relatively stable, the OIA and the Arbitration Oversight Board (AOB) continuously strive to improve it and to provide more information about it to the public.

21. **Change in Membership of AOB.** Sylvia Drew Ivie, Executive Liaison for the L.A. County Commission for Children and Families, and Beong-Soo Kim, Kaiser's Vice President and Assistant General Counsel, joined the AOB. See Section XII and Exhibit C.

22. **The AOB Selected a New Independent Administrator for March 29, 2015.** The present Independent Administrator, Sharon Oxborough, informed the AOB that she did not want to renew her contract when it ended in March 2015. The AOB then selected Marcella Bell, the current Director, as the next Independent Administrator and negotiated a three year contract with her. See page 4.

23. **Audit of OIA Found Its Information Accurate.** The audit firm of Perr & Knight examined the OIA's computer records of 40 open and closed cases for 66 different events. It found one discrepancy - one date was off by two days. See page 4 and Exhibit D.

24. **Independent Administrator Implemented Assembly Bill AB 802**. Pursuant to amended California Code of Civil Procedure § 1281.96, the OIA created another disclosure table about the cases it administers. This table is sortable and includes additional information. It was published January 2015. See page 4.

25. **The OIA Implemented Changes to Ethics Standards.** In response to amendments to the Judicial Council's Ethics Standards for Neutral Arbitrators, the OIA created forms, changed procedures, and met with other provider organizations. The changes took effect July 1, 2014 and the process has been smooth. See page 5.

26. **AOB Amends Arbitration Rules**. The AOB amended Rules 19, 38, and 39 to require neutral arbitrators to provide information required for the OIA new disclosure table and to facilitate the amended Ethics Standards. See Exhibit B, Rules 19, 38, and 39.

27. **The Independent Administrator and AOB Members and Kaiser Executives Were Invited to Assist in Article About the OIA.** A member of the National Academy of Sciences' Committee on Science, Technology and the Law drafted an article based largely on the OIA's annual reports. The Academy of Sciences convened a meeting in December 2014 with interested parties to discuss the article. See page 5.

CONCLUSION

These factors show that the OIA provides an arbitration system that is fair, timely, lower in cost than litigation, and protects the privacy of the parties. To summarize, neutral arbitrators are selected expeditiously and close faster than in civil court. The fee is smaller than in court, there are no other filing fees, and parties can and do shift the cost of the neutral arbitrator to Kaiser. Neither the OIA nor neutral arbitrators publish the names of individuals involved in arbitrations. The pool of neutral arbitrators includes neutral arbitrators divided between a plaintiff, defendant, judicial background. The work is spread among them. Parties can and do disqualify neutral arbitrators they do not like. The OIA publicizes much information for the public and parties.

A Note About Numbers

There are a lot of numbers in this report. To make it somewhat easier to read, we offer the following information.

We often give average, median, mode, and range. Here are definitions of those terms:

Average:	The mean. The sum of the score of all items being totaled divided by the number of items included.
Median:	The midpoint. The middle value among items listed in ascending order.
Mode:	The single most commonly occurring number in a given group.
Range:	The smallest and largest number in a given group.

We have rounded percentages. Therefore, the total is not always exactly 100%.

If there are items which you do not understand and would like to, call us at 213-637-9847, and we will try to give you answers.

I. INTRODUCTION & OVERVIEW

The Office of the Independent Administrator (OIA) issues this report for 2014.[1] It describes the arbitration system that handles claims brought by Kaiser members against Kaiser Foundation Health Plan, Inc. (Kaiser) or its affiliates.[2] Sharon Oxborough, an attorney, is the Independent Administrator. Under her contract with the Arbitration Oversight Board, the OIA maintains a pool of neutral arbitrators to hear Kaiser cases and independently administers arbitration cases between Kaiser members and Kaiser. The contract requires that Ms. Oxborough write an annual report describing the arbitration system. The report describes the goals of the system, the actions being taken to achieve them, and the degree to which they are being met. While this report mainly focuses on what happened in the arbitration system during 2014, one section compares 2014 with earlier years. The final section concludes that the system is continuing to achieve its goals.

The Arbitration Oversight Board (AOB), an unincorporated association registered with the California Secretary of State, provides ongoing oversight of the OIA and the independently administered system. Its activities are discussed in Section XII.

The arbitrations are controlled by the *Rules for Kaiser Permanente Member Arbitrations Administered by the Office of the Independent Administrator Amended as of January 1, 2015 (Rules)*. The *Rules* consist of 54 rules in a 21 page booklet and are available in English, Spanish, and Chinese.[3] Some important features include:

Procedures for selecting a neutral arbitrator expediously;[4]

Deadlines requiring that the majority of cases be resolved within 18 months;[5]

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[1]The OIA has a website, www.oia-kaiserarb.com, where this report can be downloaded, along with the prior annual reports, the *Rules*, various forms, and much other information, including organizational disclosures. A description of the OIA's staff is attached as Exhibit A. The OIA can be reached by calling 213-637-9847, faxing 213-637-8658, or e-mailing oia@oia-kaiserarb.com.

[2]Kaiser is a California nonprofit health benefit corporation and a federally qualified HMO. Since 1971, it has required that its members use binding arbitration. Kaiser arranges for medical benefits by contracting with the The Permanente Medical Group, Inc. (Northern California) and the Southern California Permanente Medical Group. Hospital services are provided by contract with Kaiser Foundation Hospitals. Almost all of the demands are based on allegations against these affiliates.

[3]The *Rules* are attached as Exhibit B. They are redlined so the reader can view the change in Rules 19, 38 and 39.

[4]Exhibit B, Rules 16 and 18.

[5]Exhibit B, Rule 24.

Procedures to adjust these deadlines when required;[6] and

Procedures under which claimants may choose to have Kaiser pay all the fees and expenses of the neutral arbitrator.[7]

The 18 month timeline that the *Rules* establish for most cases is displayed on the next page. Details about each step in the process are discussed in the body of this report.

A. Goals of the Arbitration System Between Members and Kaiser

The system administered by the OIA is expected to provide a fair, timely, and low cost arbitration process that respects the privacy of the parties. These goals are set out in Rule 1. The data in this report are collected and published to allow the AOB and the public to determine how well the arbitration system meets these goals.

B. Format of This Report[8]

Section II discusses developments in 2014. Sections III and IV look at the OIA's pool of neutral arbitrators and the number and types of cases the OIA received. The parties' selection of neutral arbitrators is discussed in Section V. That is followed by Section VI on the monitoring of open cases and Section VII which analyzes how cases are closed and the length of time to close. Section VIII discusses the cost of arbitration in the system. Sections IV.B. through VIII exclude lien cases.[9] Section IX then presents all the analyses for lien cases. The parties' evaluations of their neutral arbitrators and the parties' and neutral arbitrators' evaluations of the OIA system are summarized in Section X.[10] Section XI then compares the operation of the system over time. Finally, Section XII describes the AOB's membership and activities during 2014.

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[6]Exhibit B, Rules 24, 28 and 33.

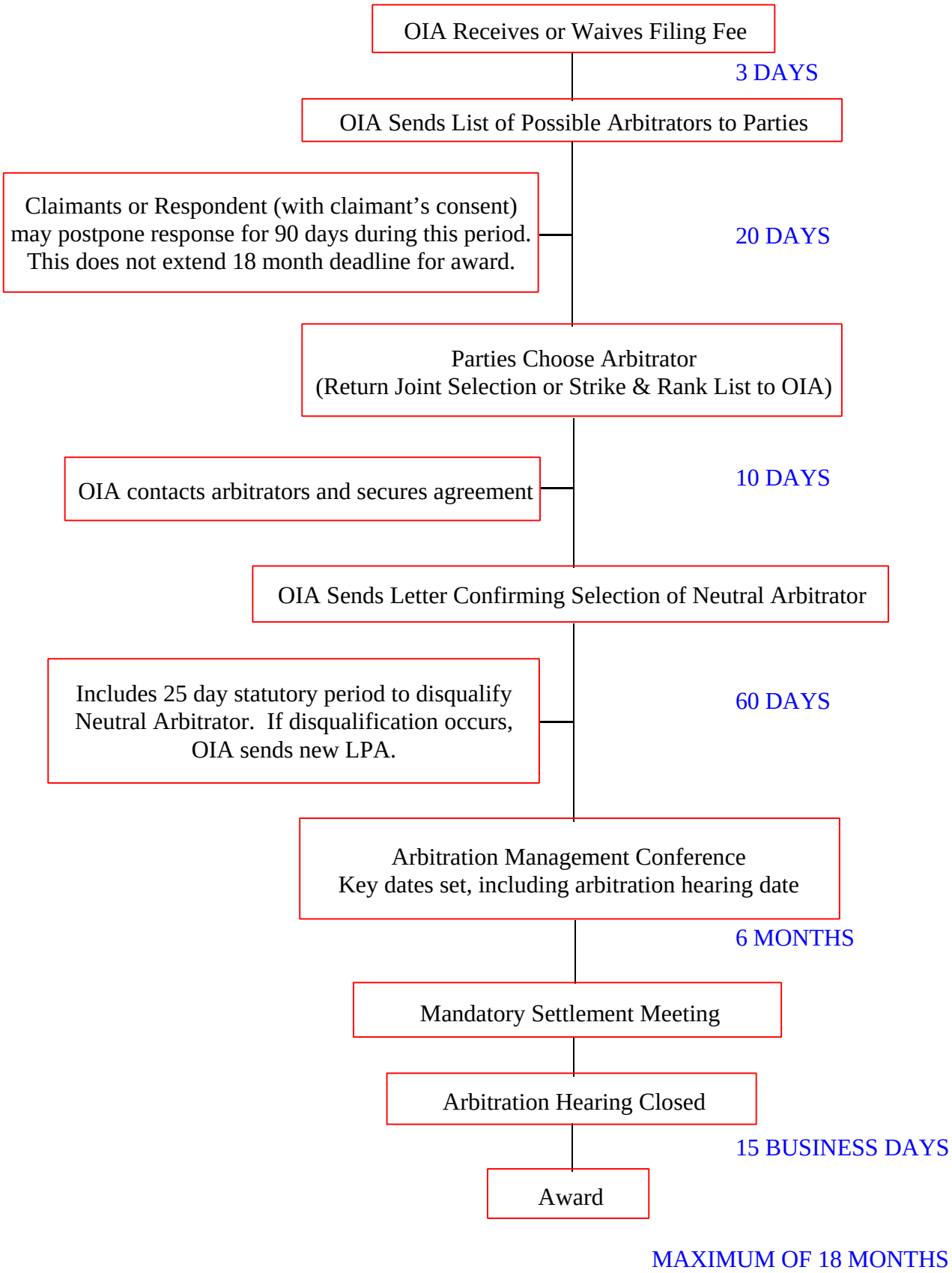
[7]Exhibit B, Rules 14 and 15; *see also* Section VIII.

[8]For a discussion of the history and development of the OIA and its arbitration system, please see prior reports. The OIA was created in response to the recommendation of a Blue Ribbon Panel (BRP) and began operating March 28, 1999. Sharon Oxborough has served as the Independent Administrator since March 28, 2003. The OIA met all of the recommendations that pertain to it since its first operating year. A full copy of the BRP report is available from the OIA website. In addition, a separate document that sets out the status of each recommendation is available from the website.

[9]Lien cases are brought by Kaiser against its members. The vast bulk of the system's cases are brought by members against Kaiser and allege medical malpractice.

[10]Because these are anonymous, all of the evaluations are considered together, regardless of the type of cases.

Timeline for Arbitrations Using Regular Procedures



II. DEVELOPMENT AND CHANGES IN THE SYSTEM IN 2014

A. Change in Membership of AOB

The AOB replaced the two members who resigned last year. Sylvia Drew Ivie, the Executive Liaison for the LA County Commission for Children and Families, replaced Lark Galloway-Gilliam. Kennedy Richardson, Kaiser Practice Manager - Litigation & PPL, was the interim representative for Kaiser until Beong-Soo Kim was hired as Kaiser's Vice President and Assistant General Counsel and joined the AOB. See Section XII and Exhibit C for the resumes of Ms. Ivie and Mr. Kim.

B. Sharon Oxborough Informed AOB that She Would Not Renew her Contract to Serve as Independent Administrator; Marcella Bell to Serve Beginning March 29, 2015

In early 2014, Ms. Oxborough informed the AOB that she did not wish to continue to act as the Independent Administrator when her contract expired in March 2015. After consultation, the AOB negotiated a new contract with Marcella Bell – the current director of the OIA – to take over as the Independent Administrator. The substantive duties, as well as the staff and physical office of the OIA will remain the same. At Ms. Bell's request, Ms. Oxborough will become Of Counsel to Ms. Bell's office. Ms. Bell has been the Director of the OIA for 15 years.

C. Audit of OIA Resulted in Positive Findings

The Blue Ribbon Panel Report, which was in large part instrumental in creating the OIA, recommended that the OIA's results be audited periodically to ensure its reports are accurate. In 2014, the AOB met with the OIA to discuss the parameters of such an audit and then selected Perr & Knight and Sunera to perform an audit. The audit examined 66 different items for 40 different open and closed cases. It found one mistake in the OIA's records.[11]

D. OIA Implemented California Assembly Bill AB 802

The California Legislature passed a bill that amends California Code of Civil Procedure § 1281.96, which specifies the information arbitrator provider organizations, including the OIA, must provide on their website. It requires, beginning January 1, 2015, the OIA to provide additional information about its consumer arbitrations[12] and to do so in a format that is sortable, as well as searchable. During 2014, the OIA made changes to its internal calendaring system, created its new sortable disclosure table, and requested the AOB amend the *Rules* so the OIA could obtain the information the law requires. The disclosure table was available on the OIA website in January 2015.

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[11]Exhibit D. A separate audit examined the OIA's security and computer procedures.

[12]All of the arbitrations the OIA administers are consumer arbitrations.

E. The OIA Implemented Changes to the Ethics Standards

As mentioned in last year's report, the California Judicial Council proposed amending the Ethics Standards for Neutral Arbitrators in Contractual Arbitration (Ethics Standards). The proposed amendments would have modified the process for selecting neutral arbitrators by requiring neutral arbitrators to notify parties in open cases if they were going to accept another case in the OIA system and give the parties an opportunity to object. The OIA, as well as many other organizations and individuals, provided comments. In response, the Judicial Council substantially changed its amendments so that neutral arbitrators must provide the parties with notice of offers and acceptances of new work. The parties have no right to object to the new work but there is a risk of subsequent vacature of awards for failure to comply. The changes became effective July 1, 2014. Before the new rule became effective, the OIA revised and created new forms for internal and external use, informed neutral arbitrators of the new requirements, and met with other arbitration provider organizations to discuss the processes. Since the standards took effect, everything has gone smoothly.

F. AOB Amends Arbitration Rules

The AOB amended Rule 19 for the amendments to the Ethics Standards and Rules 38 and 39 to require neutral arbitrators provide information required by the Legislature's amendment of California Code of Civil Procedure § 1281.96. See Exhibit B, Rules 19, 38 and 39.

G. The Independent Administrator and AOB Members and Kaiser Executives Commented on Draft Article on OIA and Attended a Meeting Held by the National Academy of Sciences to Discuss it

The Committee of Science, Technology and Law (CSTL) is part of the National Academy of Sciences. In 2011, it held a meeting on medical malpractice arbitration and invited Ms. Oxborough to speak about the arbitration system the OIA administers. Alan Morrison, a member of the CSTL and professor at GW Law, was sufficiently intrigued by the system that he subsequently spoke with various members of Kaiser and Ms. Oxborough, and drafted an article based on those conversations and information provided in the 2013 annual report. In December 2014, the National Academy of Sciences held a meeting with individuals interested in medical malpractice arbitration to discuss the article. Ms. Oxborough attended, as did Dr. Bruce Merl and Kennedy Richardson, both then members of the AOB, as well as fifteen others who are interested in malpractice arbitration.

III. POOL OF NEUTRAL ARBITRATORS

A. Turnover in 2014 and the Size of the Pool at Year-End

On December 31, 2014, there were 281 people in the OIA's pool of possible neutral arbitrators. Of those, 110 were former judges, or 39%.

Members of the OIA pool are distributed into three geographic panels: Northern California, Southern California, and San Diego. See Table 1. Members who agree to travel without charge may be listed on more than one panel. Exhibit E contains the names of the members of each panel.

Table 1 - Number of Neutral Arbitrators by Region

Total Number of Arbitrators in the OIA Pool:	**281**
Southern California Total:	**142**
Northern California Total:	**139**
San Diego Total:	**75**

The three regions total 356 because 57 arbitrators are in more than one panel; 35 in So. Cal & San Diego, 4 in No. Cal & So. Cal, and 18 in all three panels.

On January 1, 2014, the OIA pool of possible arbitrators contained 274 names. During the year, 16 people left the pool. Twenty-one arbitrators, however, joined the pool in 2014.[13] The OIA rejected eight applicants because they did not meet the qualifications.[14]

B. Practice Background of Neutral Arbitrators

The neutral arbitrator application requires applicants to estimate the amount of their practice spent in various professional endeavors. On average, neutral arbitrators in the OIA pool spend their time as follows: 68% of his or her time acting as a neutral arbitrator, 10% as a respondent (or defense) attorney, 10% in other forms of employment, including non-litigation

[13]The application can be obtained by calling the OIA or by downloading it from the OIA website.

[14]The qualifications for neutral arbitrators are attached as Exhibit F. If the OIA rejects an application, we inform the applicant of the qualification(s) which he or she failed to meet.

legal work, teaching, mediating, etc., 9% as a claimant (or plaintiff) attorney, and less than 1% acting as a respondent's party arbitrator, a claimant's party arbitrator, or an expert.

There are, of course, no such "average" neutral arbitrators, in part because a very substantial percentage of the pool spends 100% of their practice acting as neutral arbitrators. More than half of the pool, 151 members, report that they spend all of their time that way.[15] The full distribution is shown in Table 2.

Table 2 - Percentage of Practice Spent As a Neutral Arbitrator

Percent of Time	0%	1 – 25%	26 – 50%	51 – 75%	76 – 99%	100%
Number of NAs	**12**	**73**	**20**	**5**	**20**	**151**

The members of the OIA pool who are not full time arbitrators primarily work as litigators. See Table 3.

Table 3 - Percentage of Practice Spent As an Advocate

Percent of Practice	Number of NAs Reporting Plaintiff Counsel Practice	Number of NAs Reporting Defendant Counsel Practice
0%	**216**	**218**
1 – 25%	**25**	**18**
26 – 50%	**26**	**25**
51 – 75%	**4**	**8**
76 – 100%	**10**	**12**

Finally, while the qualifications do not require that members of the OIA pool have medical malpractice experience, 93% of them do. At the time they filled out or updated their applications, 260 reported that they had such experience, while 21 did not. Members of the pool who have served on a Kaiser case since they joined the pool may have acquired medical malpractice experience since their initial report to us.[16]

[15]One-hundred-ten members of the OIA pool are retired judges.

[16]Of the 21 who reported no medical malpractice experience in their applications, 13 of them have served as a neutral arbitrator in an OIA case.

C. How Many in the Pool of Arbitrators Served in 2014?[17]

One of the recurring concerns expressed about mandatory consumer arbitration is the possibility of a "captive," defense-oriented, pool of arbitrators. The theory is that Kaiser is a "repeat player" but claimants are not; Kaiser therefore has the capacity to bring more work to arbitrators than claimants. Moreover, if the pool from which neutral arbitrators are drawn is small, some arbitrators could become dependent on Kaiser for their livelihood.

A large pool of people available to serve as neutral arbitrators, and actively serving as such, is therefore an important tool to avoid this problem. If the cases are spread out among many neutrals, no one depends on Kaiser for his or her income and impartiality is better served. Three factors that can minimize possible bias are: 1) the large size of the OIA pool from which the OIA randomly compiles Lists of Possible Arbitrators, 2) the ability of parties to jointly select arbitrators from both within and outside the pool,[18] and 3) the ability of a party to disqualify any neutral arbitrator after selection.[19]

1. The Number of Neutral Arbitrators Named on a List of Possible Arbitrators in 2014

All but one of the neutral arbitrators in the OIA pool were named on at least one List of Possible Arbitrators (LPA) sent to the parties by the OIA in 2014. The average number of times Northern California arbitrators appear on an LPA is 23, the median number is 24, and the mode is 21. The range of appearances is from 0 to 42 times.[20] In Southern California, the average number of appearances is 24, the median is 25, and the mode is 26. The range is from 1 to 42. In San Diego, the average is 6, the median is 6, and the mode is 8. The range of appearances on the LPA is from 0 to 13. One neutral arbitrator was not listed on a San Diego LPA but was listed on LPAs for Southern California.

2. The Number Who Served in 2014

In 2014, 163 different neutral arbitrators were selected to serve in 526 OIA cases. The great majority (148) were members of the OIA pool. Thus, in 2014, 53% of the OIA pool were

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[17]The procedure for selecting neutral arbitrators for individual cases is described below in Section V.A.

[18]See Section V.B.

[19]See Section V.D.

[20]In addition to chance, the number of times a neutral arbitrator is listed is affected by how long a given arbitrator has been in the pool, the number of members in each panel, and the number of demands for arbitration submitted in the geographical area for that panel. Some neutral arbitrators have been in the OIA pool since it started; one joined in December 2014 and was not listed on a LPA. The number of times an arbitrator is selected also depends on whether the individual will hear cases when the claimant has no attorney (*pro per* cases). Twenty-four percent of the pool will not hear *pro per* cases.

selected to serve in a case. The number of times a neutral in the OIA pool was selected ranges from 0 to 29. The neutral arbitrator at the highest end was jointly selected 22 times. The average number of appointments for members of the pool in 2014 is 2, the median is 1, and the mode is 0.

3. The Number Who Wrote Awards in 2014

The group of neutral arbitrators deciding awards after hearing is similarly large. Forty-four different neutral arbitrators wrote awards. Thirty-six arbitrators wrote a single award, while five decided two. Two other neutral arbitrators decided three cases each and the third decided four. The neutral arbitrator who decided four cases wrote awards in favor of both sides, including one for more than $1,300,000 in favor of claimant(s).

4. The Number Who Have Served After Making a Large Award

Concerns have been raised whether Kaiser will allow neutral arbitrators who have made large awards to serve in subsequent arbitrations, since its attorneys could strike them from LPAs or disqualify them if selected. Therefore, annual reports have reported what has happened to neutral arbitrators after making an award of $500,000 or more.

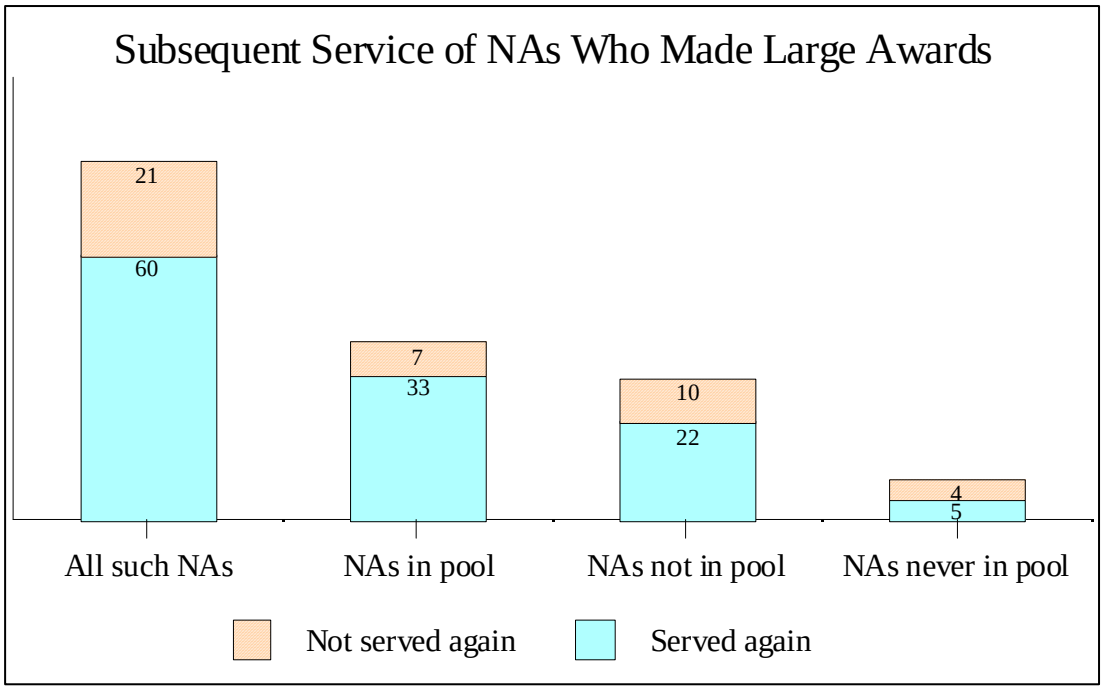
Since 1999, 81 different neutral arbitrators have made 108 awards of $500,000 or more in favor of claimants. Most of the neutral arbitrators who made the awards were members of the OIA pool, but nine were not. The awards have ranged from $500,000 to $8,973,836. Neutral arbitrators made six awards for more than $500,000 in 2014.

As Chart 1 illustrates, most neutral arbitrators who have made awards of $500,000 or more served again. Specifically, 60 neutral arbitrators served 1,389 times after making their awards for $500,000 or more. In almost half of these cases (655), the parties jointly selected the neutral arbitrator.[21]

Of the 21 neutral arbitrators who were not selected after making their awards for $500,000 or more, some were never in the OIA pool and some left the pool. Seven of the neutral arbitrators who made such awards and were still in the pool in 2014 have not served again. Three of these neutral arbitrators made their first award in 2014.

[21] In 2014, 30 neutral arbitrators who made such awards were selected in 122 cases. In 61 of the cases, they were jointly selected.

Chart 1



5. Comparison of Cases Closed by Neutral Arbitrators Selected Ten or More Times in 2014 with Cases Closed by Other Neutral Arbitrators

The AOB has been interested in whether there are differences between neutral arbitrators who serve the most often and other neutral arbitrators. Since 2007, the OIA has compared how the two groups close cases. There were seven neutral arbitrators who were selected ten or more times in 2014. The OIA compared the cases these arbitrators closed in 2013 and 2014 with the other cases that closed in those years with neutral arbitrators in place. Table 4 shows the results.

Table 4 - Comparison of Cases Closed with Neutral Arbitrators Selected Ten or More Times in 2014 vs. Cases Closed with Other Neutral Arbitrators

Cases Closed 2013 – 2014	Cases with Neutral Arbitrators Selected 10 or More Times in 2014		Cases with Other Neutral Arbitrators	
Settled	73	45%	426	47%
Withdrawn	45	28%	213	23%
Summary Judgment	24	15%	117	13%
Awarded to Respondent	12	7%	74	8%
Awarded to Claimant	2	1%	42	5%
Dismissed	5	3%	32	4%
Other	1	1%	3	0%
Total	162		907	

IV. DEMANDS FOR ARBITRATION SUBMITTED BY KAISER TO THE OIA

Kaiser submitted 630 demands for arbitration in 2014. Geographically, 277 demands for arbitration came from Northern California, 314 came from Southern California, and 39 came from San Diego.[22]

A. Types of Claims

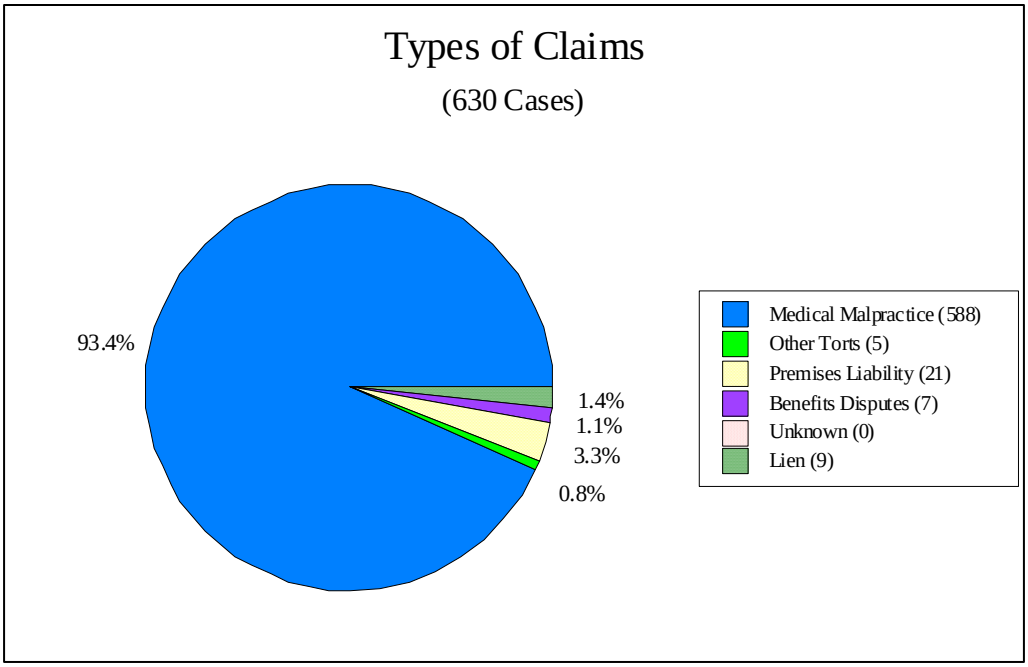
In 2014, the OIA administered 630 new cases.[23] The OIA categorizes cases by the subject of their claim: medical malpractice, premises liability, other tort, lien, or benefits and coverage. Medical malpractice cases make up 93% (588 cases) in the OIA system. Benefits and coverage cases represent one percent of the system (seven cases).

[22]The allocation between Northern and Southern California is based upon Kaiser's corporate division. Roughly, demands based upon care given in Fresno or north are in Northern California, while demands based upon care given in Bakersfield or south are in Southern California or San Diego. Rule 8 specifies different places of service of demands for Northern and Southern California, including San Diego.

[23]A few of these demands submitted by Kaiser do not proceed further in the system because they are "opt in" – based on a contract that required arbitration but not the use of the OIA. There were 4 "opt ins" in 2014. All of the claimants chose to have the OIA administer their claims.

Chart 2 shows the types of new claims the OIA administered during 2014.

Chart 2



As discussed in Section I.B., the rest of this report, with the exception of Sections IX and X, excludes lien cases from its analysis and concentrates on what happened in 2014 to the 621 new mainly malpractice demands the OIA received, as well as the 582 cases that were open at the beginning of 2014. Lien cases are discussed in Section IX.

B. Length of Time Kaiser Takes to Submit Demands to the OIA

The *Rules* require Kaiser to submit a demand for arbitration to the OIA within ten days of receiving it.[24] In 2014, the average length of time that Kaiser took to submit demands to the OIA is four days. The mode is one. This means that usually Kaiser sent the OIA a demand on the day after Kaiser received it. The median is four days. The range is 0 – 103 days.

There were 18 cases in 2014 in which Kaiser took more than 10 days to submit the demand to the OIA.[25] If only these "late" cases are considered, the average is 27 days, the median is 21.5, and the mode is 11. The range is 11 to 103 days.

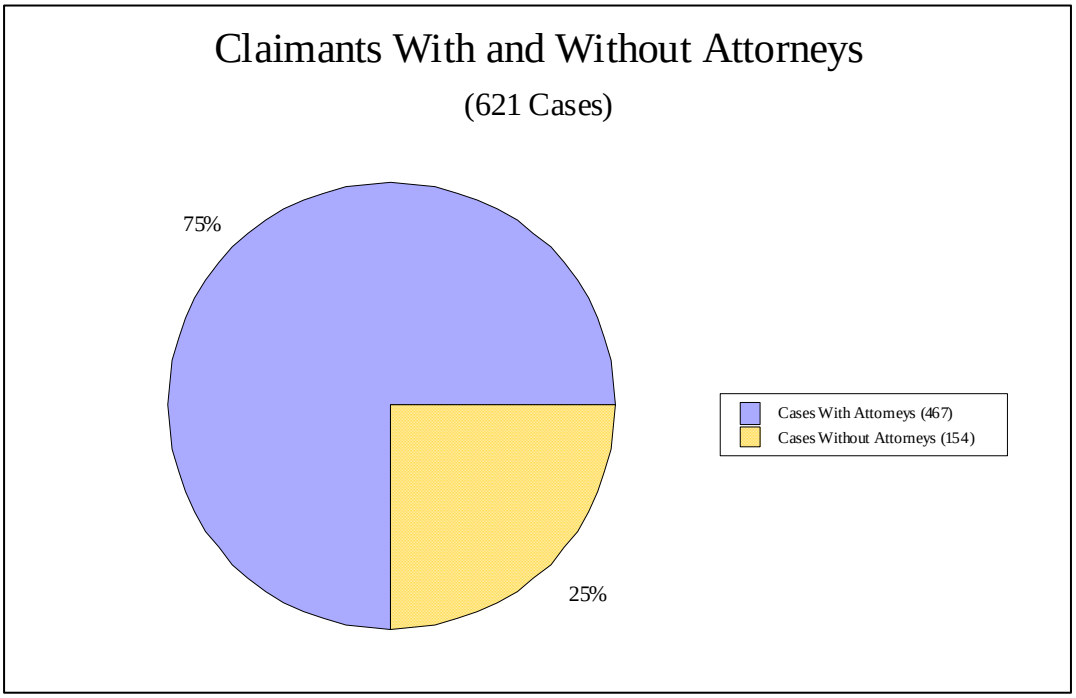
[24]Exhibit B, Rule 11.

[25]Fifteen of the late cases came from Southern California; three came from Northern California. There was a significant increase in the number of late cases from 6 in 2013 to18 in 2014.

C. Claimants With and Without Attorneys

Claimants were represented by counsel in 75% of the cases the OIA administered in 2014 (467 of 621). In 25% of cases, the claimants represented themselves (or acted in *pro per*).

Chart 3



V. SELECTION OF THE NEUTRAL ARBITRATORS

One of the most important steps of the arbitration process occurs at the beginning: the selection of the neutral arbitrator. Subsection A first describes the selection process in general. The next four sub-sections discuss different aspects of the selection process in detail: 1) whether the parties selected the neutral arbitrator by jointly agreeing to someone or by striking and ranking the names on their List of Possible Arbitrators (LPA) (subsection B); 2) the cases in which the parties – almost always the claimant – decided to delay the selection of the neutral (subsection C); 3) the cases in which the parties – again, usually the claimant – disqualified a neutral arbitrator (subsection D); and 4) the amount of time it took the parties to select the neutral arbitrator (subsection E). Finally, the report examines cases in which parties have selected party arbitrators (subsection F).

A. How Neutral Arbitrators are Selected

The process for selecting the neutral arbitrator begins when the OIA starts to administer a case[26] and a claimant has either paid the $150 arbitration fee or received a waiver of that fee. The OIA sends both parties in the case an LPA. This LPA contains the names of 12 members from the appropriate panel of the OIA pool of neutral arbitrators. The names are generated randomly by computer.

Along with the LPA, the OIA sends the parties information about the people named on the LPA. At a minimum, the parties receive:

1) a copy of each neutral arbitrator's application and fee schedule, and

2) subsequent updates.

If a neutral arbitrator has served in any earlier, closed OIA case, the parties may also receive:

1) copies of any evaluations previous parties have submitted about the neutral, and

2) redacted copies of any awards or decisions closing cases the neutral arbitrator has prepared.

The parties have 20 days to respond to the LPA.[27] Parties can respond in one of two ways. First, both sides can jointly decide on the person they wish to be the neutral arbitrator. This person does not have to be one of the names included in the LPA, be in the OIA pool, or meet the OIA qualifications.[28] Provided the person agrees to follow the OIA *Rules*, the parties can jointly select anyone they want to serve as neutral arbitrator.

On the other hand, if the parties do not jointly select a neutral arbitrator, each side returns the LPA, striking up to four names and ranking the rest, with "1" as the top choice. When the OIA receives the LPAs, the OIA eliminates any names that have been stricken by either side and

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[26]For the OIA to administer a case, it must be mandatory or the claimant must have opted-in. The OIA can take no action in a non-mandatory case before a claimant has opted in except to return it to Kaiser to administer. See footnote 23.

[27]A member of the OIA staff contacts the parties before their responses to the LPA are due to remind them of the deadline.

[28]Neutral arbitrators who do not meet our qualifications – for example, they might have served as a party arbitrator in the past three years for either side in a Kaiser arbitration – may serve as jointly selected neutral arbitrators. There is, however, one exception: If, pursuant to California's Ethics Standards a neutral arbitrator has promised not to take another case with the parties while the first remains open and the OIA knows the case is still open, the OIA would not allow the person to serve as a neutral arbitrator in a subsequent case.

then totals the scores of the names that remain. The person with the best score[29] is asked to serve. This is called the "strike and rank" procedure.

A significant number of OIA administered cases close before a neutral arbitrator is selected. In 2014, 65 cases either settled (32) or were withdrawn (33) without a neutral arbitrator in place.[30] Before a neutral has been selected, the parties can request a postponement of the LPA deadline under Rule 21 of up to 90 days. In addition, after the neutral arbitrator is selected, but before he or she actually begins to serve, California law allows either party to disqualify the neutral arbitrator.

B. Joint Selections vs. Strike and Rank Selections

Of the 519 neutral arbitrators selected in 2014, 159 were jointly selected by the parties (31%) and 358 (69%) were selected by the strike and rank procedure. Two neutral arbitrators were selected by court order.[31] Of the neutral arbitrators jointly selected by the parties, 134 (84%), were members of the OIA pool, though not necessarily on the LPA sent to the parties. In 25 cases (16%), the parties selected a neutral arbitrator who was not a member of the pool. See Chart 4. Three neutral arbitrators who are not part of the OIA pool account for 17 of the joint selections.[32]

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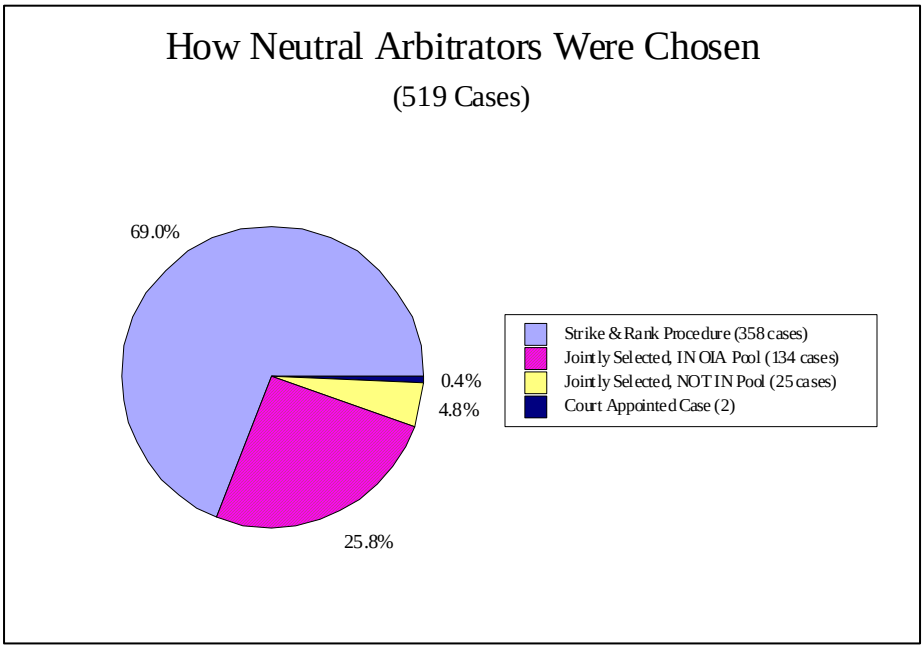
[29]For example, a person who was ranked "1" by both sides -- for a combined score of "2" -- would have the best score.

[30]These cases included both cases with attorneys and cases where the claimant was in *pro per*. The disposition varied however. In the 37 *pro per* cases that closed without a neutral arbitrator selected, 5 settled and 15 were withdrawn. In the 56 cases with an attorney, 27 settled and 18 were withdrawn. The other cases were abandoned, returned to Kaiser, or closed some other way.

[31]In rare cases when the parties cannot select a neutral arbitrator, generally because of disqualifications of neutral arbitrators, either party can petition the state court to do so. See footnote 36. There have also been two cases where a neutral arbitrator, in a case where a claimant has made multiple demands for arbitration, has inserted in the award a statement that he retains jurisdiction over any future claims. After that award is confirmed by a state court, it becomes a court order and binding on the OIA.

[32]While they have been invited, they prefer not to be in the OIA pool.

Chart 4



C. Cases with Postponements of Time to Select Neutral Arbitrators

Under Rule 21, a claimant has a unilateral right to a 90 day postponement of the deadline to respond to the LPA. If a claimant has not requested one, the respondent may request such a postponement, but only if the claimant agrees in writing. The parties can request only one postponement in a case – they cannot, for example, get a 40 day postponement at one point and a 50 day postponement later. Many parties request a postponement of less than 90 days. In addition to Rule 21, Rule 28 allows the OIA, in cases where the neutral arbitrator has not been selected, to extend deadlines. The OIA has used this authority occasionally to extend the deadline to respond to the LPA. Generally, parties must use a 90 day postponement under Rule 21 before the OIA will extend the deadline under Rule 28. A Rule 28 extension is generally short – two weeks if the parties say the case is settled or withdrawn[33] – though it may be longer if, for example, it is based on the claimant's medical condition, or a party has gone to court for some reason.

Under Rule 21, claimants do not have to give a reason to obtain a 90 day postponement. For a Rule 28 extension, however, they must provide a reason. The reasons for a Rule 28 extension are often the same as claimants identify as the reasons they used Rule 21. In some cases, the parties are seeking to settle the case or to jointly select a neutral arbitrator. Some claimants or attorneys want a little more time to evaluate the case before incurring the expense of a neutral arbitrator. As noted above, parties in 65 cases either settled or withdrew them before a

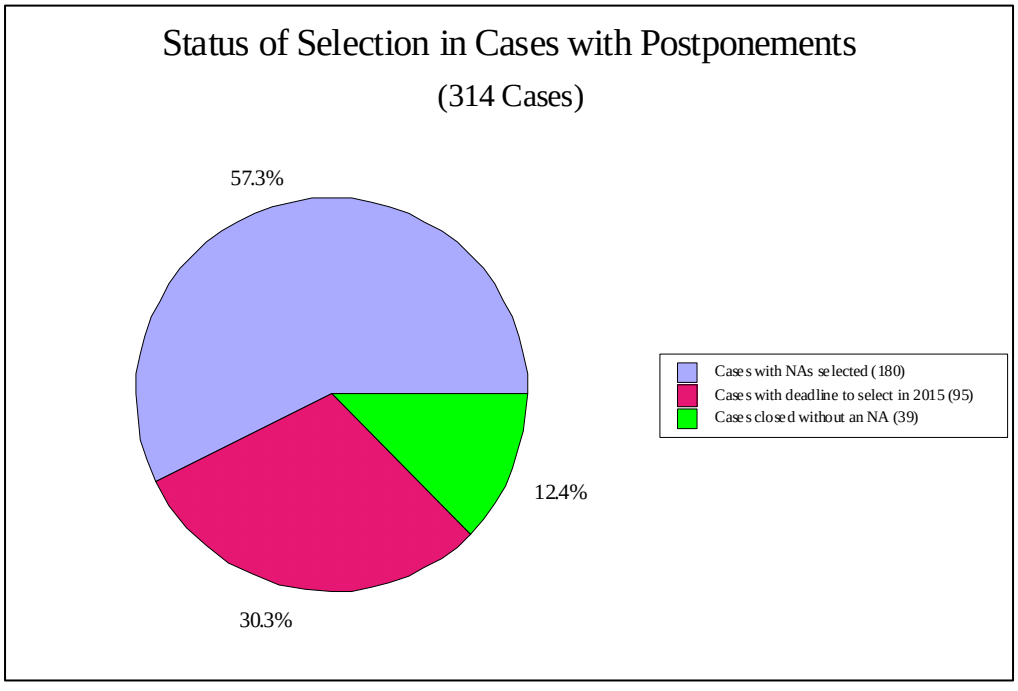
[33]The extension allows the claimant to send in a written notice of settlement or withdrawal without a neutral arbitrator being selected and sending out disclosure forms, reducing expenses generally.

neutral arbitrator was put in place. Some claimants who do not have an attorney want time to find one. Occasionally the OIA has discovered at the deadline that an attorney no longer represents a claimant. There are also some unrepresented claimants who request more time for health reasons. One reason for Rule 21 postponement that does not justify a Rule 28 extension is that the claimants or their attorneys simply want more time to submit their LPA responses.

In 2014, there were 314 cases where the parties obtained either a Rule 21 postponement, a Rule 28 extension of the time to return their responses to the LPA, or both. The claimants made all but three of the requests for Rule 21 postponements. Requests for a Rule 28 extension were made in 29 cases. In some, the Rule 21 request was made in prior years. There were no cases where a Rule 28 extension was given without a prior Rule 21 postponement.

Chart 5 shows what happened in those 314 cases. Fifty-seven percent (180) now have a neutral arbitrator in place. Thirty-nine closed before a neutral arbitrator was selected. For the remaining 95 cases, the deadline to select a neutral arbitrator is after December 31, 2014.

Chart 5



D. Cases with Disqualifications

California law gives the parties in an arbitration the opportunity to disqualify neutral arbitrators at the start of a case.[34] Neutral arbitrators are required to make various disclosures within ten days of the date they are selected.[35] After they make these disclosures, the parties have 15 days to serve a disqualification of the neutral arbitrator. Additionally, if the neutral arbitrator fails to serve the disclosures, the parties have 15 days after the deadline to serve disclosures to disqualify the neutral arbitrator. Absent court action, there is no limit as to the number of times a party can disqualify neutral arbitrators in a given case. However, under Rule 18.f, after two neutral arbitrators have been disqualified, the OIA randomly selects subsequent neutral arbitrators, rather than continuing to send out new LPAs.

Multiple disqualifications occur infrequently. In 2014, neutral arbitrators were disqualified in 45 cases. Thirty-six cases had a single disqualification. Three cases had two disqualifications, one case had three, two cases had four, two cases had five, and one case had six or more disqualifications.[36] Chart 6 shows what happened in those 45 cases. In 36 of the cases with a disqualification, a neutral arbitrator had been selected at the end of 2014. In eight of the cases with a disqualification, the time for the neutral arbitrator selection had not expired by the end of the year. One case closed after a neutral arbitrator was disqualified, but before another could be selected.

Because of multiple disqualifications in some cases, these 45 cases represent 76 neutral arbitrators who were disqualified in 2014. The claimants' side disqualified 52 neutral arbitrators and Kaiser 24 neutral arbitrators.

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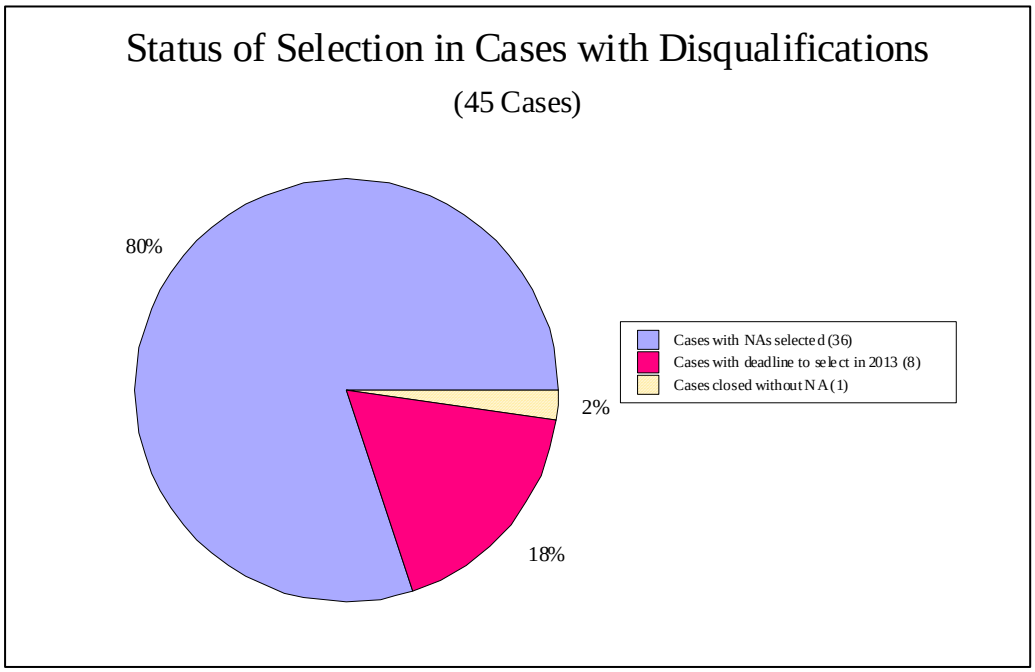
[34]California Code of Civil Procedure § 1281.91; see also Exhibit B, Rule 20.

[35]California Code of Civil Procedure § 1281.9, especially California Code of Civil Procedure § 1281.9(b). In the OIA system, the ten days are counted from the date of the letter confirming service which the OIA sends to the neutral arbitrator, with copies to the parties, after the neutral arbitrator agrees to serve.

[36]In cases with multiple disqualifications, one of the parties may petition the California Superior Court to select a neutral arbitrator. If the court grants the petition, a party is only permitted to disqualify one neutral arbitrator without cause; subsequent disqualifications must be based on cause. California Code of Civil Procedure §1281.91(2).

Chart 6

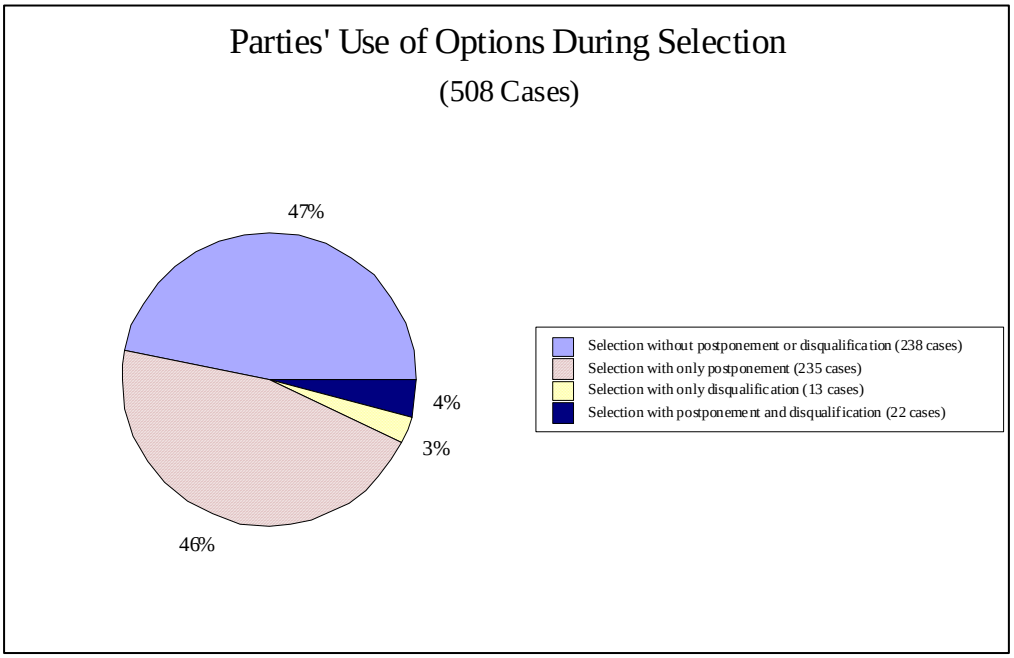


E. Length of Time to Select a Neutral Arbitrator

This section considers 508 cases in which a neutral arbitrator was selected in 2014.[37] Because parties can postpone the deadline to select an arbitrator and parties have a statutory right to disqualify a neutral arbitrator, the report divides the selections into four categories when discussing the length of time to select a neutral arbitrator. The first is those cases in which there was no delay in selecting the neutral arbitrator. The second category is those cases in which the deadline for responding to the LPA was extended, generally because the claimant requested a 90 day postponement before selecting a neutral arbitrator. The third category is those cases in which a neutral arbitrator was disqualified by a party and another neutral arbitrator was selected. The fourth category is those cases in which there was both a postponement of the LPA deadline and a disqualification of a neutral arbitrator. Finally, we give the overall average for the 508 cases. Chart 7 displays the four categories. The average length of time by category, overall, and before the OIA are shown on Chart 8.

[37] Eleven cases in which a neutral arbitrator was selected in 2014 are not included in this section. In these cases, a neutral arbitrator had previously been appointed, had begun acting as the neutral arbitrator, but had subsequently been removed as the neutral arbitrator. These include cases where a neutral arbitrator died, became seriously ill, was made a judge, or made disclosures in the middle of a case – because of some event occurring after the initial disclosure – and was disqualified. Because we count time from the first day that the case was administered, those cases are not included in these computations of length of time to select a neutral arbitrator.

Chart 7



1. Cases with No Delays

There were 238 cases where a neutral arbitrator was selected in 2014 in which there was no delay. Under the *Rules*, the maximum number of days to select a neutral arbitrator when there is no delay is 33 days. The average number of days to select a neutral arbitrator in those cases is 25 days, the mode is 23 days, the median is 25 days, and the range is 1 – 45 days. This category represents 47% of all neutral arbitrators selected in 2014.

2. Cases with Postponements

There were 235 cases where a neutral arbitrator was selected in 2014 and the only delay was a 90 day postponement and/or an OIA extension of the deadline under Rule 28. This includes cases where the request for the postponement was made in prior years, but the neutral arbitrator was actually selected in 2014. Under the *Rules*, the maximum number of days to select a neutral arbitrator when there is a 90 day postponement is 123 days. The average number of days to select a neutral arbitrator in those cases is 108 days, the mode is 113 days, the median is 115 days, and the range is 23 – 175 days.[38] This category represents 46% of all cases which selected a neutral arbitrator in 2014.

[38]The case that took 175 days to select a neutral arbitrator with just a postponement received a 90 day postponement first. The parties then requested a further 60 day postponement as they were trying to settle the case. The matter was eventually dismissed without prejudice.

3. Cases with Disqualifications

There were 13 cases where a neutral arbitrator was selected in 2014 and the only delay was that one or more neutral arbitrators were disqualified by a party. Again, this includes cases where a disqualification was made in prior years. Under the *Rules*, the maximum number of days to select a neutral arbitrator is 96, if there is only one disqualification.[39] The average number of days to select a neutral arbitrator in the 13 cases is 66 days, the median is 61 days, the mode is 60, and the range is 35 – 116 days.[40] Disqualification only cases represent 3% of all cases which selected a neutral arbitrator in 2014.

4. Cases with Postponements and Disqualifications

There were 22 cases where a neutral arbitrator was selected in 2014 after a postponement and a disqualification of a neutral arbitrator. Again, this includes cases where a postponement or disqualification was made in prior years. Under the *Rules*, the maximum number of days to select a neutral arbitrator if there is both a 90 day postponement and a single disqualification is 186 days. The average number of days to select a neutral arbitrator in these cases is 178 days, the mode is 147, the median is 160 days, and the range is 85 – 374 days.[41] These cases represent 4% of all cases which selected a neutral arbitrator in 2014.

5. Average Time for All Cases

The average number of days to select a neutral arbitrator in all of these cases is 71 days. For purposes of comparison, the California Supreme Court stated in *Engalla vs. Permanente Medical Group*[42] that the old Kaiser system averaged 674 days to select a neutral arbitrator over a period of two years in the 1980's. Thus, as shown on Chart 8, in 2014, the OIA system is 9.5 times faster.

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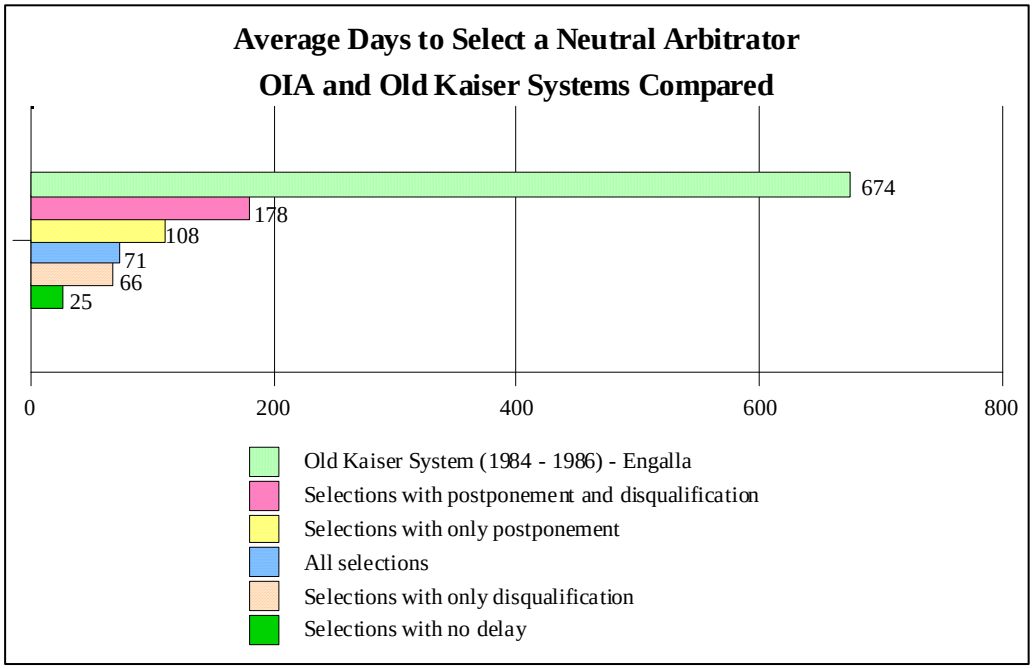
[39]The 96 days is comprised of the 33 days to select the first neutral arbitrator; the 30 days for the statutory periods for disclosure, disqualification, and service under the California Code of Civil Procedure; and then 33 days to select the second neutral arbitrator. The amount of time increases if there is more than one disqualification.

[40]In the case that took 116 days to select the neutral arbitrator, the neutral arbitrator was already appointed and subsequently served the parties with a supplemental disclosure. One of the parties then disqualified the neutral arbitrator.

[41]In the case that took 374 days to select a neutral arbitrator, the claimant was in pro per. He obtained a 90 day postponement. The parties disqualified 16 neutral arbitrators before Kaiser's attorney filed a petition in the state court to select the neutral arbitrator a year after the demand for arbitration was first filed.

[42]15 Cal. 4th 951, 64 Cal. Rptr. 2d 843, 938 P.2d 903. The California Supreme Court's criticism of the then self-administered Kaiser arbitration system led to the creation of the Blue Ribbon Panel.

Chart 8



F. Cases With Party Arbitrators

In medical malpractice cases in which the claimed damages exceed $200,000, a California statute gives parties a right to proceed with three arbitrators: one neutral arbitrator and two party arbitrators.[43] The parties may waive this right. The Blue Ribbon Panel (BRP) that gave rise to the OIA questioned whether the value added by party arbitrators justified their expense and the delay associated with two more participants in the arbitration process. The BRP therefore suggested that the system create incentives for cases to proceed with one neutral arbitrator.

Rules 14 and 15 provide such an incentive. Kaiser pays the full cost of the neutral arbitrator if the claimant waives the statutory right to a party arbitrator, as well as any court challenge to the arbitrator on the basis that Kaiser paid him/her. If both Kaiser and the claimant waive party arbitrators, the case proceeds with a single neutral arbitrator.

Few party arbitrators are used in the OIA system. In 2014, all 56 cases that went to hearing were decided by a single neutral arbitrator.

Of the cases that remained open at the end of 2014, party arbitrators had been designated in seven of them. In five of them, the OIA had designations from both parties. In the other two, only one side had designated a party arbitrator.

[43] California Health & Safety Code §1373.19.

VI. MAINTAINING THE CASE TIMETABLE

This section summarizes the methods for monitoring compliance with deadlines and then looks at actual compliance with deadlines at various points during the arbitration process. The OIA monitors its cases in two different ways.

First, through its software, the OIA tracks whether the key events set out in the *Rules* – service of the arbitrator's disclosure statement, the arbitration management conference, the mandatory settlement meeting, and the hearing – occur on time. If arbitrators fail to notify the OIA that a key event has taken place by its deadline, the OIA contacts them by phone, letter, or e-mail and asks for confirmation that it has occurred. In most cases, it has and arbitrators confirm in writing. When it has not, it is rapidly scheduled. In some cases, the OIA contacts neutral arbitrators a second time, asking for confirmation. The second notice warns arbitrators that, if they do not provide confirmation that the event took place, the OIA will remove their names from the OIA pool until confirmation is received.

In a few cases, neutral arbitrators have not responded to a second communication. In those cases, the neutral arbitrators are suspended – i.e., the OIA removes the neutral arbitrators' names from the OIA pool – until they take the necessary action. Thus, neutrals are not listed on any LPA when they are suspended and cannot be jointly selected by the parties.

Second, the OIA looks at cases overall and their progress toward closing on time. When a case enters the system, the OIA computer system calendars a reminder for 12 months. As discussed in Section VII, most cases close before then. For those that remain, the OIA attorneys call the neutral arbitrators to ensure that the hearing is still on calendar and the case is on track to be closed in compliance with the *Rules*. In addition, the Independent Administrator holds monthly meetings to discuss the status of all cases open more than 15 months. OIA attorneys also review a neutral arbitrator's open cases when they offer him or her new cases.

As detailed in the following sections, three different neutral arbitrators were suspended in 2014. One of the neutral arbitrators was suspended several times in the same case. The other two were suspended in two different cases. No neutral arbitrator remained suspended at the end of the year.

A. Neutral Arbitrator's Disclosure Statement

Once neutral arbitrators have been selected, California law requires that they make written disclosures to the parties within ten days. The *Rules* require neutral arbitrators to serve the OIA with a copy of these disclosures. The OIA monitors all cases to ensure that timely disclosures are made, but does not check for content. All disclosures were timely in 2014.

B. Arbitration Management Conference

The *Rules* require the neutral arbitrator to hold an Arbitration Management Conference (AMC) within 60 days of his or her selection.[44] Neutral arbitrators rated this feature of the OIA system second highest of any in their questionnaire responses. (See Section X.B.)

Neutrals return the AMC form to the OIA within five days of the conference. The schedule set forth on the form establishes the deadlines for the rest of the case. It also allows the OIA to see that the case has been scheduled to finish within the time allowed by the *Rules*, usually 18 months. Receipt of the form is therefore important. One neutral was suspended for failing to return an AMC form and complied by the end of the year.

C. Mandatory Settlement Meeting

Rule 26 instructs the parties to hold a mandatory settlement meeting (MSM) within six months of the AMC. It states that the neutral arbitrator is not present at this meeting. The OIA provides the parties with an MSM form to fill out and return, stating that the meeting took place and its result. In 2014, the OIA received notice from the parties in 283 cases that they have held an MSM. Thirty of them reported that the case had settled at the MSM. Three of these cases involved a *pro per* claimant. In 43 cases, neither party returned the MSM form to the OIA by the end of 2014.[45]

D. Hearing, Award, and the Aftermath

The neutral arbitrator is responsible for ensuring that the hearing occurs and an award is served within the time limits set out in the *Rules*. In 2014, one neutral arbitrator was suspended until he served his decision. He was suspended in two cases. Another neutral arbitrator was suspended three times for failing to send orders extending the deadline to serve the award.[46] All eventually complied and rejoined the pool.

One neutral arbitrator was suspended for failing to provide the amount of the fee and the fee allocation required by California Code of Civil Procedure §1281.96. The neutral arbitrator complied by the end of 2014.

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[44]Exhibit B, Rule 25.

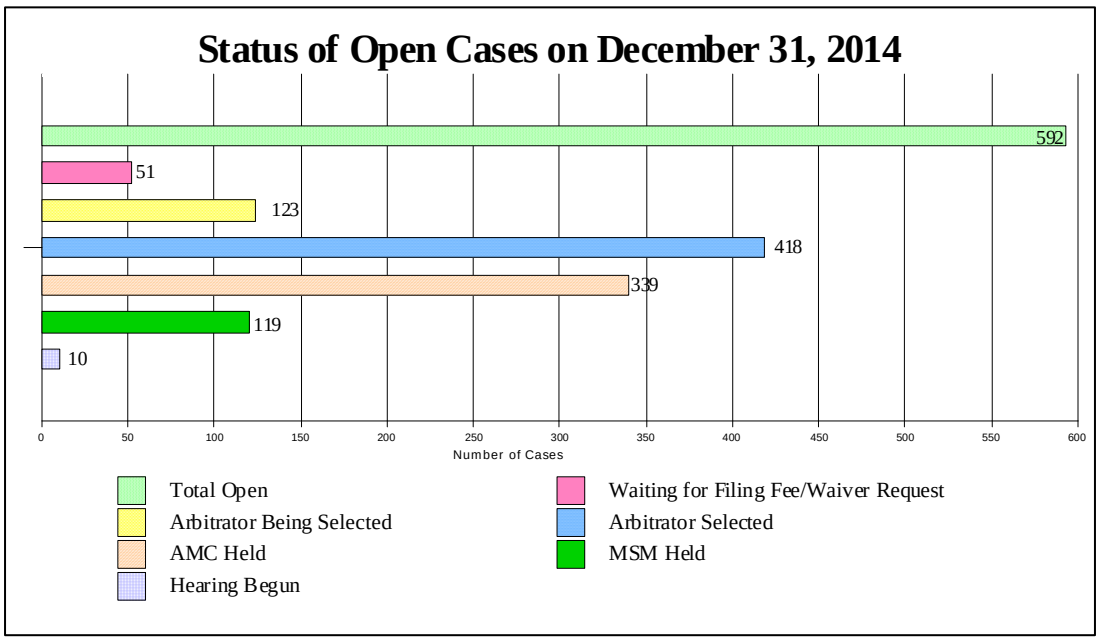
[45]As the settlement meeting is supposed to be conducted without the appointed neutral arbitrator and in a form agreed upon by the parties, the OIA has no real way to track whether the event has occurred except for receiving the forms from the parties. While letters are sent to the parties, the OIA has no power to compel them to report or to meet. A neutral arbitrator, on the other hand, can order the parties to meet if a party complains that the other side refuses to do so.

[46]The neutral arbitrator kept missing the extensions and therefore needed additional extensions.

E. Status of Open Cases Administered by the OIA on December 31, 2014

On December 31, 2014, there were 592 open cases in the OIA system. In 51 of these cases, the LPA had not been sent because the filing fee had not yet been paid or waived. In 123 cases, the parties were in the process of selecting a neutral arbitrator. In 418 cases, a neutral arbitrator had been selected. Of these, the AMC had been held in 339. In 119 cases, the parties had held the MSM. In ten cases, the hearing had begun, but either there were additional hearing days or the OIA had not yet been served with the award. Chart 9 illustrates the status of open cases.

Chart 9

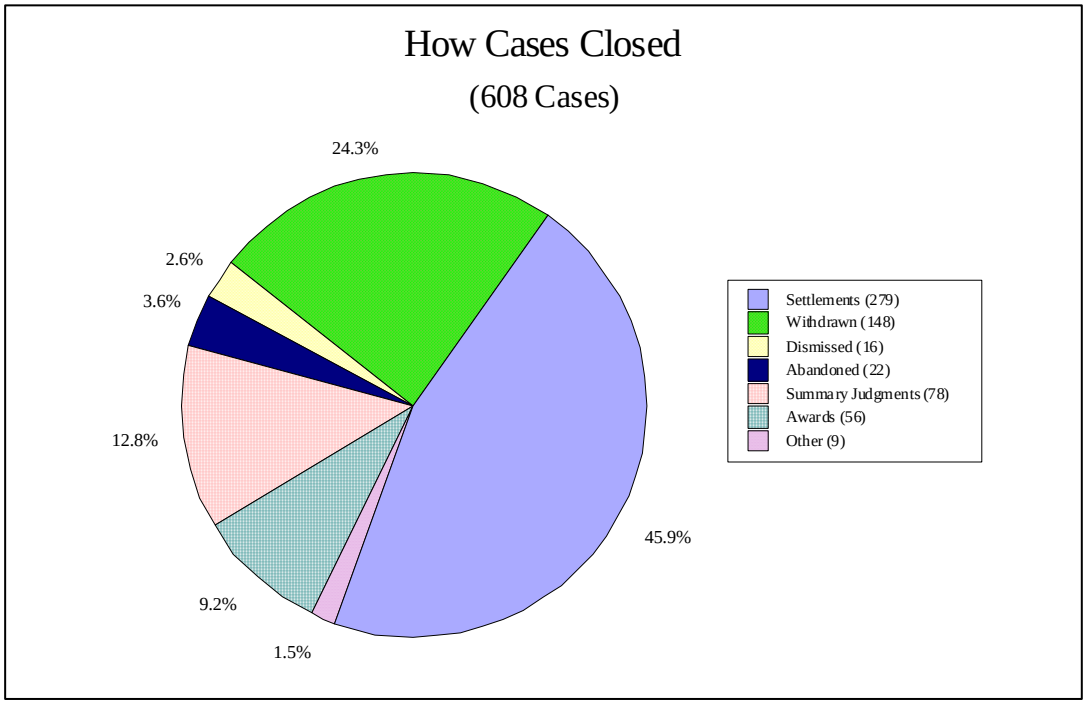


VII. THE CASES THAT CLOSED

In 2014, 608 cases closed. Cases close either because of (1) action by the parties (cases that are settled, withdrawn, or abandoned for non-payment of fees), or (2) action of the neutral arbitrator (cases are dismissed, summary judgment is granted, or cases are decided after a hearing). This discussion looks at each of these methods, how many closed, and how long it took.

The discussion of cases that closed after a hearing also includes the results: who won and who lost. Chart 10 displays how cases closed.[47]

Chart 10

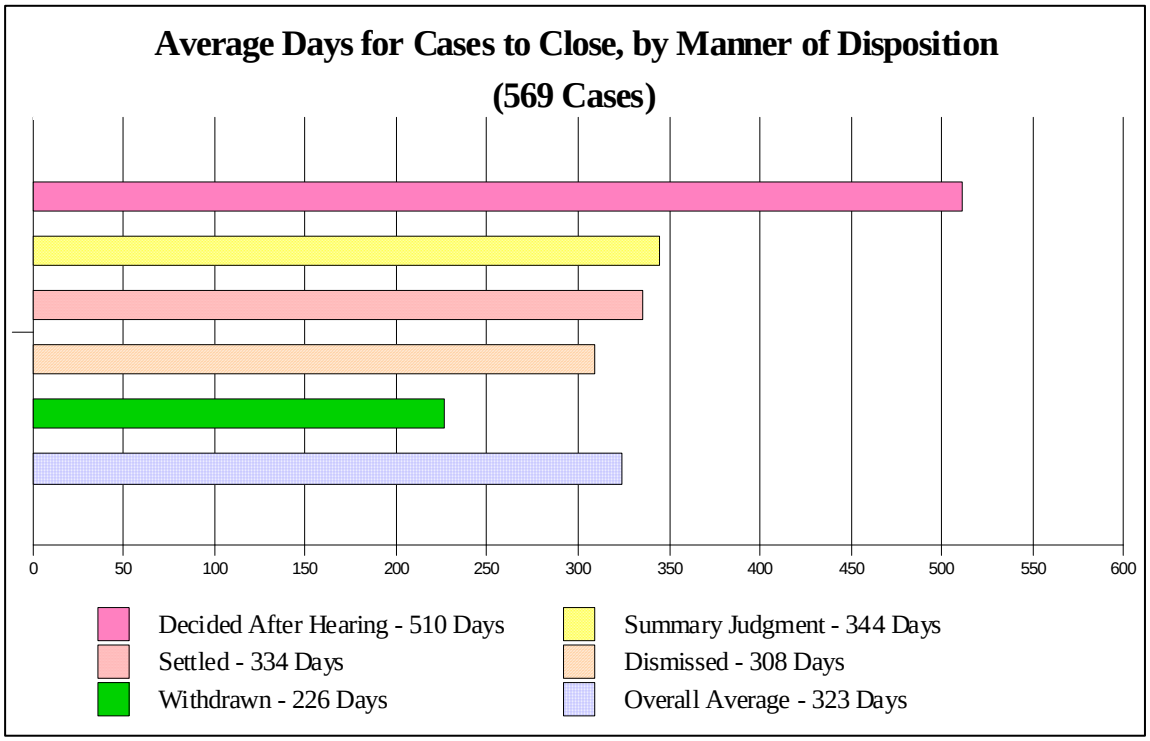


As shown on Chart 11, cases closed on average in 323 days, or 11 months.[48] The median is 308 days. The mode is 286 days. The range is 3 – 1,286 days. No case closed after its deadline, i.e., none was "late".

[47]There were nine cases that closed because the case was consolidated with another, had a split outcome, or judgment on the pleadings. (A split outcome means that there was more than one claimant and they had different outcomes.) As they represent less than one percent of the total of all closed cases, they are not further discussed in this section.

[48]As mentioned before, the OIA does not begin measuring the time until the fee is either paid or waived. Therefore, Chart 11 refers to 569 closed cases, not 608. It excludes 22 abandoned cases, 13 cases that were withdrawn or settled before the fee was paid, 2 cases that were consolidated and 2 cases closed in other ways.

Chart 11

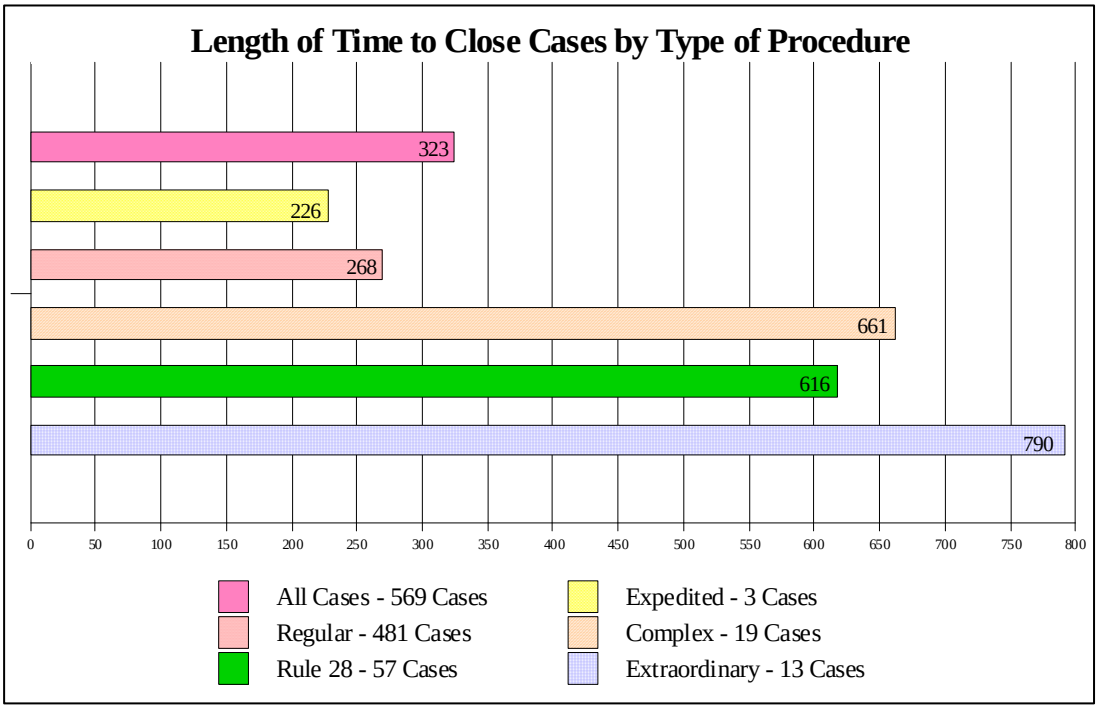


The second half of this section discusses cases that employed special *Rules* to either have the cases decided faster or slower than most. This begins on page 30. Under the *Rules*, cases must ordinarily be completed within 18 months. Ninety percent of the cases are closed within this period, and two-thirds close in a year or less. If a claimant needs a case decided in less time, the case can be expedited. If the case needs more than 18 months, the parties can classify the case as complex or extraordinary, or the neutral arbitrator can order the deadline to be extended for good cause under Rule 28.[49]

Chart 12 shows the average time to close by type of procedure.

[49] A complex case can also be the subject of a Rule 28 extension if it turns out the case requires more than 30 months to close. Four cases that closed in 2014 were both complex and the subject of a Rule 28 extension. They are included in both Sections VII.B.2 and VII.B.4 and in Chart 12.

Chart 12



A. How Cases Closed

1. Settlements – 46% of Closures

During 2014, 279 of the 608 cases settled. This represents 46% of the cases closed during the year. The average time to settle is 334 days, or about a year. The median is 322, the mode is 322, and the range is 9 – 1,286 days.[50] In 25 settled cases (9%), the claimant was in *pro per*. Thirty cases closed at the mandatory settlement meeting.

[50] In the case that took 1,286 days to settle, the claimant's attorney obtained a 90 day postponement and disqualified the first 5 neutral arbitrators. The attorneys ultimately jointly selected the neutral arbitrator. The hearing was continued once. The case settled at a mediation.

2. Withdrawn Cases – 24% of Closures

In 2014, the OIA received notice that 148 claimants had withdrawn their claims. In 53 (36%) of these cases, the claimant was in *pro per*. Withdrawals take place for many reasons. We categorize a case as withdrawn when a claimant writes us a letter withdrawing the claim, or when we receive a dismissal without prejudice from the parties. When we receive a "dismissal with prejudice," we call the parties to ask whether the case was "withdrawn," meaning voluntarily dismissed, or "settled" and enter the closure accordingly. Twenty-four percent of closed cases were withdrawn.

The average time for a party to withdraw a claim in 2014 is 226 days. The median is 186 days. The mode is 147 days, and the range is 3 – 991 days.[51]

3. Abandoned Cases – 4% of Closures

Claimants failed to either pay the filing fee or obtain a waiver in 22 cases.[52] These cases were deemed abandoned for non-payment. In 16 of the 22 cases, the claimants were in *pro per.* Before claimants are excluded from this system for not paying the filing fee, they receive four notices from the OIA and are offered the opportunity to apply for fee waivers.

4. Dismissed Cases – 3% of Closures

In 2014, neutral arbitrators dismissed 16 cases. Neutral arbitrators dismiss cases if the claimant fails to respond to hearing notices or otherwise to conform to the *Rules* or applicable statutes. Ten of these closed cases involved *pro pers.*

5. Summary Judgment – 13% of Closures

In 2014, 78 cases were decided by summary judgment granted to the respondent. In 59 of these cases (76%), the claimant was in *pro per.* Failing to have an expert witness (32 cases), failing to file an opposition (24 cases), exceeding the statute of limitations (5 cases), and no triable issue of fact (12 cases) were the most common reasons given by the neutrals in their written decisions for granting summary judgment. The reasons parallel summary judgments granted in the courts.

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[51]The case that was withdrawn after 991 days was designated extraordinary because the claimant was a minor and the injuries could not be ascertained. The hearing was continued several times. After the neutral arbitrator refused to continue a motion for summary judgment, the claimant's attorney withdrew the demand without prejudice.

[52]The arbitration filing fee is $150 regardless of the number of claimants or claims. This is significantly lower than court filing fees except for small claims court. If a Kaiser member's claim is within the small claims court's jurisdiction of $10,000, the claim is not subject to arbitration. Both the OIA and Kaiser inform these claimants of their right to go to small claims court. See generally, Sections VIII.B.1,2.

The average number of days to closure of a case by summary judgment in 2014 is 344 days. The median is 320 days. The mode is 286. The range is 164 – 970 days.[53]

6. Cases Decided After Hearing – 9% of Closures

a. Who Won

Nine percent of all cases closed in 2014 (56 of 608) proceeded through a full arbitration hearing to an award. Judgment was for Kaiser in 38 of these cases, or 68%. In three cases, the claimant was in *pro per*. The claimant prevailed in 18 of them, or 32%. One was a *pro per* claimant.

b. How Much Claimants Won

Eighteen cases resulted in awards to claimants. One claimant was awarded $2,181,375. The range of relief is $7,000 – $2,181,375. The average amount of an award is $597,342. The median is $250,000. The mode is $250,000. A list of the awards made in 2014 is attached as Exhibit G.

c. How Long It Took

The 56 cases that proceeded to a hearing in 2014, on average, closed in 510 days. The median is 469 days. The mode is 469 days. The range is 280 – 1,141 days.[54] Cases that go to a hearing are the most likely to employ the special procedures discussed in Section VII.B to give the parties extra time. If only regular cases are considered, the average to close is 422 days, 14 months.

B. Cases Using Special Procedures

1. Expedited Procedures – Less Than 1% of Closures

The *Rules* include provisions for cases which need to be expedited, that is, resolved in less time than 18 months. Grounds for expediting a case include a claimant's illness or condition raising substantial medical doubt of survival, a claimant's need for a drug or medical procedure, or other good cause.[55]

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[53]The case that closed in 970 days after a summary judgment motion was first continued after a year and a half to accommodate everyone's schedule. After another year, the claimant attorney filed a motion to withdraw, but it took three months to set the date. The motion was eventually granted.

[54]The case that closed after 1,141 days was first continued due to discovery problems and then designated extraordinary because of health problems with the claimant attorney. The award was ultimately in favor of Kaiser.

[55]Exhibit B, Rules 33 – 36.

In 2014, claimants in seven cases requested that their cases be resolved in less than the standard 18 months. Five of the requests were made to the OIA, which granted three of them. Kaiser objected to two of the requests, which the OIA granted. In addition, in two other cases, requests were made to neutral arbitrators, which were granted.

The OIA had one open expedited case on January 1, 2014. Three expedited cases closed in 2014, including the case that was open at the beginning of the year. They settled. The average for these cases to close is 226 days (less than eight months) and the range is from 131 to 314 days, or ten months. Three expedited cases remained open at the end of 2014.

Although originally designed to decide benefit claims quickly, none of the expedited cases in 2014 involved benefit or coverage issues.

2. Complex Procedures – 3% of Closures

The *Rules* also include provisions for cases that need more time. In complex cases, the parties believe that they need 24 – 30 months.[56] The designation does not have to occur at the beginning of a case. It may be made as the case proceeds and the parties develop a better sense of what evidence they need. In 2014, 28 cases were designated as complex. There were additional complex cases open that had been previously designated. Nineteen complex cases closed in 2014. The average length of time for complex matters to close in 2014 is 661 days, about 22 months. The median is 668 days. There is no mode. The range is from 284 to 1,024 days (about 34 months).[57]

3. Extraordinary Procedures – 2% of Closures

Extraordinary cases need more than 30 months for resolution.[58] Seven cases were designated extraordinary in 2014 and there were additional cases open that had been previously designated. Thirteen cases closed this year. Eight settled, one was decided after a hearing with award for respondent, and four were withdrawn. The average number of days for an extraordinary case to close is 790 days, or 27 months. The range is 464 – 1,141 days (38 months).[59]

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[56]Exhibit B, Rule 24(b).

[57]The complex case that took 1,024 days to close was continued multiple times at the request of the parties, ultimately requiring a Rule 28 extension. After the hearing, there was a long and contentious post hearing brief process. The award was ultimately in favor of Kaiser.

[58]Exhibit B, Rule 24(c).

[59]The extraordinary case that took 1,141 days to close is discussed in footnote 54.

4. Rule 28 Extensions of Time to Close Cases – 10% of Closures

Rule 28 allows neutral arbitrators to extend the deadline for a case to close past the eighteen month deadline if there are "extraordinary circumstances" that warrant it. In 2014, neutral arbitrators made Rule 28 determinations of "extraordinary circumstances" in 75 cases. In addition, there were open cases at the beginning of 2014 that had previously received Rule 28 extensions. Fifty-seven cases closed during the year. The average time in 2014 to close cases with a Rule 28 extension is 616 days, about 20 months. The median is 603 days. The mode is 471 days. The range is 141 – 1,286 days.[60]

According to the neutral arbitrator orders granting the extensions, the claimant's side requested seven, respondent's side requested one, and the parties stipulated 13 times. An extension was ordered once over the respondents' objections and once over the claimants' objections. Sixteen orders noted that there was no objection. Fifty-eight orders recited there was good cause or extraordinary circumstances. Where neutral arbitrators gave specific reasons, the most common reasons were procedure difficulties, problems with medical experts and unexpected trial schedules (five and four times each).

VIII. THE COST OF ARBITRATIONS IN THE OIA SYSTEM

A. What Fees Exist in OIA Arbitrations

Whether in court or in private arbitration, people face certain fees. In an OIA arbitration, in addition to attorney's fees and fees for expert witnesses, a claimant must pay a $150 arbitration filing fee and half of the neutral arbitrator's fees. State law provides that neutral arbitrator's fees be divided equally between the claimant and the respondent.[61] In addition, state law provides that if the claim is for more than $200,000, the matter will be heard by an arbitration panel, which consists of three arbitrators – a single neutral arbitrator and two party arbitrators, one selected by each side. Parties may waive their right to party arbitrators.

The OIA system provides mechanisms for a claimant to obtain a waiver of either the $150 arbitration filing fee and/or the claimant's portion of the neutral arbitrator's fees and expenses. These provisions are discussed below. When claimants ask for waiver information, they receive information about the types of waiver and the waiver forms. The claimants can thus choose which waiver(s) they want to submit.

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[60]The case with a Rule 28 extension that took 1,286 days to close is discussed in footnote 50.

[61]California Code of Civil Procedure § 1284.2.

B. Mechanisms Claimants Have to Avoid These Fees

There are three mechanisms for waiving some or all of these fees. The first two are based on financial need and required by statute. The third is open to everyone and is voluntary on Kaiser's part.

1. How to Waive Only the $150 Arbitration Filing Fee

This waiver is available to individuals whose gross monthly income is less than three times the national poverty guidelines. If claimants' income meets the guidelines, the OIA's $150 arbitration fee is waived. The OIA informs claimants of the existence of this waiver in the first letter we send to them. They have 75 days to submit the form, from the date the OIA receives their demands for arbitration.[62] According to statute and Rule 12, this completed form is confidential and only the claimant and claimant's attorney know if a request for the waiver was made or granted.

2. How to Waive Both the Arbitration Filing Fee and the Neutral Arbitrators' Fees and Expenses

This type of fee waiver, which is required by state law, depends upon the claimants' ability to afford the cost of the arbitration filing fee and the neutral arbitrators' fees. Claimants must disclose certain information about their income and expenses. If this waiver is granted, a claimant does not have to pay either the neutral arbitrator's fees or the OIA's $150 arbitration filing fee. This waiver form is based on the form used by the state court to allow a plaintiff to proceed *in forma pauperis,* but changed to make it simpler to understand. According to the *Rules*, the form is served on both the OIA and Kaiser. Kaiser has the opportunity to object before the OIA decides whether to grant this waiver.[63] A claimant who obtains this waiver is allowed to have a party arbitrator, but must pay for the party arbitrator.

[62]California Code of Civil Procedure §1284.3; Exhibit B, Rule 12.

[63]See Exhibit B, Rule 13.

3. How to Waive Only the Neutral Arbitrators' Fees and Expenses

The *Rules* also contain provisions to shift to Kaiser the claimants' portion of the neutral arbitrators' fees and expenses.[64] For claims under $200,000, the claimant must agree in writing not to object later that the arbitration was unfair because Kaiser paid the fees and expenses of the neutral arbitrator. For claims over $200,000, the claimant must also agree not to use a party arbitrator.[65] No financial information is required. The waiver forms are served on Kaiser, the neutral arbitrator, and the OIA.

C. Number of Cases in Which Claimants Have Shifted Their Fees

1. The $150 Arbitration Filing Fee

In 2014, the OIA received 53 forms to waive the $150 filing fee. The OIA granted 50 and denied 3.[66] Eighteen of these claimants received both a waiver of the filing fee and the waiver of the neutral arbitrators' fees and expenses. By obtaining the waiver of the filing fee, the neutral arbitrator selection process can begin immediately, without waiting for the second waiver to be granted.

2. The $150 Arbitration Filing Fee and the Neutral Arbitrators' Fees and Expenses

In 2014, the OIA received 56 completed fee waiver applications and 2 remained from the prior year. The OIA granted 55 waivers of the arbitration filing fee and neutral arbitrators' fees, denied 0, and 3 remain to be decided. Kaiser did not object to any request.

3. The Neutral Arbitrators' Fees and Expenses

State law requires arbitration providers such as the OIA to disclose neutral arbitrators' fees and fee allocations for closed cases.[67] We received fee information from neutral arbitrators for 485 cases that closed in 2014.

In these 485 cases, fees were allocated 100% to Kaiser in 410 (85%) cases. In 29 (6%) cases, no fees were charged. Fees were split 50/50 in 45 (9%) cases. There was also one case in which fees were allocated in some other arrangement. Thus, in 456 cases where the neutral

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[64]See Exhibit B, Rules 14 and 15.

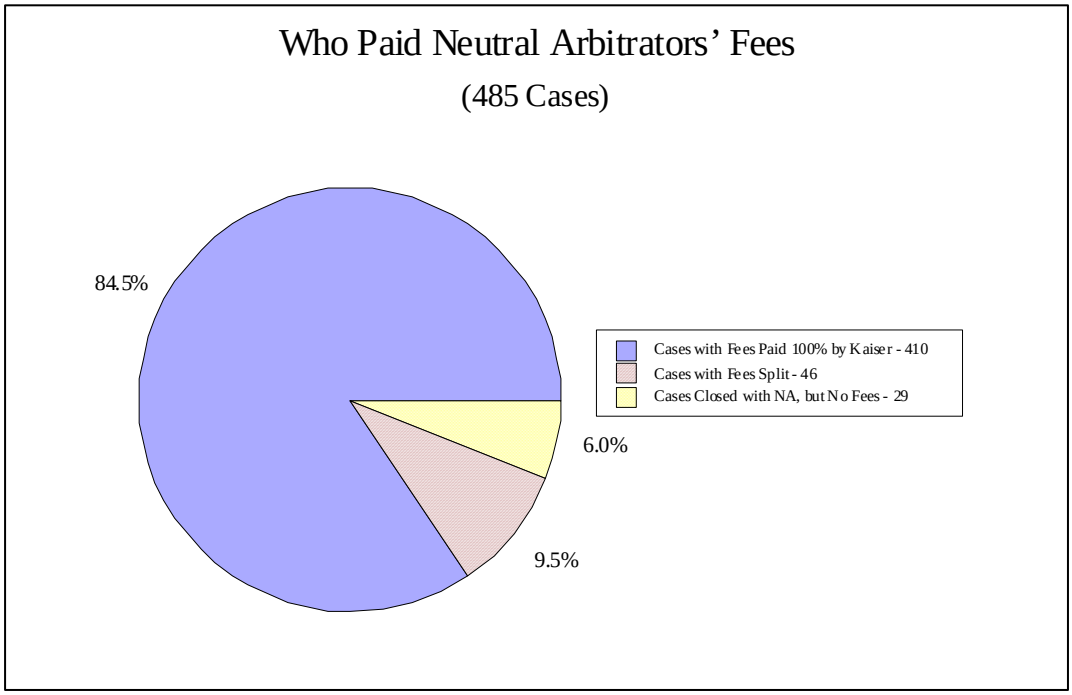
[65]If the claimant waives his/her right to a party arbitrator but Kaiser wants to proceed with party arbitrators, Kaiser will still pay all of the neutral arbitrator's fees and expenses.

[66]One had the other fee waiver granted while the other two paid the fee.

[67]California Code of Civil Procedure §1281.96.

arbitrators charged fees, Kaiser paid all of the neutral arbitrators' fees in 90% of the cases. As Chart 13 shows, claimants paid neutral arbitrators' fees in less than ten percent of cases that closed in 2014.

Chart 13



D. The Fees Charged by Neutral Arbitrators

Members of the OIA pool set their own fees. They are allowed to raise their fees once a year, but the increases do not affect cases on which they have begun to serve. The fees range from $150/hour to $800/hour. The average hourly fee is $434, the median is $443, and the mode is $400. Some neutral arbitrators also offer a daily fee. This ranges from $900/day to $8,000/day. The average daily fee is $3,592, the median is $3,200, and the mode is $5,000.

Looking at the 456 cases in which neutral arbitrators charged fees, the average neutral arbitrator fee is $7,024.45. The median is $1,897.50 and the mode is $800. This excludes the 29 cases in which there are no fees. The average for all cases, including those with no fees, is $6,604.43.

The arbitrators' fees described in the prior paragraph include many cases where the neutral arbitrator performed relatively little work. If only the cases where the neutral arbitrator wrote an award are considered, the average neutral arbitrator fee is $28,113.67, the median is $23,905 and there is no mode. The range is $7,450 – $86,165.

IX. ANALYSIS OF LIEN CASES

This section applies only to the lien cases that are in the OIA system. In lien cases, unlike the other demands for arbitration, Kaiser makes the demand against a member to recoup the costs of medical care it provided where Kaiser asserts the member has recovered something from a third party, as in a car accident. Kaiser submitted nine demands for arbitration based on liens in 2014. Geographically, six of them came from Northern California, and three from Southern California. Two cases were open at the beginning of the year.

A. Demands for Arbitration Submitted by Kaiser to the OIA

1. Length of Time Kaiser Takes to Submit Demands to the OIA

Under the *Rules*, Kaiser must submit a demand for arbitration to the OIA within 10 days of serving the demand on the member. In 2014, the average length of time that Kaiser took to submit demands to the OIA is 41 days. There is no mode. The median is 37 days. The range is 0 – 94 days. Seven of the nine cases were late. It takes Kaiser longer to submit these demands than the demands it receives from members, though the length of time shortened in 2014.

2. Members With and Without Attorneys

Members were represented by counsel in 55% of the lien cases the OIA administered in 2014 (6 of 11). In 45% of cases, the members represented themselves.

B. Selection of the Neutral Arbitrators

Neutral arbitrators were selected in seven cases. For an explanation of the selection process, please see Section V.

1. Joint Selections vs. Strike and Rank Selections

One neutral arbitrator was selected by the parties jointly. The neutral arbitrator was a member of the OIA pool.

2. Cases with Postponements of Time to Select Neutral Arbitrators

There were two cases in 2014 where the claimant obtained a Rule 21 postponement of the time to return the LPA. The deadline to select a neutral arbitrator is in 2015.

3. Cases with Disqualifications

In 2014, no neutral arbitrator was disqualified.

4. Length of Time to Select a Neutral Arbitrator

This section sets out the length of time to select a neutral arbitrator in seven cases based upon how the neutral arbitrators were selected: no delay in selecting the neutral arbitrator. Finally, we give the overall average for the seven cases.

a. Cases with No Delays

The seven cases where a neutral arbitrator was selected in 2014 had no delay. Under the *Rules*, the maximum number of days to select a neutral arbitrator when there is no delay is 33 days. The average number of days to select a neutral arbitrator is 26, the median is 25, there is no mode and the range is 23-28. This category represents 100% of all selections.

b. Average Time for All Cases

The average number of days to select a neutral arbitrator in all of these cases is 26 days.

5. Cases With Party Arbitrators

No lien case has ever had party arbitrators.

C. Maintaining the Case Timetable

1. Suspensions

One neutral arbitrator was suspended in a lien case in 2014 for failing to timely serve disclosures. The neutral arbitrator complied and was reinstated.

2. Mandatory Settlement Meeting

The OIA received one notice from the parties that they held an MSM.

3. Status of Open Lien Cases Administered by the OIA on December 31, 2014

On December 31, 2014, there were eight open lien cases in the OIA system. Two are still in the process of selecting a neutral arbitrator. Six have selected a neutral arbitrator. An Arbitration Management Conference has been held in four.

D. The Cases That Closed

In 2014, three lien cases closed. Cases close either because of (1) action by the parties (cases that are settled, withdrawn, or abandoned), or (2) action of the neutral arbitrator (cases are decided after a hearing). No lien case has ever been dismissed or decided by summary judgment.

This discussion looks at each of these methods, how many closed, and how long it took.

Cases closed on average in 169 days, or 6 months. The median is 160 days. The range is 23 – 323 days. No case closed late.

1. How Cases Closed

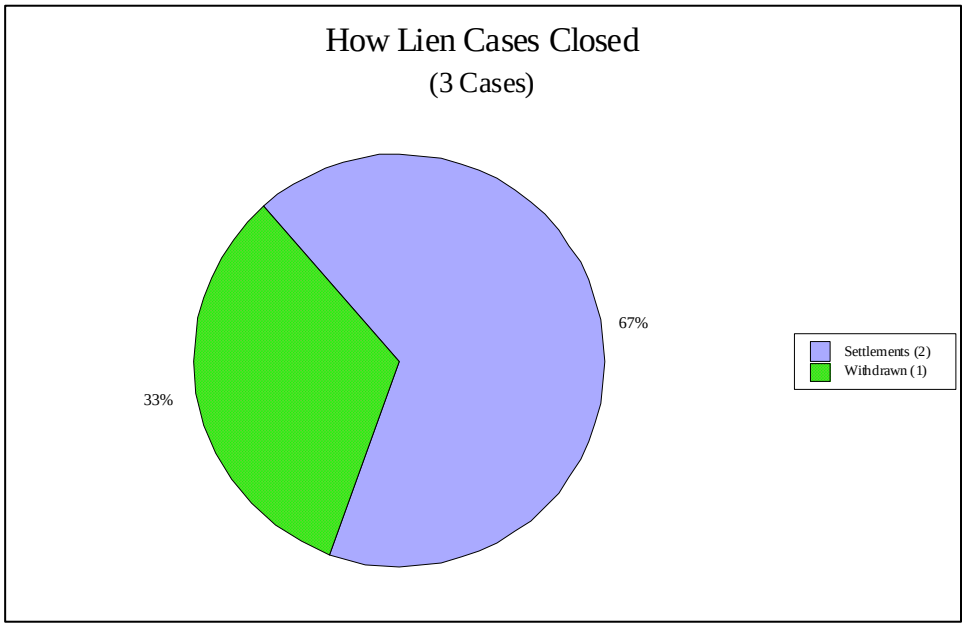
a. Settlements – 67% of Closures

During 2014, two of the three cases settled. They settled in 23 days and 323 days. The member was represented in both cases.

b. Withdrawn Cases – 33% of Closures

In 2014, the OIA received notice that Kaiser withdrew one claim. The member was not represented. Kaiser withdrew the case in 160 days, or a little over 5 months.

Chart 14



2. Cases Using Special Procedures

For a discussion of expedited, complex, and extraordinary procedures or Rule 28 extensions, see Section VII.B. No lien case has ever been designated expedited or extraordinary. In 2014, no case was designated complex and no neutral arbitrator used Rule 28 to extend the time for a case to close.

E. The Cost of Lien Arbitrations in the OIA System

1. Number of Lien Cases in Which Members Have Shifted Their Neutral Fees

We have fee information in two cases. Both cases reported that the fees were allocated 100% to Kaiser.

2. The Fees Charged by Neutral Arbitrators

In the two cases for which we have information, the neutral arbitrators charged $870 and $4,045.24 respectively.

X. EVALUATIONS OF NEUTRAL ARBITRATORS AND THE OIA SYSTEM

When cases close, the OIA sends forms to the attorneys, *pro per* claimants and neutral arbitrators asking them questions about the neutral arbitrator, the arbitration process, the OIA, or all of the above. This section discusses the highlights of the responses we received in 2014 from the parties and the arbitrators. The complete statistics and copies of the forms are set out in Exhibits H, I, and J, respectively. This section considers all evaluations returned in all cases, including lien claims.

A. The Parties Evaluate the Neutral Arbitrators

Some people have told the OIA that it sent out neutral arbitrator evaluations in too many cases in which the neutral arbitrator had little contact other than the AMC. The argument was that information in such cases was not useful to appraise the neutral arbitrator. Therefore, in 2013, the OIA began sending neutral arbitrator evaluations to the attorneys or *pro per* claimants only in cases in which the neutral arbitrator made a decision that ended the case.

The form asks them to evaluate their experience with the neutral arbitrator in 11 different categories including fairness, impartiality, respect shown for all parties, timely response to communications, understanding of the law and facts of the case, and fees charged. Most important, they are asked whether they would recommend this neutral to another person with a similar case. The inquiries appear in the form of statements, and all responses appear on a scale of agreement to disagreement with 5 being agreement and 1 disagreement. The evaluations are anonymous, though the people filling it out are asked to identify themselves by category and how the case closed.

During 2014, the OIA sent out 312 evaluations and received 145 responses in return, or 46%.[68] Forty-three identified themselves as claimants (15) or claimants' counsel (28), and 101 identified themselves as respondent's counsel. One did not specify a side.[69]

Here are the responses to some of the inquiries.

Item 2: "The neutral arbitrator treated all parties with respect." – 4.5 Average

The average of all responses is 4.5 out of a possible maximum of 5. Claimants counsel average 4.2. *Pro pers* average 2.8. Respondents counsel average 4.7. The attorneys for both sides have a mode and median of 5. The *pro per* mode is 1 and the median is 3.

Item 5: "The neutral arbitrator explained procedures and decisions clearly." – 4.2 Average

The average of all responses is 4.2. Claimants counsel average 3.6. *Pro pers* average 2.1. Respondents counsel average 4.7. The mode for all attorneys is 5, the median is 5 for respondents side and 4.5 for claimants. The *pro per* mode is 1.

Item 7: "The neutral arbitrator understood the facts of my case." – 4.1 Average

The average of all responses is 4.1. Claimants counsel average 3.3. *Pro pers* average 1.8. Respondents counsel average 4.7. The mode for *pro pers* is 1.

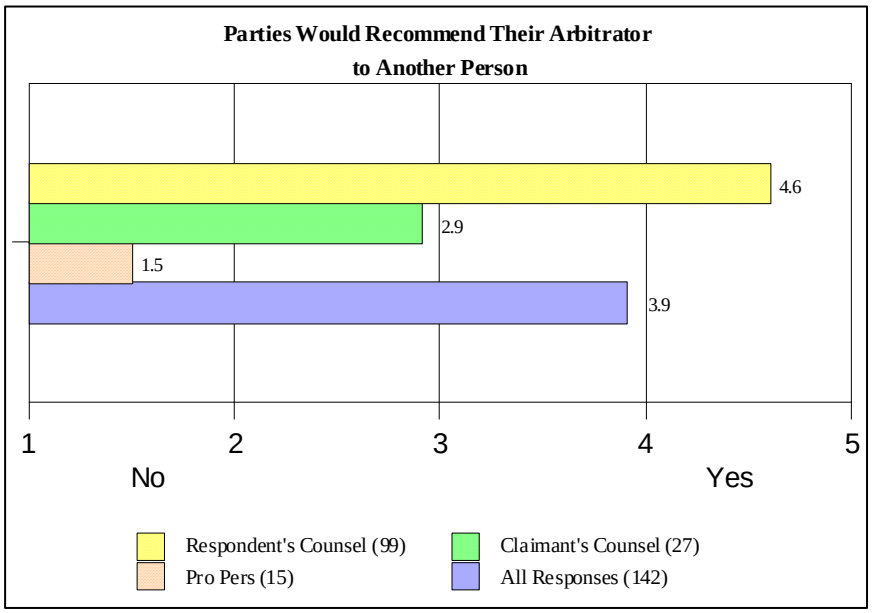
Item 11: "I would recommend this arbitrator to another person or another lawyer with a case like mine." – 3.9 Average

The average on all responses to this question is 3.9. Claimants counsel average 2.9. *Pro pers* average 1.5. Respondents counsel average 4.6. Claimants counsel have mode of 1 and a median of 2. Respondents counsel have a mode and a median of 5. The mode for *pro pers* is 1. Chart 15 displays the responses.

[68]The response rate has climbed from 28% in 2005. The number of responses from claimants doubled this year. The OIA had hoped that the response rate would increase if the evaluations were sent out more selectively. It increased slightly, but the response rate from claimants attorneys is discouraging.

[69]This response is included only in the overall averages.

Chart 15



B. The Neutral Arbitrators Evaluate the OIA System

Under Rule 48, when cases close, the neutral arbitrators complete questionnaires about their experiences with the *Rules* and with the overall system. The information is solicited to evaluate and improve the system. As with the evaluations sent to the parties to evaluate the neutral arbitrators, in 2013 the OIA began sending these forms to neutral arbitrators only in cases where the neutral arbitrator closed the case. The reasoning is similar: if the neutral arbitrator has not done much other than hold an AMC, the neutral arbitrator may not have much experience upon which to judge the system. During 2014, the OIA sent questionnaires in 156 closed cases and received 153 responses. The results continue to show a high degree of approval of, and satisfaction with, the *Rules* and the OIA.

The neutrals average 4.7 in saying that the procedures set out in the *Rules* had worked well in the specific case. The responses average 4.8 in saying that based on this experience they would participate in another arbitration in the OIA system. They average 4.8 in saying that the OIA had accommodated their questions and concerns in the specific case. The median and the mode for all questions are 5.

The questionnaires also includes two questions that ask arbitrators to check off features of the system which worked well or poorly in the specific case. The vast majority of those who responded were positive.

Table 5 - Neutral Arbitrators' Opinions Regarding OIA System

Feature of OIA System	Works Well	Needs Improvement
Manner of neutral arbitrator's appointment	107	1
Early management conference	100	0
Availability of expedited proceedings	42	0
Award within 15 business days of hearing closure	52	3
Claimants' ability to have Kaiser pay neutral arbitrator	99	4
System's rules overall	86	3
Hearing within 18 months	54	1
Availability of complex/extraordinary proceedings	21	0

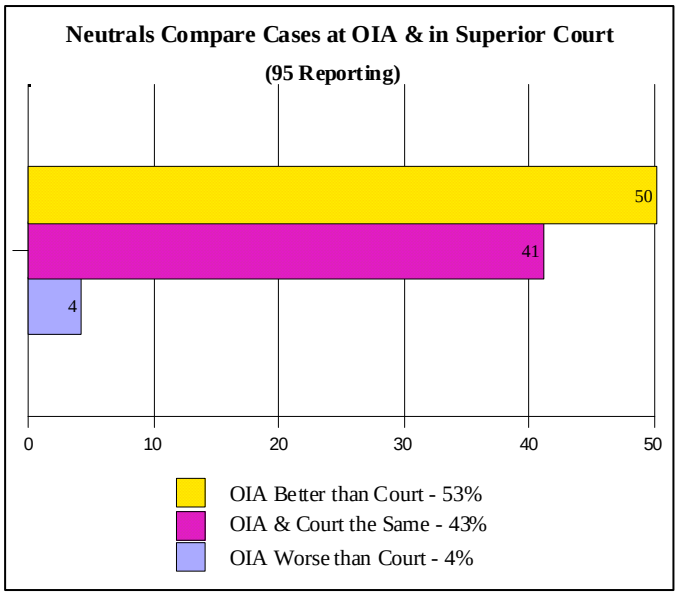
Finally, the questionnaires ask the neutrals whether they would rank the OIA experience as better or worse than or about the same as a similar case tried in court. For the seventh year in a row, a majority of the neutral arbitrators judged the system to be better than a court trial. Ninety-five of the neutral arbitrators made the comparison. Fifty, or 53%, said the OIA experience was better. Forty-one, or 43%, said it was about the same. Only four (four percent) said the OIA experience was worse.

Those who believe it was better said it was more efficient and expeditious, and praised its flexibility to accommodate the needs of individual cases and parties. One neutral arbitrator said that court summary judgment motions are more cumbersome and time consuming and unpredictable in process and fairness. Two of the neutral arbitrators who rated it worse may have done so by mistake as they called it more efficient, less time consuming or more flexible and answered all the questions with "5's". One was upset by the claimant's ability to dismiss a claim for tactical reasons when faced with a dispositive motion. The last was concerned by a claimant's attorney who was difficult to control and caused delays. The neutral arbitrator thought the repeated unnecessary delays should be sanctioned.

Most of the comments overall praised the system, OIA, or *Rules*. Only two mentioned difficulties with *pro pers.* Two people mentioned billing. Only one specifically asked for more

time for awards. While neutral arbitrators generally praised the flexibility of the *Rules*, three asked for rules that covered specific circumstances.

Chart 16



C. The Parties Evaluate the OIA System and Ease of Obtaining Medical Records

The OIA sends the parties an additional one page evaluation of the OIA system and the ease of obtaining medical records. The form is similar to, but shorter than, the form sent to the neutral arbitrators.

As with the other forms, this asks the recipients, on a scale from 1 to 5, whether they agree or disagree. A "5" is the highest level of agreement.

The OIA sent 1,080 evaluations and received 327 responses (30%).[70] Ninety-one identified themselves as either claimants (21) or claimant attorneys (70), and 171 identified themselves as respondent's counsel. Sixty-five did not specify a side.

The responses for whether the procedures in general worked well and whether the OIA was responsive were quite positive for the attorneys. The mode and median is 5 for most. *Pro pers* gave much lower scores to all questions.

[70] Eight people returned blank forms.

Item 1: "The procedures worked well in this particular case." 4.5 Average

The overall average is 4.5 out of 5. The average for claimant attorneys is 4.0, for *pro pers* 2.0, and for respondent attorneys 4.9. For *pro pers*, the mode and the median are 1. The median is 4 for claimant attorneys.

Item 2: "The procedure for obtaining medical records worked well." 4.3 Average

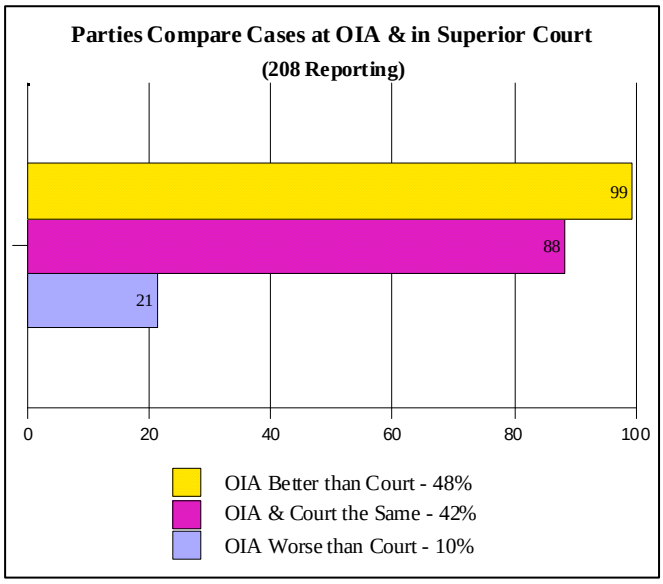
The average is 4.3 for all responses. The average for claimant attorneys is 3.7; for *pro pers*, 1.8; and respondent attorneys, 4.9. The mode and median for *pro pers* are 1. The median is 4 for claimant attorneys.

Item 3: "The OIA was responsive to my questions and concerns." 4.6 Average

The overall average is 4.6. The average is 4.4 for claimant attorneys, 2.7 for *pro pers*, and 4.8 for respondent attorneys. The mode for *pro pers* is 1 and the median is 2.

The form also asked the parties if they have had a similar experience in Superior Court and, if so, to compare the two. Of the 208 people who made the comparison, 99 said it was better. Eighty-eight said it was the same. Twenty-one said it was worse.

Chart 17



For those who said the OIA system was better and gave reasons, they were similar to the neutral arbitrators: that it was faster, less expensive, more responsive to the parties' needs. Scheduling was highly praised. One person commented that the neutral arbitrator was better than most judges. Those who said it was worse said that their arbitrator or the pool was biased in favor

of Kaiser and that juries were better. One thought Kaiser might have been more inclined to mediate in court and another that it was more expensive.

In general, the most common comment concerned obtaining medical records. Those who responded called getting records from Kaiser expensive, time consuming, and/or confusing. The next most common subject was the neutral arbitrator pool, with opinions that it should be more diverse, objections to the lack of a jury, or that it was inherently biased. There was only one recommendation to eliminate the optional 90 day postponement to select the neutral arbitrator. Two called for an appellate process. Finally, the *pro per* claimants once again expressed their frustration in navigating a legal system without a lawyer.

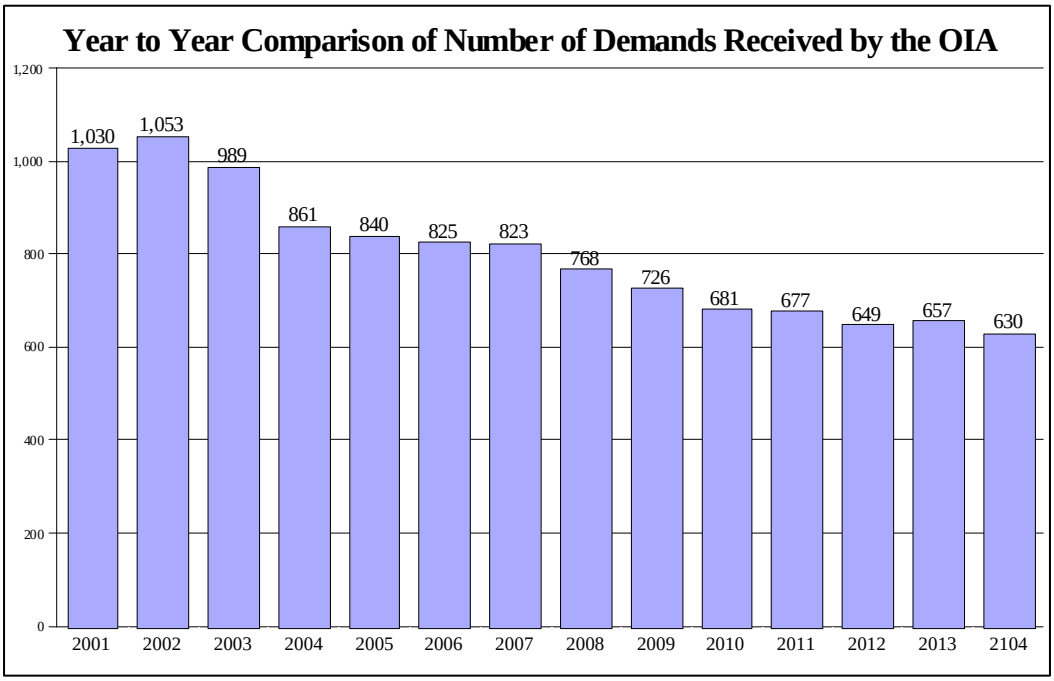
XI. TRENDS AND DATA OVER THE YEARS OF OPERATION OF THE OIA

Using the data that the OIA has published in prior reports, this section considers the operation of the OIA over time, highlighting those elements that have changed as well as those that have remained relatively stable. The percentage of neutral arbitrators who are retired judges, how neutral arbitrators are selected, the percentage of claimants represented by counsel, and how cases close have remained relatively stable. As in the preceding sections, lien cases are only considered in the first three Sections (A, B, and C) and the last (K).

A. The Number of Demands for Arbitration Resumed Pattern of Slight Decline

Until 2013, the number of demands for arbitrations has declined since 2002. In 2013, it increased very slightly. In 2014, it again declined slightly. The number reached a high of 1,053 in 2002. As Chart 18 shows, the sharpest decline occurred between 2003 and 2004 (a decrease of 128), with significant further decreases from 2007 to 2010. In 2014, the OIA received 630, 27 less than in 2013. Since 2010, the number has varied by no more than 28.

Chart 18



The number of demands declined in Northern California and San Diego, but increased by nine in Southern California.

B. The Number of Neutral Arbitrators Has Stayed Relatively Stable

Even though the number of demands for arbitration has declined 40% since 2002, the number of neutral arbitrators has stayed relatively stable, normally declining in odd numbered years when neutral arbitrators are required to submit updates and increasing the next year. The pool has ranged from 349 at the end of 2000 to 251 in 2011. For the most part, the pool has contained between 270 – 310 people and 30 – 40% have been retired judges. The pool contained 281 neutral arbitrators in 2014 – 7 more than 2013 – with 39% retired judges.

The percentage of neutral arbitrators who have served in any given year has dropped with the number of demands, since there are fewer opportunities to serve. It reached a high of 70% in 2003, when the OIA received 989 demands for arbitration and had 287 neutral arbitrators in its pool.[71] For the most part, the percentage of neutral arbitrators who have served in any given year has been 53 – 63%. If the entire time is considered, 90% of the pool in 2014 has served at some time. The average number of selections is 20. The number of neutral arbitrators who have written awards also remained high, ranging from 44 (in 2014) to 93 (in 2004). During the OIA's existence, 393 different

[71] In 2014, by contrast, there were 359 fewer demands for arbitration but only 6 fewer neutral arbitrators in the pool.

neutral arbitrators have written awards. Equally important, the vast majority of those neutral arbitrators, 68 – 81%, only wrote a single award in any year. This wide spread distribution of work among members of the pool and corresponding lack of concentration protect against "captive" neutrals, a key concern when the OIA was created.

C. Claims Primarily Allege Medical Malpractice

The overwhelming majority of demands for arbitration are, and have always been, claims that allege medical malpractice. This has ranged from 86 to 97%.[72] Benefit claims are generally less than two percent.

D. Twenty-Five Percent of Claimants Do Not Have an Attorney

The percentage of cases with claimants who are not represented by an attorney has generally remained between 20 – 26%, reaching 29% the first year and dropping to 17% in 2004. Dealing with the concerns raised by *pro per* claimants has been a continuing issue for the OIA, the AOB, and neutral arbitrators. Both the AOB and the OIA have revised forms and the "*pro per* handout" to make them easier for *pro pers* to understand. See Exhibit B, Rule 54.

E. The Parties Select the Neutral Arbitrators by Strike and Rank in Almost Seventy Percent of the Cases

The percentage of neutral arbitrators chosen by strike and rank versus those jointly selected has ranged from 65% (the first year) to 74% (2003 and 2013). Similarly, the percentage of neutral arbitrators jointly selected who are members of the OIA pool has ranged from 55% (2011) to 84% (2014).[73]

F. Half of the Claimants Use Procedures Contained in OIA Rules and State Law to Delay Selecting the Neutral Arbitrator, While Time to Select Remains Timely

The use of the tools (postponement and disqualification) allowing more time to select a neutral arbitrator has increased.[74] In 2000, only 21% of cases employed one or both. Since 2003, 43 – 57% of the cases did. Claimants made almost all of the postponements (5,197 out of 5,225) and

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[72]The range may actually be smaller because during the early years the OIA categorized a larger percentage of demands as "unknown" when they gave no specifics. Now, Kaiser provides information as to the type of claim being made.

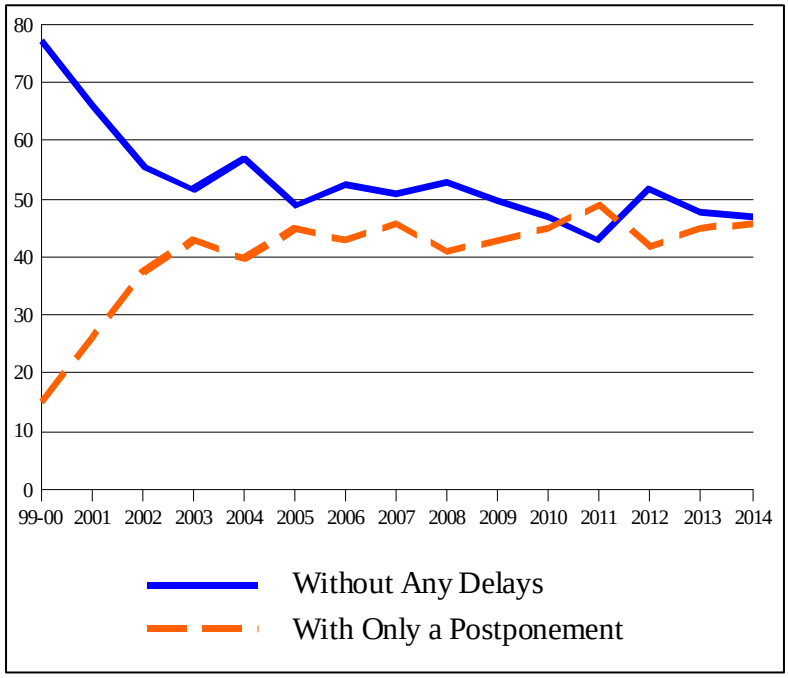
[73]There have only been 14 cases in which the parties had to go to court to have a neutral arbitrator selected.

[74]We call the parties to remind them of the deadline to return the List of Possible Arbitrators. During this call, we remind claimants or their attorneys that they may seek a postponement if they are not able to return their responses by the deadline.

the vast majority of disqualifications (839 out of 1,040). Chart 19 displays the use of the 90 day postponement versus no delays over time.

Chart 19

Year to Year Comparison of Percentage of Neutral Arbitrators Selected Without Delay vs. Neutral Arbitrators Selected With Only A Postponement



The length of time to select a neutral arbitrator, however, has remained consistent since 2003: 24 – 26 days for cases with no postponements and 108 – 114 days for cases where the claimants seek a 90 day postponement. Table 6 compares the differing forms of selecting a neutral arbitrator since 2006.

Table 6 - Year to Year Comparison of No Delay vs. Delays: Percentage and Average Number of Days to Select Neutral Arbitrators

	2006	2007	2008	2009	2010	2011	2012	2013	2014
No delay	25 days 53%	25 days 51%	26 days 53%	26 days 50%	25 days 47.7%	25 days 43%	24 days 52%	24 days 48%	25 days 47%
Only Postponement	111 days 43%	113 days 46%	114 days 41%	113 days 43%	110 days 44.9%	111 days 49%	108 days 42%	108 days 45%	108 days 46%
Only Disqual.	59 days 2%	72 days 1%	58 days 3%	71 days 3%	80 days 3.5%	72 days 2%	63 days 2%	59 days 2%	66 days 3%
Postponement & Disqual.	171 days 2%	155 days 2%	157 days 3%	165 days 4%	174 days 3.9%	160 days 6%	175 days 4%	162 days 5%	178 days 4%
Total Selections	66 days	68 days	67 days	70 days	71 days	75 days	66 days	69 days	71 days

G. The Parties Consistently Close Most Cases Themselves

The most common way cases close has always been settlement (40 – 49%). This is followed by cases withdrawn by the claimant (20 – 28%); cases decided after a hearing (9 – 16%); and summary judgment (7 – 14%). The remaining cases were abandoned by the claimant or claimant's attorney or dismissed by the neutral arbitrator. Table 7 displays the statistics since 2006. In 2014, the percentage of cases that closed after an award was nine percent.

Table 7 - Year to Year Comparison of How Cases Closed

	2006	2007	2008	2009	2010	2011	2012	2013	2014
Settlements	42%	42%	44%	46.5%	44%	44%	44%	44%	46%
Withdrawn	28%	26%	27%	25.6%	25%	26%	26%	27%	27%
Abandoned	5%	5%	5%	4.3%	4%	3%	3%	5%	4%
Dismissed	3%	3%	3%	2.4%	3%	4%	3%	3%	3%
Summary Judgment	8%	10.5%	8%	7%	11%	11%	11%	9%	13%
Awards	13%	13.5%	13%	13%	12%	11%	13%	11%	9%

H. The Results After a Hearing

In those cases in which the claimant won after a hearing, the awards have ranged from a single dollar to nearly $9,000,000. The average is $410,786. Because the number of cases in any given year is small, the yearly averages can fluctuate quite a bit from year to year. The lowest average, $156,001, occurred in 2001, when the largest award was just over $1,000,000. The largest average, $823,692, was in 2011, which had an award of $8,973,836.

After 2000, the percentage of cases in which members prevailed after a hearing ranges from 29% (2009)[75] to 43% (2002 and 2005). In 2014, 32% of members prevailed in non-lien cases.

I. Cases Close in Less Than A Year

For the most part, the length of time for cases to close has been stable. This can be seen by looking at the averages for all cases, regardless of the type of closure. The average for all cases (which is the least susceptible to the influence of a single old case closing in a year) was 319 days in 2003 and reached 357 days in 2009. See Table 8.

Table 8 - Year to Year Comparison of Average Number of Days to Close, by Disposition

	2006	2007	2008	2009	2010	2011	2012	2013	2014
Settlements	325 days	337 days	340 days	375 days	341 days	326 days	330 days	318 days	334 days
Withdrawn	262 days	242 days	227 days	234 days	242 days	268 days	240 days	241 days	226 days
Summary Judgment	355 days	333 days	324 days	366 days	351 days	346 days	343 days	336 days	344 days
Awards	533 days	520 days	455 days	503 days	483 days	555 days	558 days	538 days	510 days
All Cases	342 days	336 days	325 days	357 days	336 days	339 days	340 days	325 days	323 days

The OIA closely follows each case that is still open after 15 months to make sure that the case is not drifting. Because of this type of diligence by the neutral arbitrators and the OIA, only 40 cases – less than half of one percent – have closed late.

[75] In 2009, lien cases were included and all of those cases were decided in Kaiser's favor. If the 15 lien cases were excluded, members prevailed after a hearing 34% of the time in cases they brought.

J. Claimants Shift Cost of Arbitration to Kaiser in Vast Majority of Cases

California law provides that, absent any other arrangement by the parties, the fees of the neutral arbitrator will be split evenly between the parties. The OIA *Rules*, however, provide several ways to shift those fees to Kaiser and most claimants use them. Thus, Kaiser has paid all of the neutral arbitrators' fees in 81 – 88% of the cases. This is done most easily, and most commonly, by the claimants signing a form and agreeing not to use party arbitrators. Each year, however, in 5 – 10% of the cases, the claimants have requested a waiver based on financial hardship, which also exempts them from paying the $150 filing fee or giving up the right to party arbitrators. In addition, a waiver created in 2003 by the California Legislature allows claimants who meet certain tests to avoid the $150 filing fee.[76] While some claimants file for both waivers, others request only that the $150 fee be waived, relying on the standard forms to shift the neutral arbitrators' fees to Kaiser.

K. Neutral Arbitrators and the OIA System Receive Positive Evaluations

Since 2000, the OIA has been sending out evaluations to the parties of the neutral arbitrators and the OIA. The evaluations ask, among other things, whether the neutral arbitrator treated the parties with respect, explained the process, and understood the facts and whether the parties would recommend the arbitrator to others. The responses to the evaluations have generally been quite positive, especially from the attorneys. For Kaiser attorneys, the averages range between 4.6 and 4.8, quite close to 5 (on a 1 – 5 scale). For claimants' attorneys, the averages range from 4.0 to 4.5 on five questions and from 2.9 to 3.6 on the rest. The modes and medians are 5 for Kaiser attorneys for all questions and for claimants' attorneys for most questions. This means that the most common response is the most positive. Fewer *pro per* claimants return the evaluations, and thus the average responses are more susceptible to lower rated evaluations. The numbers are lower than responses from attorneys.

The OIA began asking neutral arbitrators to evaluate the OIA system in 2000. The questions ask them to identify whether particular features are useful or not, whether the OIA is helpful or responsive, and to compare the OIA system with the court system. The neutral arbitrators' evaluations have always been positive. The percent response rate averages in the 80s. Ninety-six percent of the neutral arbitrators and 90% of the parties who answer the question rated the OIA system as good as or better than the state court system in 2014.

[76]Unlike California Superior Courts, the filing fee has not increased during the OIA's operation.

XII. THE ROLE OF THE ARBITRATION OVERSIGHT BOARD

A. Membership

The Arbitration Oversight Board (AOB) is chaired by David Werdegar, M.D. M.P.H. Dr. Werdegar is the former director of California's Office of Statewide Health Planning and Development and is Professor of Family and Community Medicine, *Emeritus*, at the University of California, San Francisco, School of Medicine. The Vice-Chair of the AOB is Cornelius Hopper, M.D., Vice President for Health Affairs, *Emeritus*, of the University of California System.

The membership of the AOB is a distinguished one. There are eleven board members, besides the two officers.

The members represent various stakeholders in the system, such as Kaiser Health Plan members, employers, labor, plaintiff bar, defense bar, physicians, and hospital staff. There are also outstanding public members. Six of the thirteen are attorneys. No more than four may be Kaiser affiliated. Changing the *Rules* requires the agreement of two-thirds of all the members of the AOB, as well as a majority of the non-Kaiser related board members.

The members in 2014, in alphabetical order, are:

Doris Cheng, medical malpractice attorney representing plaintiffs, San Francisco.

Sylvia Drew Ivie, Executive Director, LA County Commission for Children and Families, Los Angeles.

Beong-Soo Kim, Vice President and Assistant General Counsel, Kaiser Foundation Health Plan, Pasadena (joined in December 2014).

Rosemary Manchester, MBA, a member of Kaiser for many years, Sebastopol.

Bruce R. Merl, M.D., Director of The Permanente Medical-Legal/Risk Management/Patient Safety Group, Oakland.

Kenneth Pivo, medical malpractice attorney representing respondents, Costa Mesa.

Kennedy Richardson, Interim Practice Manager, Litigation & PPL, Oakland (left at end of 2014 and replaced by Mr. Kim).

Honorable Cruz Reynoso, Professor of Law Emeritus, King Hall School of Law, University of California, Davis, and former California Supreme Court Justice, Davis.

Richard J. Spinello, Executive Director of Financial Risk and Insurance, CHOC Children's Hospital, Orange.

Al Ybarra, a former Secretary-Treasurer, Orange County Central Labor Council, AFL-CIO, Orange.

Donna L. Yee, MSW, Ph.D., Chief Executive Officer of the Asian Community Center of Sacramento Valley, Sacramento.

Steven R. Zatkin, retired Senior Vice President and General Counsel, Kaiser Foundation Health Plan, Inc. and Kaiser Foundation Hospitals.

B. Activities

The AOB takes an active role. It meets quarterly to review operation of the OIA and receive reports from OIA staff. This includes quarterly reports of statistics similar to those included in the annual reports.

After Ms. Oxborough informed the AOB that she would not renew the contract when it expired, the Board evaluated and approved Ms. Bell, the current Director, to be the next Independent Administrator. It then negotiated a three year contract with her beginning March 29, 2015. The present staff and office will remain the same.

The AOB also undertook the work to have an audit conducted. It interviewed prospective firms, met with the OIA and the selected firms to design the parameters of the audit, and met with the firms to discuss the results.

During 2014, the AOB had several discussions concerning legislation that modified the requirements governing disclosures the OIA makes on its website and how it would affect the OIA. It amended the *Rules* to ensure the OIA received the information it needs. The AOB also discussed amendments by the Judicial Council to the Ethics Standards and how the OIA would handle these changes. It continued to examine how the Affordable Care Act would affect Kaiser and medical dispute resolution.

The AOB also reviews the draft annual report and comments upon it. Exhibit K is the AOB Comments on the Annual Report for 2014.

XIII. CONCLUSION[77]

This report describes a mature arbitration system, though one continuously subject to further improvement. This report shows the goals of a fair, timely, low cost arbitration system that protects the privacy interests of the parties are being met.

Timeliness is the easiest to measure. The time to select a neutral arbitrator and to go through the arbitration process is many times faster than the pre-OIA system, and delay has largely disappeared as an issue. The fact that in 2014 no case closed after its time limit is good evidence that the arbitration process meets expectations of timeliness.

Cost is an area the OIA measures. The $150 filing fee is lower than court filing fees (other than small claims) and can be waived. In 86% of the cases with neutral arbitrator fees that began after January 1, 2003 and ended in 2014, the fees were paid by Kaiser.

The OIA continues to protect the confidentiality of the parties in this system. The OIA publishes information about cases on its website in response to California law, but no names of individual claimants or respondents are included, only corporate entities. Similarly, no names of individuals are included in the copies of awards provided with LPA packets.

Finally, the *Rules* and OIA procedures seek to promote fairness in the arbitration process and in its outcomes.

A large number of individuals serve as neutral arbitrators. This includes a large number who preside over hearings. Spreading the work helps reduce the possibility of neutral arbitrators being dependent upon Kaiser for work.

The *Rules* give both parties the power to determine who their neutral arbitrator will be – or at least who their neutral arbitrator will not be. The parties can jointly select anyone who agrees to follow the *Rules* and either party can timely disqualify neutral arbitrators after the selection. The OIA gives both parties identical information about the neutral arbitrators. This includes evaluations of the neutral arbitrators by the parties in earlier cases and redacted awards.

The California Legislature and the Judicial Council have decided that disclosures about organizations involved in arbitrations helps promote fairer arbitrations. The OIA posts this information on its website for all to see and helps the neutral arbitrators comply with their obligations. The amount of information available to the parties and the public has increased

[77]This is a conclusion in more ways than one. This is also the last annual report that Sharon Oxborough will write as the Independent Administrator. See Exhibit L.

dramatically over the years.[78] The OIA now provides information about more cases than required on its new sortable disclosure table and has maintained its original non-sortable table for those who find it easier to use. During 2014, the Independent Administrator, Director, and Assistant Director met with provider organizations and worked with non-affiliated neutral arbitrators to make sure all were prepared for the Ethics Standards amendments.

The composition of the pool of neutral arbitrators includes those who have plaintiff's side experience and those who have defendant's side experience. Ninety-three percent report medical malpractice experience.

The system is easier than a court system to access: the filing fee is only $150, no particular forms are required to demand arbitration, most documents can be faxed or e-mailed to the OIA (and arbitrators), many parties communicate by email, and the neutral arbitrators' fees can be, and generally are, paid by Kaiser.

The OIA is evaluated by neutral arbitrators and the parties at the conclusion of cases. Most who answered rated it better than or as good as Superior Court.

The OIA reports to the AOB regularly about the arbitration process.

The OIA publishes this report on the internet and sends a copy to those who ask for it. The annual reports provide more information about its arbitrations than any other arbitration system provides about its arbitrations. An audit conducted in 2014 confirmed the accuracy of the OIA's records. The wealth of this information was recognized by the National Academy of Science's Committee on Science, Technology, and Law when it requested the Independent Administrator participate in its session on medical malpractice arbitration and a member of the CSTL drafted an article largely based on annual reports.

[78]Unfortunately, the information about OIA arbitrations cannot be compared to results in complaints filed in state court because California courts do not publish similar information.