

## REPORT SUMMARY

Kaiser Foundation Health Plan, Inc., has arbitrated all disputes with its members since 1971. In the 1997 *Engalla* case, the California courts criticized Kaiser's system, saying that it should not be self-administered and that there was too much delay in the handling of members' claims. In response, Kaiser and its citizen advisory board selected the Law Offices of Sharon Lybeck Hartmann to create the Office of the Independent Administrator ("OIA") and operate this system. This is the third report on the results of the independent administration and describes the system as of December 31, 2001. Here are some of the highlights:

1. **Number of New Demands Forwarded to the OIA.** To date, Kaiser has forwarded 2,968 demands for arbitration to the OIA from its six million members in California. This averages to about 90 demands a month, which is the same average that we reported in the second annual report. In 2001 alone, we received 1,030 demands from Kaiser. See pages 11-12.
2. **Increase in Demands Making Use of the OIA Mandatory.** Until 2001, almost all of the demands Kaiser sent to the OIA were cases where claimants could choose whether they wanted to be part of our system or remain in the old Kaiser system. During 2000, Kaiser amended all of its contracts with members to make the use of our office mandatory. Now all disputes arising under the amended contracts are subject to OIA administration. As of December 31, 2001, 825 claims in the OIA system were mandatory as compared to one year earlier when only 101 claims were mandatory. Of the demands forwarded to the OIA during 2001, 70% were mandatory (724 out of 1,030). Of the 766 open cases, 551 are mandatory (72%). See pages 11-12, 26.
3. **Increase in Open Cases.** On December 31, 2001, the OIA had 766 open cases. This is an increase of 24% since last year, when we had 617 open cases, and results from the rising number of mandatory cases. See page 26.
4. **Average of 44 Days to Selection of a Neutral Arbitrator.** The OIA continues to move quickly in selecting neutral arbitrators. For purposes of comparison, the California Supreme Court said that under Kaiser's old system, it averaged 674 days to select a neutral arbitrator. Through December 31, 2001, the OIA averaged 44 days to select a neutral arbitrator in all cases. In cases where the parties did not seek a postponement or disqualify a neutral arbitrator the OIA averaged 24 days. Claimants were responsible for approximately 70% of the disqualifications and for nearly all postponements. See pages 14-16, 18-19.

5. **Hearings.** Arbitrators have made a total of 228 awards since the OIA system began. There were 104 awards in the first 21 months and 122 awards in 2001 alone. The average time to complete these 228 cases is 328 days or about 11 months, which is 50 days longer than reported last year. According to the *Engalla* decision, the “old Kaiser system” average to the first day of hearing was 863 days, or 2 years and 4 months. See page 30.
6. **Closed Cases.** Of the closed cases, 44% have settled, which is about the same as last year. Our average time to closure of all cases is 259 days, about nine months, which is about one month longer than reported last year. All but one of the closed cases have met their deadlines for completion under OIA *Rules*. See pages 27, 28, 31.
7. **Expedited Cases.** There have been a total of 22 expedited cases in the OIA system thus far, a total of 1% of our caseload. Twenty of these cases are closed, and two remain open. One case settled in 20 days, while another closed after a hearing in 39 days. The average length of time in which expedited cases have been decided is 149 days, or 5 months. All closed cases were decided within the accelerated timetable set for the case. See pages 32-34.
8. **Neutral Arbitrators.** We have 306 neutral arbitrators on our panel. One third, or 102, of the panel are retired judges. Seventy-nine percent (79%) of all neutral arbitrators on our panel, or 241 out of the 306, have served at least once. Since the OIA began, on average, each neutral arbitrator has served five times. See pages 3-4, 6-7, 9.
9. **Claimants Elect to Have Kaiser Pay the Neutral Arbitrator.** Claimants have elected to have Kaiser pay the neutral arbitrator’s fees and expenses in at least 43% of all cases administered by the OIA. This is an increase of three percent from the second annual report. See pages 36-37.
10. **Party Arbitrators Rarely Used.** Few party arbitrators are being used in our system; therefore most cases are proceeding with a single neutral arbitrator, rather than a panel of three. We have received designations of party arbitrators in only 14 of the 228 cases decided by hearing (6%). The remaining 214 (94%) were decided by a single neutral arbitrator. We have received a designation of party arbitrator in only 20 of the 766 open cases (3%). See page 36.
11. **Types of Cases.** Approximately 90% of all the cases in our system are medical malpractice cases. The remaining demands concern premises liability, benefits, other torts, or do not specify the basis of the claim. Benefit disputes make up less than two percent of the cases. See pages 21-22.

12. **Claimants.** Approximately 25% of the claimants are not represented by counsel. This percentage has remained stable. See page 22. In discussing the manners in which cases are resolved, the report states, for each category, the number of cases in which the claimant was not represented by counsel. See pages 23, 27-30.
13. **Positive Party Evaluation of Neutrals.** Party evaluations of the neutral arbitrators continue to be very positive. The average responses of claimant attorneys increased slightly during 2001. See pages 9-11.
14. **Positive Neutral Evaluation of OIA Procedures.** Neutral arbitrators continue to evaluate the OIA positively. Among other things, we ask whether the neutrals have experience in a similar Superior Court case, and if so, whether they would rank this particular OIA experience as better, worse or about the same. In 2001, of the 302 neutral arbitrator responses, 131 (43%) said the OIA experience was better, 165 (55%) said it was the same, and only 6 (2%) said it was worse. See pages 38-40.
15. **New Ethics Code for Neutral Arbitrators.** During this reporting period, the California Legislature passed a statute mandating the Judicial Council to draft a code of ethics for neutral arbitrators, effective July 1, 2002. At the time of this writing, the standards have not been finalized. They may create certain obligations for neutral arbitrators, for example, to obtain permission of the parties in current cases before accepting an additional case, or rights for the parties, for example, the right of continuing automatic disqualification. This would affect the OIA system, require amendments to our *Rules*, and may increase the time needed to select a neutral arbitrator and/or to arbitrate a case. See page 42.
16. **Most Blue Ribbon Panel Recommendations Achieved.** After the *Engalla* decision, Kaiser convened a Blue Ribbon Panel to study its arbitration system and recommend improvements. The Blue Ribbon Panel Report, which brought the OIA system into being, made 36 recommendations for change in the old Kaiser arbitration system. In Exhibit B of this report, we have set forth in full all 36 of those recommendations along with the status of each. We conclude that 27 have been completed and another 4 are essentially on-going in nature. Two have not been done. About three, we have no knowledge since we are not involved in their implementation. See pages 47-59.
17. **Arbitration Oversight Board.** The Arbitration Oversight Board (“AOB”) is composed of stakeholders in the Kaiser Permanente System and members representing the public. The AOB was formed in 2001 to replace the former Arbitration Advisory Committee and is designed to oversee this office and the Kaiser arbitration system. The AOB met three times in 2001 and has reviewed the draft of this report. See pages 41-42.

Complete copies of this report are available to Kaiser members, the public and the media. They can be obtained from the Kaiser Permanente Member Service Customer Center, (800) 464-4000, or from the OIA at (213) 637-9847. The report can also be read or downloaded from the OIA website, [www.slhartmann.com/oia](http://www.slhartmann.com/oia).

**THIRD 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, 2001 - December 31, 2001**

## TABLE OF CONTENTS

	<u>Page Number</u>
A Note About Numbers .....	v
I. Introduction.....	1
A. Background Information.....	1
B. Goals of the OIA System .....	2
II. Creation and Development of the System .....	2
A. Rules for Kaiser Member Arbitrations Overseen by the OIA .....	2
B. Maintenance and Expansion of the Panel of Neutral Arbitrators .....	3
1. Qualifications .....	5
2. Application.....	5
3. Annual Update to Application .....	6
4. The Panel of December 31, 2001 .....	6
5. Materials Available to Help Parties Make Their Selection of a Neutral .....	8
6. How Many of the Panel of Arbitrators Have Served? .....	9
7. The Parties and Their Counsel Evaluate the Neutral Arbitrators .....	9
III. Demands for Arbitration Submitted by Kaiser to the OIA .....	11
A. Length of Time Kaiser Takes to Submit Demands to the OIA.....	12
B. Mandatory Cases.....	12
C. Opt In Cases.....	13
1. Pre-OIA Cases.....	13
2. Post-OIA Cases .....	13
3. Opt in Process .....	13
IV. Description of Cases Administered by the OIA .....	14
A. Average Length of Time for a Neutral Arbitrator to be Selected .....	14

1.	The Majority of Cases.....	17
2.	Cases With 90 Day Postponements .....	17
3.	Cases in Which the Parties Disqualified the Neutral Arbitrators .....	18
4.	Cases With Postponements and Disqualifications .....	19
5.	Average Time to Selection of Neutral Arbitrator for All Cases Administered by the OIA.....	19
B.	Types of Cases .....	21
C.	Claimants With and Without Attorneys (“ <i>Pro Pers</i> ”).....	23
D.	Number of Cases Involving Fee Waiver Applications .....	24
E.	Number of Cases Where Parties Use the OIA List of Arbitrators or Choose to Jointly Select a Neutral Arbitrator .....	24
F.	Administration of Cases.....	24
1.	Neutral Arbitrator’s Disclosure Statement .....	25
2.	Arbitration Management Conference.....	25
3.	Mandatory Settlement Meeting.....	25
4.	Hearing.....	25
G.	Status of Open Cases Currently Administered by the OIA .....	26
H.	Number of Cases Resolved and Types of Resolutions .....	27
1.	Settlements – 44% of Closures .....	28
2.	Withdrawn Cases – 20% of Closures.....	28
3.	Dismissed and Abandoned Cases –7% of Closures.....	29
4.	Summary Judgment – 13% of Closures .....	29
5.	Cases Decided After Hearing – 16% of Closures .....	30
6.	Average Time to Closure of All OIA Cases .....	31
I.	Amounts of Awards .....	32
J.	Number of Cases Using Special Procedures.....	32

1.	Expedited Procedures .....	33
2.	Complex Procedures .....	34
3.	Extraordinary Procedures.....	34
4.	Rule 28 Postponements.....	34
K.	Number of Cases in Which Claimants Have Elected to Have Kaiser Pay the Fees and Expenses of the Neutral Arbitrator and to Proceed with a Single Arbitrator..	36
L.	Number of Cases in Which Kaiser Has Agreed to Waive Its Party Arbitrator.....	38
M.	Neutral Arbitrator Evaluations of the OIA System.....	38
V.	The Role of the Arbitration Oversight Board (AOB) .....	41
VI.	Significant Event During 2002: State Mandated Ethics Code for Neutral Arbitrators.....	42
VII.	Conclusion .....	43

### **EXHIBITS**

Exhibit A	Firm Profile and Description of OIA Staff .....	44
Exhibit B	Blue Ribbon Panel Report Recommendations and Report on Achievement .....	48
Exhibit C	Rules for Kaiser Permanente Member Arbitrations Overseen by the Office of the Independent Administrator .....	60
Exhibit D	Application for Neutral Arbitrators.....	84
Exhibit E	Qualifications for Neutral Arbitrators.....	95
Exhibit F	Statement of Annual Update Form.....	97
Exhibit G	Lists of Neutral Arbitrators on the OIA Panel.....	100
Exhibit H	Information for Claimants Who Do Not Have Attorneys.....	109
Exhibit I	Instructions and Application for Fee Waiver .....	112
Exhibit J	List of All Awards to Claimants .....	120
Exhibit K	Arbitration Oversight Board (AOB) Draft Bylaws.....	124
Exhibit L	Party & Attorney Evaluations of Neutral Arbitrators .....	132



Exhibit M	Neutral Arbitrator Evaluation of OIA Procedures and Rules .....	145
Exhibit N	Kaiser Arbitration Oversight Board Report Review .....	168

### **GRAPHS**

1.	Number of Neutral Arbitrator Applications Sent and Received by the OIA.....	4
2.	How Neutral Arbitrators Have Been Chosen.....	8
3.	Pro Pers and Attorney Satisfaction With Neutral Arbitrators.....	11
4.	Time to Selection of a Neutral Arbitrator -- Comparison of First 21 Months and 2001 Selections .....	15
5.	Time to Selection of a Neutral Arbitrator -- Total Cases.....	17
6.	Average Days to Selection of Neutral Arbitrator – Comparison of OIA and Old Kaiser Systems .....	20
7.	Types of Cases – Total and 2001 Cases.....	22
8.	Claimants With and Without Attorneys.....	23
9.	Status of Open Cases at OIA .....	26
10.	Manner in Which Cases have been Closed.....	28
11.	Average Days to Hearing -- Comparison of OIA and Old Kaiser Systems .....	31
12.	Time to Closure of Case by Manner of Disposition.....	32
13.	Neutral Arbitrators Compare Cases at OIA and in Superior Court .....	40

## **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:

For most items reported we 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.

The report has rounded percentages and averages. Therefore, the percentages may not always total exactly 100%.

We provide both numbers for the entire time covered by the report (March 29, 1999 to December 31, 2001) – sometimes called the total period—and for just the year 2001.

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

This third annual report, issued by the Office of the Independent Administrator (“OIA”),<sup>1</sup> describes an arbitration system that handles claims brought by Kaiser members against Kaiser Foundation Health Plan, Inc. (“Kaiser”) or its affiliated entities. The Law Offices of Sharon Lybeck Hartmann has acted as the OIA since October 1998, when Kaiser and the Arbitration Advisory Committee selected it to act as the independent administrator of Kaiser’s mandatory member arbitration system in California.<sup>2</sup> Under that contract, in 2001 the OIA has maintained its pool of neutral arbitrators qualified to hear Kaiser cases and independently administered arbitration cases brought by Kaiser members. The contract also requires that the OIA write an annual report describing the arbitration system it administers. The report must describe the goals of the system, the actions being taken to achieve the system’s goals, and the degree to which those goals are being met.<sup>3</sup> Our third annual report covers our activity through December 31, 2001.<sup>4</sup>

### A. Background Information

In 1997, the California Supreme Court criticized Kaiser’s arbitration system in *Engalla v. Permanente Medical Group*.<sup>5</sup> In this opinion, the Court said that the system should not be self-administered and that there was too much delay in the handling of members’ claims. In response, Kaiser convened a Blue Ribbon Advisory Panel to evaluate its arbitration process and recommend improvements. The Blue Ribbon Panel

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<sup>1</sup> The OIA is located within the Law Offices of Sharon Lybeck Hartmann, 213.637.9847 (telephone), 213.637.8658 (facsimile), [ويا@slhartmann.com](mailto:ويا@slhartmann.com) (e-mail). The OIA has a website where this report, our first and second reports, *the Rules for Kaiser Permanente Member Arbitrations Overseen by the Office of the Independent Administrator*, and much other information can be downloaded. It is located at [www.slhartmann.com/oia](http://www.slhartmann.com/oia). A firm profile and a description of the OIA’s staff are attached as Exhibit A.

<sup>2</sup> Kaiser Foundation Health Plan, Inc. is a California nonprofit health benefit corporation and a federally qualified HMO. Since 1971, it has required that its members use binding arbitration to resolve disputes. Kaiser arranges for medical benefits by contracting exclusively with The Permanente Medical Group, Inc. (Northern California) and the Southern California Permanente Medical Group. Hospital services are provided by contract with Kaiser Foundation Hospitals, another California nonprofit public benefit corporation.

<sup>3</sup> *Agreement Between Kaiser Foundation Health Plan, Inc. and the Law Offices of Sharon Lybeck Hartmann Creating the Office of the Independent Administrator of the Kaiser Foundation Health Plan, Inc. Mandatory Arbitration System for Disputes with Health Plan Members*, Section D(15)(i) at 10. Copies of the entire contract and its amendments may be obtained from the OIA.

<sup>4</sup> The first annual report covered the period from March 29, 1999 through March 28, 2000. The second report covered the remainder of calendar year 2000, March 29, 2000 through December 31, 2000. This annual report covers calendar year 2001, January 1 through December 31, 2001.

<sup>5</sup> See *Engalla v. Permanente Medical Group, Inc.*, 15 Cal.4<sup>th</sup> 951, 64 Cal. Rptr.2d 843, 938 P.2d 903 (1997).

issued a report in January 1998.<sup>6</sup> In response to this report, Kaiser created the Arbitration Advisory Committee (“AAC”) to help enact the recommendations the Blue Ribbon Panel made. Kaiser and the AAC issued an RFP, interviewed candidates, and selected the Law Offices of Sharon Lybeck Hartmann to create and operate its system.

On April 13, 2001, Kaiser announced the appointment of the Arbitration Oversight Board (“AOB”), made up of representatives of stakeholder interests and public members, which replaced the AAC.<sup>7</sup> The AOB provides ongoing oversight of the independently administered system. As part of this task, the AOB reviewed a draft of the third OIA annual report before its general release.

## **B. Goals of the OIA System**

Consistent with the critique of the California Supreme Court and the recommendations of the Blue Ribbon Advisory Panel, the OIA attempts to offer a fair, timely, low cost arbitration process that respects the privacy of all who participate in it. These goals are set out in Rules 1 and 3 of the *Rules for Kaiser Member Arbitrations Overseen by the Office of the Independent Administrator (“Rules”)*.<sup>8</sup> As documented in the balance of this report, we believe that the goals are currently being realized.

## **II. Creation and Development of the System**

### **A. Rules for Kaiser Member Arbitrations Overseen by the OIA**

The first annual report discussed the creation and development of the *Rules*. They consist of 53 rules in a 15 page booklet, and are available in English, Spanish, and Chinese. They are attached as Exhibit C. Some important features contained in the *Rules* include:

Deadlines requiring that most cases be resolved within 18 months from the date that the OIA receives a claimant’s demand for arbitration and filing fee;<sup>9</sup>

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<sup>6</sup> The Panel’s report is entitled *The Kaiser Permanente Arbitration System: A Review and Recommendations for Improvement* (“Blue Ribbon Panel Report”). It is a 45-page document containing a description of Kaiser’s arbitration system through 1997, including historical background, and the Panel’s 36 recommendations for improvement. Each of the Panel’s recommendations and a brief discussion of their status is set forth in Exhibit B to this Report. The Blue Ribbon Panel Report itself is available from Barbara Nelson, Kaiser Foundation Health Plan, Legal Department, 1950 Franklin Street, 17<sup>th</sup> Floor, Oakland, California 94612.

<sup>7</sup> The formation and role of the AOB is further discussed in section V, page 41.

<sup>8</sup> The *Rules* are attached as Exhibit C.

<sup>9</sup> Exhibit C, Rule 24.

Deadlines requiring that most cases must have neutral arbitrators in place no later than 33 days after the OIA receives a claimant's demand for arbitration and filing fee;<sup>10</sup>

Procedures under which claimants may choose to have Kaiser pay the fees and expenses of the neutral arbitrator;<sup>11</sup>

Timing options for cases that require more or less time than 18 months for resolution.<sup>12</sup>

The *Rules* have not changed since they were first adopted in March 1999. During 2001, the OIA consulted with Kaiser and the AOB about amendments to the *Rules*. We expect these changes to be completed shortly.<sup>13</sup> Additionally, proposed ethics standards for neutral arbitrators currently being formulated by the Judicial Council will also require that the *Rules* be modified to comply with and accommodate them.<sup>14</sup> The new ethics standards will take effect on July 1, 2002, and the new *Rules* will be issued before then. They will be posted on the OIA website as soon as they are available.

## **B. Maintenance and Expansion of the Panel of Neutral Arbitrators**

The first annual report discussed the creation and development of our panel of neutral arbitrators. As of December 31, 2001, we had 306 neutral arbitrators in service. Most of these neutral arbitrators joined our panel during the first and second years of the OIA. However, in 2001, we received 76 requests for applications, 24 of which were completed and returned (32% of those requested).<sup>15</sup> Individuals who requested

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<sup>10</sup> Weekends and holidays sometimes increase the number of days. Rule 43 explains how days are counted in the system. The 33 day deadline does not apply to cases where claimants obtain a 90 day postponement to select a neutral arbitrator or to cases where a party disqualifies the neutral arbitrator under statutory provisions. *See* Exhibit C, Rules 20 and 21.

<sup>11</sup> Rules 14 and 15 explain how claimants may shift the responsibility to pay all of a neutral arbitrator's fees and expenses to Kaiser. *See also* Exhibit B at Recommendation 27.

<sup>12</sup> *See* Rules 24 and 33; *see also* Exhibit B at Recommendation 7.

<sup>13</sup> None of the changes will alter the features highlighted above.

<sup>14</sup> *See* section VI, page 41.

<sup>15</sup> About 23% of the applications requested were completed and returned to the OIA in its first and second years. The arbitrator application is long. Some potential neutrals do not want to take the time to complete the application, and some do not want to give references drawn from past arbitrations or trials in which they have participated. A copy of the application is attached as Exhibit D.

applications last year or had previously submitted incomplete applications, also returned applications in 2001. Forty-two (42) neutral arbitrators were added to our panel in 2001.<sup>16</sup>

<b>Total Number of Application Requests Received:</b>	<b>2182</b>
<b>Total Number of Completed Applications Received:</b>	<b>514</b>
<b>Total Number of Arbitrators in the OIA Panel:</b>	<b>306*</b>
<b>Southern California Total:</b>	<b>169</b>
<b>Northern California Total:</b>	<b>117</b>
<b>San Diego Total:</b>	<b>40</b>
<b>*The three regions total 326 because 20 neutral arbitrators are on two panels.</b>	

The number of neutral arbitrators on our panel has decreased by 43 since December 31, 2000. There are three reasons for this decrease. First, 34 neutral arbitrators were removed from our panel because they failed to provide updated information to their applications.<sup>17</sup> Second, 29 neutral arbitrators died, resigned, or retired, and one was terminated from our panel.<sup>18</sup> Third, since the second annual report, we have modified how we report the total number of neutral arbitrators on our panel. We previously added the number of neutral arbitrators serving in each of our geographic regions, Southern California, Northern California, and San Diego. Some neutral arbitrators serve in two regions, and were thus counted twice in this total. We no longer do this. Twenty (20) of the 306 neutral arbitrators on our panel serve on two panels.

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<sup>16</sup> Overall, about 77% of all arbitrators applying to the OIA have been admitted to the panel (395 of 514). When it receives a completed application, the OIA applies the criteria, which were jointly decided upon at the outset, and makes the decision on admission. Anyone not admitted has failed to meet one or more of the published qualifications. The letter of rejection cites the specific qualification(s).

<sup>17</sup> See section II.B.3, page 6, *infra*.

<sup>18</sup> The neutral arbitrator was terminated because he notified our office that he was representing a claimant in a matter in our system. Neutral arbitrators on the OIA panel may not serve as attorney of record for or against Kaiser for a period of five years prior to serving as a neutral arbitrator or while serving on the OIA panel. This includes service as a party arbitrator. See Exhibit E, paragraph 6.

## 1. Qualifications

Except for one addition,<sup>19</sup> the qualifications for neutral arbitrators have remained the same since the inception of the system. The list of qualifications is attached as Exhibit E, and is also available from the OIA website, [www.slhartmann.com/oia](http://www.slhartmann.com/oia).

In keeping with the Blue Ribbon Panel's recommendations in this area, the qualifications are broad and were designed to recruit a large, diverse, unbiased panel. The qualifications include the following: neutral arbitrators cannot have served as attorneys of record or as party arbitrators for or against Kaiser within the last five years; arbitrators must have been admitted to the practice of law for at least ten years, with substantial litigation experience; and arbitrators must provide satisfactory evidence of their abilities to act as arbitrators based upon judicial, trial, or other legal experience or training. In order to make the panel as broad as possible, and also to approximate the experience of the parties in a courtroom setting, the qualifications do not contain a requirement that the potential arbitrator have medical malpractice experience.

## 2. Application

The application to join the OIA pool of neutral arbitrators is attached as Exhibit D. It is a lengthy document. Prospective arbitrators must provide a wide range of information, including their educational background, employment history, a summary of their legal experience, and information about their arbitration experience. They must provide detailed information about prior involvement in Kaiser cases. They are required to provide references from the last five matters where they acted as an arbitrator, attorney, or other role. They also list any languages they speak or in which they would be willing to hold an arbitration. When the OIA provides the parties in a case with a list of 12 possible arbitrators, for the purpose of striking and ranking their selections, the parties receive a complete copy of each arbitrator's application.

The application also includes a document called "Schedule of Fees and Costs." In this section, neutral arbitrators set out information related to their charges for services. The OIA also sends this to the parties. Neutral arbitrators in the OIA pool may not change the fees listed on their Schedule of Fees and Costs during an operating year or

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<sup>19</sup> The second qualification originally read:

Neutral arbitrators shall not have received public discipline or censure from the state bar of California or any other state bar in the past five years.

A second sentence has been added, which explicitly applies this restriction to former judges:

In the case of former judges, they shall not have received public discipline or censure from any government body that has authority to discipline judges in the past five years.

during the pendency of a specific case. Neutral arbitrators on the OIA panel are otherwise free to set their rates as they see fit. The range in rates is quite wide.<sup>20</sup>

### **3. Annual Update to Application**

Once a year, we send a letter to all panelists asking them to update their application information and offering an opportunity to change their Schedule of Fees and Costs. This updated information is included in the material sent to parties.<sup>21</sup> In 2001, since many members of the pool had been there since its inception, and the reference information could be more than two years old, the updating of information was mandatory.

In May 2001, we sent a letter to the 334 panelists, requiring them to complete a Statement of Annual Update Form<sup>22</sup> and permitting them to complete a new Schedule of Fees and Costs. A month later, the OIA sent a second letter to those panelists who had failed to send in a Statement of Annual Update Form and informed them that if they failed to respond by July 20, 2001, they would be removed from the panel. Prior to this deadline, we called and e-mailed panelists who did not respond to these two mailings.

Two-hundred eighty-four (284) panelists (85%) provided the requested information. Thirty-four (34) neutral arbitrators (10%) chose not to update their information and thus were removed from our panel. None of the panelists who were removed had open cases in our system, and only four had ever been selected to serve as a neutral arbitrator on a matter in our system. Sixteen (16) neutral arbitrators (5%) resigned prior to the deadline to return the Update Form.<sup>23</sup>

### **4. The Panel of December 31, 2001**

For the convenience of the parties and for ease of administration, the panel of neutral arbitrators maintained by the OIA is split into three parts, Northern California,

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<sup>20</sup> Under Rules 14 and 15, claimants may elect to have Kaiser pay all of the neutral arbitrator's fees and expenses. Section IV.K, page 36-37, *infra*, of this report discusses how many claimants have elected to follow the procedures set out in Rules 14 and 15.

<sup>21</sup> If neutral arbitrators choose to change their fees, the updated schedule of fees and expenses replaces the original. If such neutral arbitrators have already been selected for cases, their original schedule still applies throughout those cases.

<sup>22</sup> The Statement of Annual Update Form asked for updated information to two sections of the application, Sections XIII, Previous Involvement in Kaiser Cases, and XVIII, References, as well as any other information needed to update the application. A copy of the Statement of Annual Update Form is included as Exhibit F.

<sup>23</sup> Six of these neutral arbitrators had never had a case in the OIA system, six had one case each, and two had two cases each. One of the neutral arbitrators with two cases resigned because he accepted a position with a law firm that represents Kaiser in arbitrations in our system. One neutral arbitrator who resigned had seven cases, and one had nine cases. These two neutrals resigned for reasons unrelated to the updating requirement.



Southern California, and San Diego.<sup>24</sup> As of December 31, 2001, there were 306 neutral arbitrators on the OIA panel, which includes 117 in Northern California, 169 in Southern California and 40 in San Diego.<sup>25</sup> Thirty-three percent (33%), or 102 members, of the total panel are retired judges. There are 46 retired judges on the Northern California part of the panel, or 39%; 47 retired judges on the Southern California part of the panel, or 29%; and 9 retired judges in the San Diego panel, or 32%.<sup>26</sup> The percentages of retired judges available within each segment of the panel increased slightly during this reporting period.<sup>27</sup>

Under the *Rules*, the parties can either jointly agree on any person who agrees to follow the *Rules* to act as the neutral arbitrator or they can each strike and rank the 12 names provided by the OIA.<sup>28</sup> Since the OIA first began operation, a neutral has been selected in 1,851 cases. In 588 of these cases, or about 32%, the parties have jointly selected the neutral arbitrator, while in 1,260, or 68%, the parties have used the list supplied by the OIA. The state court appointed the neutral arbitrators for three cases.

In 2001, a neutral was selected in 809 cases. The percent of cases where the neutral arbitrator was jointly selected was about the same as the percent of joint selections since the OIA began operation. In 2001, the parties jointly selected the neutral arbitrator in 242 cases, or 30% of the selections, while in the remaining 565, or 70%, the neutral arbitrator was the result of the strike and rank process. The neutral arbitrator for two cases were court ordered.

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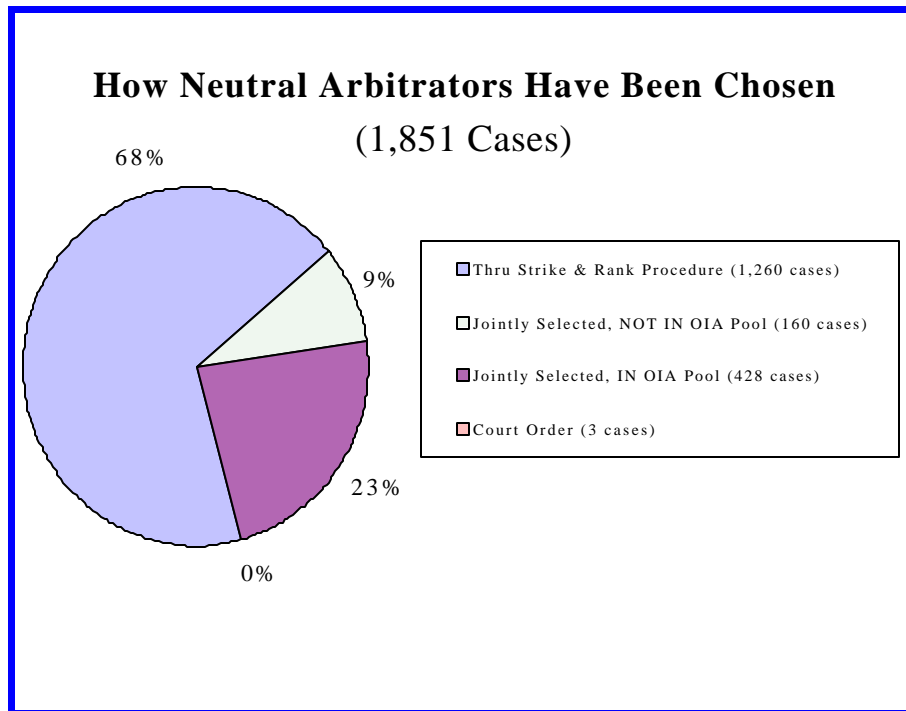
<sup>24</sup> The San Diego panel was created in May 2000, following requests from counsel for claimants in that area. It followed the boundaries of the United States District Court for the Southern District of California, which includes San Diego and Imperial Counties. In July 2001, 5 of the 33 members of the San Diego panel were removed for failing to provide updated information to their application according to the process described in the prior section. In order to increase the number of neutral arbitrators available to serve on San Diego cases, we asked nine members of our Southern California panel, who are based in cities close to San Diego and Imperial Counties, to serve on San Diego as well as Southern California matters. All nine agreed to do so. Therefore, our San Diego panel now also includes neutral arbitrators from Orange and Riverside counties.

<sup>25</sup> The total number of neutral arbitrators in the three panels equals 326, because, as noted in section II.B, page 4, 20 of the 306 neutral arbitrators serve on more than one panel.

<sup>26</sup> A list showing the complete panel of OIA arbitrators as of December 31, 2001 is attached as Exhibit G. The list of the current pool is available from the OIA's website at [www.slhartmann.com/oia](http://www.slhartmann.com/oia). The lists posted on the website are updated regularly as arbitrators are added to or leave the panel.

<sup>27</sup> As of December 31, 2000, the Northern California part of the panel included 35% retired judges, the Southern California panel included 25% retired judges, and the San Diego panel included 29% retired judges. Second annual report at 6.

<sup>28</sup> See Exhibit C, Rules 16-18; see also Exhibit B at Recommendations 14 and 15.



Of the 588 arbitrators jointly selected by the parties since the OIA began operating, 428 of them, or 73%, belong to the OIA's pool, although they may not have appeared on the specific list generated for a particular case. The remaining 160 jointly selected arbitrators, or 27%, are not part of the OIA's pool.<sup>29</sup> In 2001, 69% (166) of those jointly selected were in the pool and 31% (76) were not in the pool.

## 5. Materials Available to Help Parties Make Their Selection of a Neutral

As noted above, copies of the potential neutral arbitrators' applications are sent to both parties whenever their names appears on a randomly computer generated list of possible arbitrators. In addition, if potential neutral arbitrators have previously decided cases in the OIA system, copies of each written decision, without the names of parties involved, are also sent to the parties. Finally, after a case is closed, the OIA asks both of the parties to evaluate anonymously their experience with the neutral. We also include copies of the completed evaluations in the packets sent to the parties.<sup>30</sup>

<sup>29</sup> We have invited neutral arbitrators who are jointly selected and not part of our pool to complete an application to serve on our pool. Some of these neutral arbitrators have completed an application, met the qualifications, and joined our panel.

<sup>30</sup> In addition to the information the OIA provides, the California arbitration disclosure statute, Code of Civil Procedure §1281.9, requires that a neutral complete and mail disclosures to both parties within ten days of being selected.

## **6. How Many of the Panel of Arbitrators Have Served?**

One of the concerns expressed about arbitrations is the possibility of a “captive,” and therefore defense oriented, pool of arbitrators. A large pool of people available to serve, and serving, as neutral arbitrators is an important tool to avoid this problem. Seventy-nine percent (79%) of all neutral arbitrators on the OIA’s panel on December 31, 2001, (241 out of 306), had served or were serving as neutral arbitrators on arbitrations overseen by the OIA. In 2001 alone, 62% of the neutral arbitrators in the pool have been appointed as neutral arbitrators on cases overseen by the OIA (191 out of 306).

The number of individual assignments to cases on the OIA’s panel ranges from 0 to 76. Parties have jointly selected the arbitrator who is at the high end of this range 59 times. The average number of appointments per neutral is five. The median is two and the mode is zero. The parties’ actions – in how they rank their choices, who they jointly select, and whether they disqualify a proposed neutral arbitrator – ultimately control how many times each panelist serves as a neutral arbitrator.

All of our panelists have been named at least once on a list of possible arbitrators sent to the parties by the OIA. The range for Northern California arbitrators appearing on a list is from 8 to 107 times. The average number of appearances is 66; the median number of appearances is 69, and the mode is 39.<sup>31</sup> In Southern California, the range is from 1 to 72 times. The average number of appearances is 36; the median is 42; and the mode is 44. In San Diego, the range of appearances is from 1 to 34 times. The average, median and mode are 11, 12, and 12 appearances, respectively.

## **7. The Parties and Their Counsel Evaluate the Neutral Arbitrators**

Under Rule 49, at the close of an arbitration in which a neutral arbitrator has been appointed and held an Arbitration Management Conference, the OIA sends an evaluation form to each counsel, or to the claimant if unrepresented by counsel. The form asks them to evaluate their experience with the neutral appointed in the matter in eleven 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.<sup>32</sup> Most important, they are asked whether they would recommend this neutral to another person with a similar case. All 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.

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<sup>31</sup> The range is affected by how long a given arbitrator has been in the panel. Some have been panelists since the pools inception, while others have only recently joined. For example, the three neutral arbitrators who have appeared on 107 lists of possible arbitrators have served on the panel since its inception. The number of times an arbitrator is selected is also affected by whether the neutral is willing to hear cases where claimants have no attorneys (*pro per* cases). Many are not.

<sup>32</sup> A copy of the Evaluation Form is attached to this report as Exhibit L along with analyses of the responses to each question.

On December 31, 2001, the OIA had received responses from about 46% of the parties who had been sent evaluations (1,074 forms returned of 2,354 mailed). Three-hundred sixty-seven (367) of those responding identified themselves as claimants (63) or claimants' counsel (304), and 668 were respondent's counsel. Considering only those evaluations sent out in 2001, 51%, or 635 out of 1,244 responded. Of the 635 received, 223 identified themselves as claimants (37) or claimants' counsel (186), 390 were respondent's counsel, and 22 did not identify any category.

The responses have been very positive overall. The agreement numbers are high, and they are encouragingly similar for both claimants and respondents.

Here are responses to some of the inquiries:

Respond from 5 (Agree) to 1 (Disagree).

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

The average of all 947 responses was 4.8 out of a maximum of 5 with the median and mode both at 5. Claimants' counsel averaged 4.7. Pro pers averaged 4.0.<sup>33</sup> Respondent's counsel averaged 4.9. The median and mode for all three subgroups was 5.<sup>34</sup>

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

The average of all responses was 4.6 with the median and mode both at 5. Claimants' counsel averaged 4.5. Pro pers averaged 3.9. Respondent's counsel averaged 4.7. The median and mode for all three subgroups was once again 5.

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

The average of all responses was 4.5 with the median and mode both at 5. Claimants' counsel averaged 4.4 with the median and mode both 5. Pro pers averaged 3.6 with the median 4 and the mode 5. Respondent's counsel averaged 4.6 with the median and mode both 5.

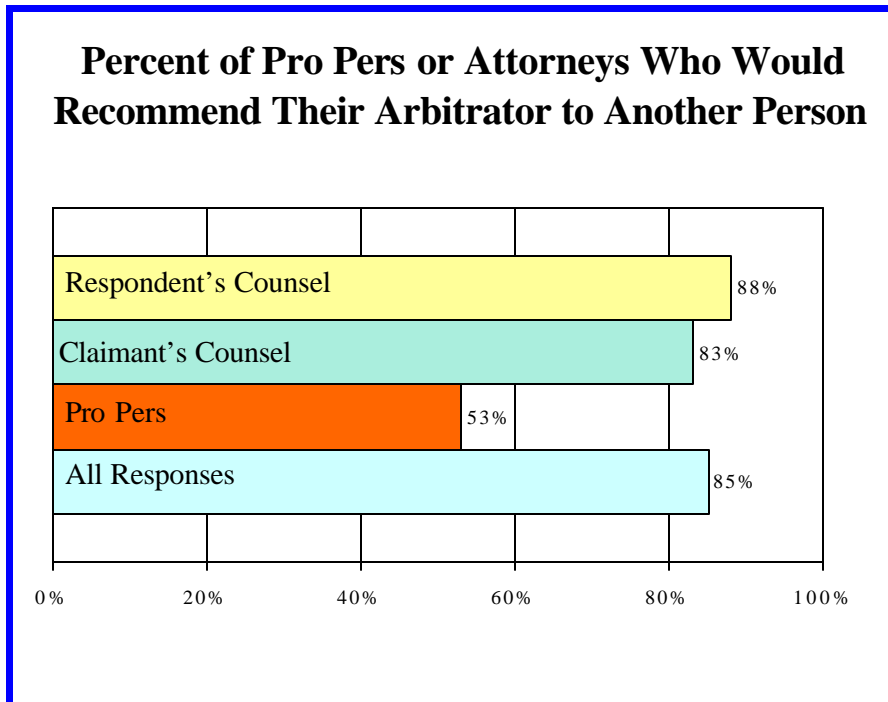
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<sup>33</sup> The responses from *pro per* claimants consistently show a lower level of agreement than the responses from claimants' counsel and respondents' counsel. This is consistent with the results reported in the second annual report. We believe it arises from a lesser understanding of the process. In June 2001, the OIA began distributing an information sheet to *pro per* claimants, which we hope will help them understand the arbitration process better. However, many, if not most, of the claimants who have returned evaluations thus far did not receive a copy of this document, since it is usually mailed when a claim first enters the system, and most of the claimants who have returned evaluations entered the system prior to June 2001. We will continue to monitor *pro per* claimants' evaluation of the system.

<sup>34</sup> When the median and mode are both 5, it means that a large number of people responding gave that number as their answer. Five was our highest score, and it was the median and mode on nearly all of the 11 questions the evaluation contained. This was also true across subgroups. It is another measure of satisfaction with neutral arbitrators.

Item 11: “I would recommend this arbitrator to another person or another lawyer with a case like mine.”

The overall average on all 910 responses to this questions was 4.4. Both the median and the mode were 5. Claimant attorneys gave an average response of 4.3. Pro pers gave an average of 3.1, with the median 4.0 and the mode 5. Respondent’s counsel had an average of 4.5, with the median and mode both 5. Claimant attorneys’ average response rose slightly in 2001.



### III. Demands for Arbitration Submitted by Kaiser to the OIA

The OIA began operations on March 29, 1999. Since then, Kaiser has submitted three types of demands for arbitration to us for administration. Until 2001, almost all of the demands Kaiser sent to the OIA were cases where claimants could choose whether they wanted to be part of our system. In 2000, Kaiser changed the arbitration clause in all of its contracts with members to make the use of our office mandatory. The class of cases in which the claimant can choose whether to use our office (“opt in”) can be further divided between “pre-OIA” and “post-OIA” cases. “Pre-OIA” cases are cases where Kaiser first received a demand for arbitration before the OIA started administering Kaiser cases, i.e., prior to March 29, 1999. “Post-OIA” cases are cases where Kaiser first received a demand for arbitration on or **after** March 29, 1999.

In total, Kaiser has submitted 2,968 demands for arbitration. It submitted 1,030 demands in 2001. These cases were about evenly divided throughout the state.

Considering the entire period, 1,453 were from Northern California; 1,364 were from Southern California; and 151 were from San Diego. During 2001, 474 were from Northern California; 465 were from Southern California; and 91 were from San Diego.

The following sections describe how long it has taken Kaiser to submit demands to the OIA after they received them from claimants (section III.A), the number of cases that are mandatory (section III.B), and opt-in cases, both pre-OIA and post-OIA cases (section III.C).

#### **A. 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 receiving it.<sup>35</sup> The average length of time that Kaiser has taken to submit mandatory and post-OIA Demands for Arbitration to the OIA is eight days.<sup>36</sup> The mode is zero. The mode at zero means that most commonly Kaiser sends the OIA a claimant's demand for arbitration on the same day that it is received at Kaiser. The median is 4 days, and the range is from 0 to 330 days.<sup>37</sup> Considering only the demands submitted in 2001, the average is 8, the mode is 1, the median is 4, and the range is between 0 and 234 days.

#### **B. Mandatory Cases**

As we reported in our last report, in 2000 Kaiser amended all its contracts in California, which cover about six million Californians, to require that the OIA act as the arbitration system administrator. This was accomplished December 30, 2000. All Kaiser disputes with its members arising after that date are subject to OIA administration. As of December 31, 2000, 101 claims in the OIA system were mandatory.<sup>38</sup> As of December 31, 2001, however, 825 claims in the OIA system were mandatory. This represents an increase of 724 claims (717%) from one year earlier. Of the cases Kaiser submitted to the OIA this year, 724 were mandatory and 306 were opt in.

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<sup>35</sup> See Exhibit C, Rule 11.

<sup>36</sup> The length of time Kaiser takes to submit pre-OIA cases is discussed in section III.C.1, page 13, *infra*.

<sup>37</sup> Kaiser sent the case which took 330 days to the OIA in July 2000. It was initially filed in the superior court; Kaiser had to file a petition to compel arbitration in order to bring it to the OIA. The court order was not forwarded to the OIA for sometime after it was entered.

<sup>38</sup> The second annual report stated that the OIA had received 100 mandatory claims. (Second annual report at 13.) An additional case received in 2000 initially identified as an opt in claim was actually mandatory.

## **C. Opt In Cases**

### **1. Pre-OIA Cases**

Between March 29, 1999 and December 31, 2001, Kaiser submitted 229 cases to the OIA in which the demand for arbitration was made before March 29, 1999. Almost all of the pre-OIA cases were sent to the OIA in its first year of operation and were received by Kaiser before the OIA began operations (213 out of 229). Kaiser submitted only seven pre-OIA cases in 2001. All were cases where the claimants belatedly decided that they wanted the case to be administered by the OIA.

Almost by definition, the average length of time these cases were with Kaiser before being forwarded to the OIA continues to increase. The second annual report stated that the average was 453 days, with a mode of 13, median of 344, and a range from 3 to 2,409 days. For the 7 pre-OIA cases Kaiser submitted to the OIA this year, the average is 1,374 days. The median is 1,408 days, the range is 1,020 to 1,782 days, and there is no mode. If the entire period is considered, the average is 477 days, the mode is 13 days, the median is 360 days, and the range is 3 to 2,409 days.

At the beginning of this reporting period, 42 pre-OIA cases were open. Thirty-two (32) of these cases closed in 2001, including three of the pre-OIA cases that we received in 2001. Thus, only 10 pre-OIA cases in our system are still open.

### **2. Post-OIA Cases**

Between March 29, 1999 and December 31, 2001, Kaiser submitted 1,914 demands that they received on or after the OIA began accepting cases from members who could chose whether to use the OIA system. The OIA received 299 such demands in 2001.

### **3. Opt in Process**

The OIA has received 2,143 demands from Kaiser since March 29, 1999 involving members whose contracts did not mandate the OIA. One thousand three-hundred seventy-four (1,374) have chosen to opt in to the OIA. Only 43 claimants have affirmatively refused to join the OIA system. Kaiser settled 8 cases and 12 claimants withdrew their demands for arbitration before they faced the deadline for deciding whether to opt in. However, the OIA returned 698 claims to Kaiser for handling under the old process because the claimants or their counsel never informed the OIA that they wished to enter the OIA's system.

During this reporting period, Kaiser forwarded 306 new Demands that fell into the opt-in category. Of these Demands, 192 chose to join the new system and proceed under the OIA's *Rules*. Three claimants affirmatively refused to join the OIA system, and seven claimants withdrew their demands. The OIA returned 96 claims to Kaiser to handle because the claimants or their counsel never told the OIA that they wished to enter the OIA's system. As of December 31, 2001, there were eight cases in the process of deciding whether or not to opt in to the OIA system.

We reported in our second annual report that, as of December 31, 2000, there were 70 cases in the process of deciding whether or not to opt in to the OIA system. Of these 70 cases, 34 opted in and 36 did not opt in. Of the 34 that opted in, 24 have closed and 10 remain open.

#### **IV. Description of Cases Administered by the OIA**

This section provides a detailed description of the cases administered by the OIA.<sup>39</sup> Of particular note is section A, which describes the average length of time for neutral arbitrators to be selected in the new system.

Other information included in this section provides the number and type of cases, the number of cases with and without attorneys representing claimants, and the number of cases where claimants have sought and obtained fee waivers. This section also provides the number of cases where the parties jointly selected a neutral arbitrator, the status of cases currently pending in the OIA system, as well as the number of cases resolved thus far and the types of resolutions. It discusses awards. This section also reports the number of cases using special procedures, the number of cases in which claimants have elected to have Kaiser pay the neutral arbitrator's fees and expenses, the number of cases in which parties have waived party arbitrators, and the number of cases proceeding with party arbitrators. Finally, it reports the results of neutral arbitrator evaluation of the OIA system as it has worked in specific cases thus far.

##### **A. Average Length of Time for a Neutral Arbitrator to be Selected**

The *Rules* set a 33-day timetable by which neutral arbitrators must be selected. Weekends and holidays may extend this timetable.<sup>40</sup> The *Rules*, however, also permit the 33-day time frame for selecting a neutral arbitrator to increase for several reasons. First, the *Rules* permit claimants to obtain a 90 day postponement to select a neutral arbitrator upon request. Second, in some cases, parties chose more than one neutral arbitrator because one of the parties disqualified a neutral arbitrator after receiving his/her statutorily required disclosures.<sup>41</sup> Neutrals send these disclosures only after they are provisionally selected. When such a disqualification occurs, the entire process of selecting a neutral arbitrator begins again, as does the statutory opportunity to disqualify

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<sup>39</sup> The phrase "administered by the OIA" excludes those cases where Kaiser has submitted a demand to the OIA, but the claimant has not yet opted in, whether or not it has been returned to Kaiser. When we refer to cases the OIA has administered during 2001, it means that such cases were open for some period of 2001.

<sup>40</sup> All the measurements of time, including time to select a neutral arbitrator, begin on the date the OIA received a mandatory claim or claimant opted in and the OIA received the \$150 filing fee or granted a fee waiver application.

<sup>41</sup> See California Code of Civil Procedure §1281.9 and Rule 20.



the second neutral arbitrator.<sup>42</sup> In a small number of cases, both these types of delay have occurred; that is, a party has requested a postponement and disqualified a neutral arbitrator.

Parties have selected neutral arbitrators in 1,779 out of 2,071 cases administered by the OIA, where the neutral arbitrator selection process has begun.<sup>43</sup> The following table and chart summarize the time to selection of neutral arbitrators. The table compares neutral arbitrator selections that occurred from March 29, 1999 through December 31, 2000 to selections that occurred in 2001. The pie chart on page 17 illustrates how selections have been made over the entire period of time.

### **Average Number of Days to Selection of Neutral Arbitrator**

#### **First 21 Month Period and 2001 Compared<sup>44</sup>**

	3/29/99 through 12/31/00		1/1/2001 through 12/31/2001	
	Number of Days To Select	Number and Percent of Cases	Number of Days To Select	Number and Percent of Cases
<b>Majority of Cases (No Postponement or Disqualification)</b>	25	798 (79%)	23	507 (66%)
<b>Cases with Postponement</b>	106	157 (16%)	104	199 (26%)
<b>Cases with Disqualification</b>	73	44 (4%)	61	44 (6%)
<b>Cases with Postponement and Disqualification(s)</b>	167	7 (1%)	143	23 (3%)
<b>All Cases</b>	41	1,006 (100%)	50	773 (100%)

While this table is complicated, it shows several important facts which are discussed in greater detail in the subsections that follow. First, the length of time to

<sup>42</sup> However, the disqualification and replacement of one or more neutrals does not extend the 18 month time period in which the case must be resolved unless the parties subsequently request and the neutral arbitrator grants a longer timeframe under Rule 24 or 28.

<sup>43</sup> In these 2,071 cases, the claim is either mandatory or the claimant has opted in, and the \$150 filing fee has been paid or waived. See Rules 12 and 13. Once either event occurs, the OIA begins the neutral selection process by sending a list of possible arbitrators to the parties. In 220 of these cases, the time for appointing a neutral had not expired on December 31, 2001 or the case was closed before a neutral was selected.

As of December 31, 2001, in addition to the 2,071 where the fee has been paid or waived, the OIA was administering 128 cases where the fee had not been paid or waived. Under Rule 12, the claimant has 75 days to pay the filing fee or obtain a waiver of the fee.

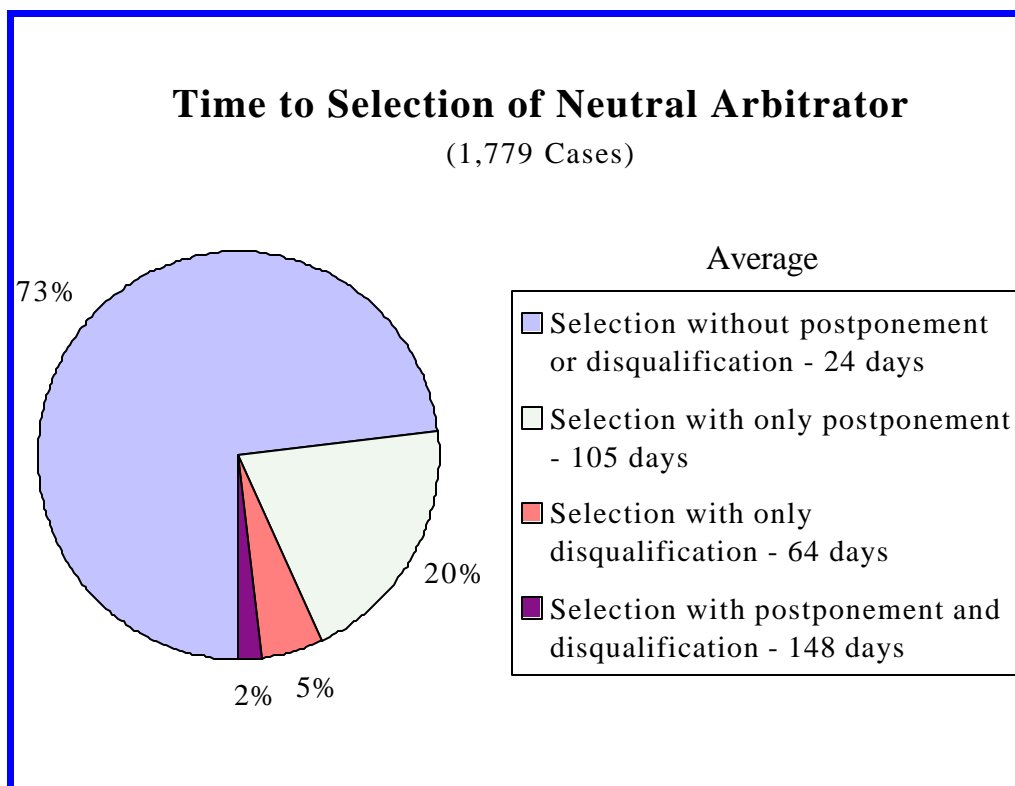
<sup>44</sup> Twenty cases which had a neutral selected in 2000, and were counted in last year's numbers, had a neutral selected again in 2001 after a disqualification or recusal by the neutral arbitrator. Thus the numbers for the first 21 month period differ slightly from those set out in last year's report.

select a neutral arbitrator – no matter what procedure is followed – decreased at least 2 days in 2001 when compared to the first 21 months. Second, the number and percentage of cases in which the parties exercised a right that lengthened the time to appointment increased in 2001. The latter fact means that even though the time to select a neutral in any one category decreased, the overall average time to select a neutral actually increased because the number of more complicated selections increased so significantly. The following sections provide additional information about each average.<sup>45</sup>

We cannot report on the reasons for the increasing use of the 90 day postponement or statutory right to disqualify a neutral arbitrator. When claimants or claimant's attorneys seek a postponement, they are not required to give a reason for the postponement and we do not track the reason when one is given. Similarly, parties are not required to give a reason when they disqualify a neutral after receipt of the neutral's disclosures. Claimants or their counsel make almost all of the requests for postponements and approximately 70% of all disqualifications. The increasing use of these mechanisms may reflect greater familiarity by the bar with our rules and systems. It could also reflect the change of the OIA system to a mandatory system, and a desire by counsel to slow down the procedure to select the neutral arbitrator.

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<sup>45</sup> There are also cases in which neutrals remove, or recuse, themselves in the course of the matter. This has happened because the neutral became sick or disabled, became a judge or government official or otherwise changed occupations, or died. The length of time to select the ultimate neutral arbitrator, in cases involving a recusal, is not included in the averages. Since the OIA began operation, neutrals have recused themselves in 72 cases. It occurred 37 times in 2001.



#### 1. The Majority of Cases

If we look at the majority of cases since the OIA began where the parties select the neutral arbitrator without seeking a postponement or disqualifying the neutral -- 73% of our cases (1,305 out of 1,779) -- neutral arbitrators were placed in an average of 24 days after the date the OIA received the demand and arbitration fee. This is one day faster than the 25 day average reported in the second annual report. The mode is 22 days, the median is 24 days, and the range is from 0 to 101 days.

In those cases where the neutral was selected in 2001, neutral arbitrators were placed in 23 days. This is two days faster, on average, than the number we reported in the second annual report. For 2001 selections, the mode is 22 days, the median is 23 days, and the range is from 0 to 94 days.

As mentioned above, the percent of cases with neither a postponement for disqualification has declined, from 77% reported in the second annual report, to 73% as of December 31, 2001, and to 66% when just 2001 is considered.

#### 2. Cases With 90 Day Postponements

Under Rule 21, claimants may obtain a postponement to select a neutral arbitrator simply by serving a request for it on the OIA and the respondent. Respondents may

obtain the postponement only if the claimant agrees in writing. To date, parties have obtained the 90 day postponement in 26% of the total number of cases administered by the OIA (538 of 2,071). Almost all of the postponements, 530, were obtained by claimants. Only eight postponements were obtained by respondents. Requests for postponements have risen in this reporting period. We received 113 in the first year (21% of the cases then administered by the OIA) and 122 in the second report period (23%), which was only 9 months. In 2001, parties have obtained postponements in 35% of the cases (303 of 879). Of these postponements, 301 were obtained by claimants and 2 by respondents. In 82 of these cases, a neutral arbitrator had not yet been selected as of December 31, 2001.

In 356 cases with postponements, that is the only delay in selecting a neutral arbitrator. When a party obtains a 90 day postponement, the time to select an arbitrator is extended to 123 days. For these 356 “postponement only” cases, the average time to selection of a neutral arbitrator is 105 days. The mode is 112 days; the median is 113 days; and the range is from 20 to 141 days. During 2001, there were 199 “postponement only” cases in which a neutral has been selected. For these cases, the average time to appointment of a neutral arbitrator is 104 days. The mode is 113 days; the median is 113 days; and the range is from 20 to 137 days.

### **3. Cases in Which the Parties Disqualified the Neutral Arbitrators**

This section discusses cases in which the parties disqualified one or more neutral arbitrators and did not request a postponement under Rule 21. In these cases, parties have chosen more than one neutral arbitrator because one of them disqualified an earlier choice under the statutory procedure. Each time a neutral arbitrator is disqualified, the entire process of selection begins again, including the requirement that the neutral serve disclosures, and the option for the parties to disqualify the neutral.<sup>46</sup>

There were 88 cases where the parties disqualified one or more proposed neutral arbitrators but did not request a postponement. As with postponements, the frequency of disqualifications is increasing. Half of the cases with disqualifications involve a disqualification in 2001. Of the 88 cases, claimants have disqualified a neutral 63 times, and respondents have disqualified a neutral 33 times.<sup>47</sup> During 2001, of the 44 cases, claimants disqualified a neutral 31 times, and respondents disqualified a neutral 14 times.

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<sup>46</sup> In some cases, more than one neutral arbitrator has been disqualified. In 120 cases, the parties disqualified 1 neutral arbitrator; in 14 cases, the parties disqualified 2 neutral arbitrators; and in 1 case, the parties disqualified 4 neutral arbitrators.

Disqualifications do not have to be based on the content of the neutral’s disclosures. In 2001, parties disqualified neutral arbitrators in 67 cases. In approximately 75% of these 2001 cases, one or both parties failed to respond to the list of possible arbitrators by the deadline. Thus, disqualifications seem to be used most often as a way to correct a mistake.

<sup>47</sup> The total number of disqualifications is greater than the number of cases because some of these cases have had more than one disqualified neutral arbitrator. See footnote 46, *supra*.

When a single neutral arbitrator is disqualified, the time to select a neutral arbitrator may take 96 days.<sup>48</sup> For the 88 cases, the average number of days to selection of the current neutral arbitrator is 64 days. The mode is 56 days; the median is 60 days; and the range is from 28 to 161 days. In 2001, the average number of days to selection of the current neutral arbitrator when there is a disqualification is 61 days. The mode is 56 days; the median is 58 days; and the range is from 28 to 161 days.

#### **4. Cases With Postponements and Disqualifications**

Since the OIA began, the parties in 30 cases have both requested postponements and disqualified one or more neutral arbitrators. During 2001, there were 23 such cases. This is a significant increase over the 7 such cases that occurred in the first 21 months, although the numbers involved are still very small.

When a single neutral arbitrator is disqualified and a party has requested a 90 day postponement, the time to select a neutral arbitrator may be extended to 186 days.<sup>49</sup> For the 30 cases, the average number of days to selection of the neutral arbitrator is 148 days. The median is 147 days. The mode is 144, and the range is from 78 to 253 days. During 2001, for the 23 cases, the average number of days to selection of the neutral arbitrator is 143 days. The median is 146 days. The mode is 144, and the range is from 78 to 172 days.

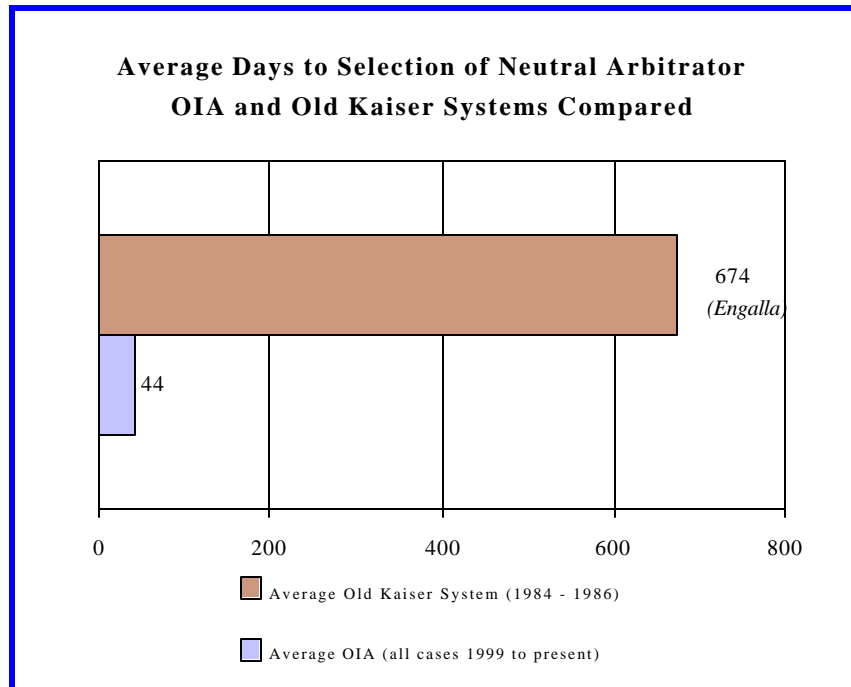
#### **5. Average Time to Selection of Neutral Arbitrator for All Cases Administered by the OIA**

The average time to the selection of the neutral arbitrator is 44 days, if we average together all cases discussed in the previous four sections. For purposes of comparison, the *Engalla* decision reported that the old Kaiser system averaged 674 days to the selection of a neutral arbitrator over a period of two years. Thus far, as the chart on page 20 shows, in the 33 months of its existence, the OIA system overall is about 15 times faster.

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<sup>48</sup> The 96 days is comprised of 33 days to select the first neutral arbitrator, 33 days to select the second neutral arbitrator, and 30 days for the statutory periods for disclosure, disqualification, and service, pursuant to the California Code of Civil Procedure. The amount of time, of course, increases if there is more than one neutral disqualified.

<sup>49</sup> The 186 days is the sum of the 90 day postponement and the 96 days which result from a disqualification. See footnote 48.



During 2001, the average time to selection of the neutral arbitrator is 50 days, if we average together all cases. This is about 13.5 times faster than the old Kaiser system.

The length of time to select a neutral arbitrator as measured in each of the four preceding sections has decreased both when the first 21 months is compared to the entire time and when 2001 is compared to either of these periods.<sup>50</sup> However, the average time to select a neutral in all cases has increased from 41 days in the second annual report to 44 days in this report and 50 days when 2001 alone is considered. This increase in the average occurred because the percentage of cases with a postponement and/or disqualification has increased significantly. During the first 21 months, only 23% of all cases had a postponement and/or disqualification. For the entire time, 27% of all cases had a postponement and/or disqualification. When 2001 alone is considered, the percentage of cases in this category increased to 34%. The increased percentage of cases with postponements or disqualifications or both has increased the average time to select a neutral arbitrator overall.

The average number of days to select a neutral arbitrator decreased under each set of circumstances discussed in the preceding four sections at the same time that the number of cases in which neutral arbitrators were selected increased significantly. In the first 21 months of operation, the OIA selected neutral arbitrators in 1,006 cases, for an average of 48 cases per month. During 2001, the OIA selected neutral arbitrators in 773 cases, for an average of 64 cases per month – a 33% increase over the previous 21

<sup>50</sup> As our second annual report states, as of December 31, 2000, the average time to select a neutral arbitrator was 25 days in cases with no postponements or disqualifications, 106 days for cases with postponements, 73 days for cases with disqualifications, and 167 days for cases with both postponements and disqualifications.

months. In addition, a higher percentage of these 2001 cases had postponements, disqualifications, or both, compared to the previous 21 months. Yet, the OIA managed to reduce the average number of days to select a neutral under each set of circumstances – no postponement or disqualification, postponement, disqualification, and both postponement and disqualification.

It is quite possible that in the future even more parties and their counsel will exercise their rights to obtain a postponement or to disqualify a neutral arbitrator. If so, the average overall length of time to select a neutral arbitrator may become less important, and the average time to select a neutral based upon the parties' actions will become more important. In any case, we expect that the overall average time to select a neutral will increase. Moreover, ethics standards which will first take effect July 1, 2002, discussed in section VI., page 42, *infra*, may further expand parties' rights to disqualify neutral arbitrators. We will continue to track and report on these developments.

In summary, the OIA system is alleviating the Supreme Court's primary concern in *Engalla* and achieving one of the major goals set by the Blue Ribbon Panel by ensuring that neutral arbitrators are selected quickly in Kaiser arbitrations. The rationale of both the Court and the Blue Ribbon Panel was that a case only really begins to move once the neutral arbitrator is in place. The parties, however, are able to control the speed at which a neutral arbitrator is selected.

## **B. Types of Cases**

Since 1999, the OIA has administered, or is now administering, a total of 2,199 Kaiser cases. We categorize the cases as medical malpractice, premises liability ("trip and falls"), other tort, or benefits and coverage cases. In addition, a group of cases are categorized as unknown because the demand for arbitration does not describe the nature of the claim. Medical malpractice cases are the most common, making up 91.5% of the cases seen in the OIA system, or 2,012 of 2,199. Benefits and coverage cases represent only 1.5% (32 of 2,199).

During this reporting period, the percentage of medical malpractice cases may have declined slightly.<sup>51</sup> We reported in the second annual report that such cases constituted 95% of all demands we administered. In 2001, however, 89% of the cases Kaiser sent us were medical malpractice (816 of 916). The remaining 11% includes 2% benefits and coverage (17 of 916); 1% premises liability (12 of 916); 2% other tort (15 of 916); and 6% unknown (56 of 916).

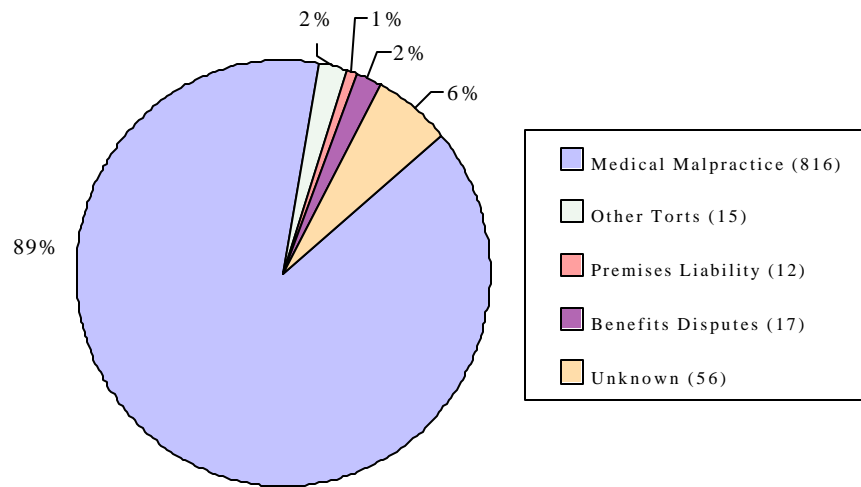
The following charts shows the breakdown of all cases by type for both the total period of time and for 2001 alone:

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<sup>51</sup> It is also possible that this difference merely reflects the increase in the "unknown" category, and less specific demands.

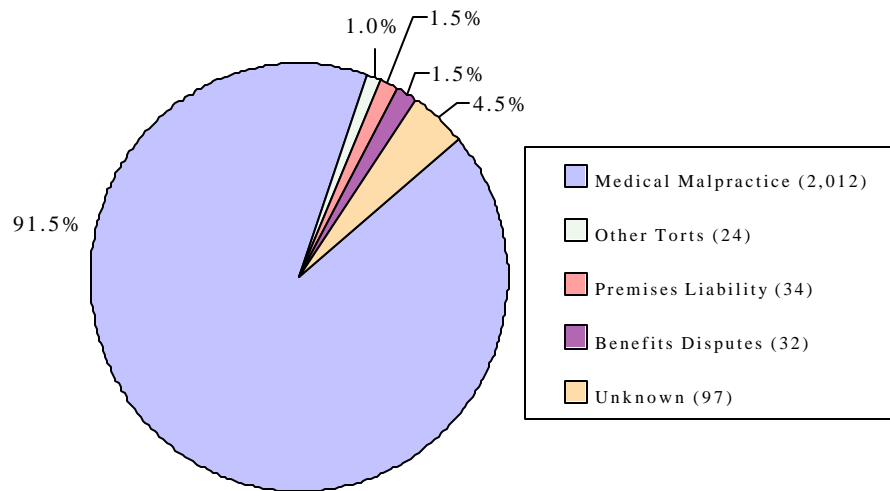
### Types of Cases - Received in 2001

(916 Cases)



### Types of Cases - Total Received

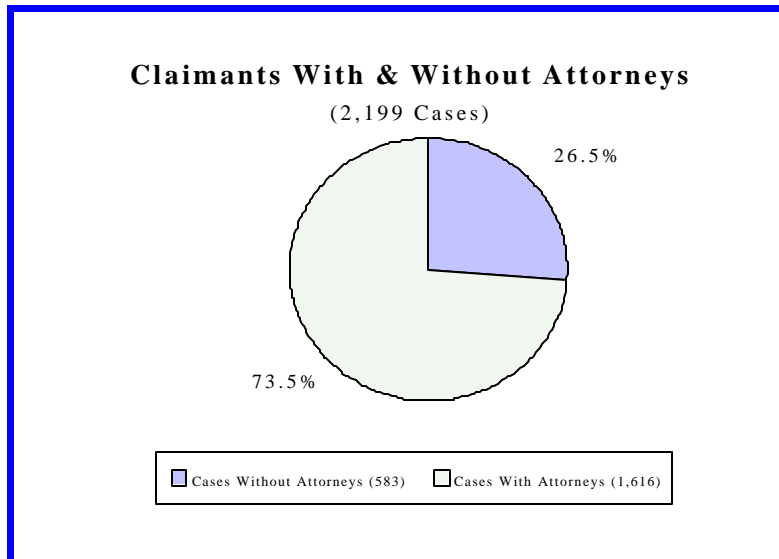
(2,199 Cases)





### C. Claimants With and Without Attorneys (“Pro Pers”)

In almost three-quarters (73.5%) of the 2,199 cases administered by the OIA, the claimants are represented by counsel (1,616 of 2,199). In the remaining, the claimants are representing themselves or acting in *pro per*. In 2001, 25% of the cases Kaiser sent us that became part of our system have claimants who are representing themselves (233 of 916). The following chart shows a breakdown of cases according to whether the claimant is represented by counsel or is proceeding in *pro per*:



In June 2001, the OIA began sending claimants in *pro per* a two-page form entitled, “Information for Claimants Who Do Not Have Attorneys.”<sup>52</sup> A copy of this form is attached as Exhibit H. This form is included with the initial letters sent to *pro per* claimants, including the letters sent in opt-in cases and letters explaining the requirement to pay the filing fee in mandatory cases. We include the form again with the list of possible arbitrators sent to *pro per* claimants. Anecdotally, the response to this form has been positive. A number of *pro per* claimants who have called us with questions have commented that the form was helpful in providing information about the arbitration process and explaining the need for expert testimony under state law.

In addition to this written information, *pro per* claimants often call this office for information and explanation about the process and the *Rules*. Several members of our staff, including the person responsible for answering the phones and fielding questions, are fluent in Spanish.

<sup>52</sup> The AAC had recommended in the last report that we prepare such a document.

#### **D. Number of Cases Involving Fee Waiver Applications**

As of December 31, 2001, 271 claimants have requested applications for fee waivers from the OIA. One hundred eighty (180) applications have been completed and returned.<sup>53</sup> We have granted waivers in 161 cases and denied 11.<sup>54</sup> Two of the 11 denied applicants subsequently failed to pay the fee, and their cases were closed as abandoned, both in 2001. Kaiser has objected to three applications for a fee waiver all in 2001. Of these three, one was granted and two were denied. The remaining eight applications were still pending. A copy of the fee waiver information sheet and application are attached as Exhibit I. It is identical to the one used in the California courts.

During 2001, 88 claimants have requested applications for fee waivers, of which 66 have been completed and returned. In addition, there were four applications pending at the beginning of 2001. During this year, we granted 56 and denied 6 applications. As noted above, Kaiser objected to three applications and eight applications were still pending on December 31, 2001. This was the first year Kaiser has objected to any fee waiver requests.

#### **E. Number of Cases Where Parties Use the OIA List of Arbitrators or Choose to Jointly Select a Neutral Arbitrator**

Under the *Rules*, parties can either jointly select a neutral arbitrator or use the list of possible arbitrators provided by the OIA, and strike and rank names. In 1,260 out of 1,851 cases, or about 68% of the cases where parties have selected neutral arbitrators, the parties used the list provided by the OIA. In 588 cases (32%), the parties have jointly selected a neutral arbitrator. Of these 588 cases, 428 (73%) of them have selected an arbitrator who is on the OIA's panel.<sup>55</sup>

During 2001, in 565 out of 809 cases, or about 70% of the cases where parties have selected neutral arbitrators, the parties used the list provided by the OIA. In the 242 cases where parties have jointly selected a neutral arbitrator this reporting period, 166 (69%) of them have selected an arbitrator who is on the OIA's panel.<sup>56</sup>

#### **F. Administration of Cases**

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. The OIA's approach for monitoring compliance with the deadlines established by the *Rules* was described in detail in the second annual report, and thus, it is only summarized in this section. If arbitrators fail to

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<sup>53</sup> Of the 104 claimants who asked for fee waiver applications and did not return them, only 11 have left the system as cases abandoned for non-payment of the fee. Five of these cases occurred in 2001.

<sup>54</sup> See Exhibit C, Rule 13, for information about fee waiver applications.

<sup>55</sup> Three neutrals were appointed by the courts.

<sup>56</sup> Two neutrals were appointed by the courts.

notify us that a key event has taken place by its deadline, the OIA contacts them and asks for confirmation that the event has occurred. In most cases, neutral arbitrators respond by sending in confirmation. In some cases, the OIA has sent a second letter and/or made a phone call asking for confirmation. The second letter and/or phone call warns arbitrators that, if they do not provide confirmation that the event took place, the OIA will remove their names from its panel until confirmation is received.

In a very few cases, neutral arbitrators have not responded to a second letter and/or phone call. In those cases, the OIA removes neutral arbitrators' names from its panel until they provide the required confirmation.

### **1. Neutral Arbitrator's Disclosure Statement**

Once neutral arbitrators have been selected, they must make disclosures within ten days.<sup>57</sup> Neutral arbitrators are required to provide a copy of their disclosure statements to the OIA. The OIA has temporarily removed four neutral arbitrators for failure to timely serve disclosures. Two of these neutral arbitrators were temporarily removed during 2001. All have been reinstated.

### **2. Arbitration Management Conference**

The *Rules* require the parties and the neutral arbitrator to have an arbitration management conference ("AMC") within 45 days of the neutral arbitrator's selection. The neutral arbitrator returns the Arbitration Management Conference Form to the OIA within five days after the conference. The OIA has temporarily removed four neutral arbitrators for failure to submit a timely AMC form. One of these neutral arbitrators was removed during 2001. All have been reinstated.

### **3. Mandatory Settlement Meeting**

The parties hold a mandatory settlement meeting ("MSM") within six months of the AMC. Consistent with the Blue Ribbon Panel recommendation, the *Rules* state 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. We have received notice from the parties in 649 cases that they have held a MSM. We received notice in 332 of these cases in 2001. On the other hand, in 267 cases, neither party returned the MSM Form to the OIA, despite our repeated requests. The MSM form was due in 139 of these cases during 2001.

### **4. Hearing**

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*. For almost all cases, this means that the OIA must receive the award no later than 18 months after the OIA

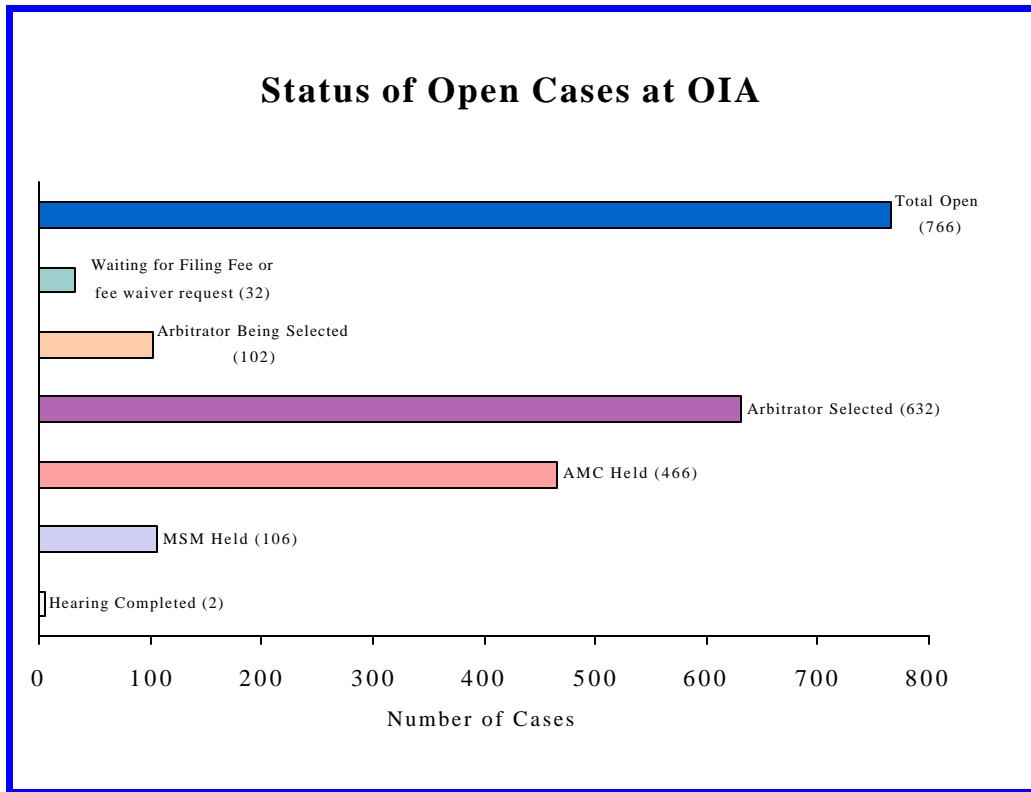
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<sup>57</sup> See California Code of Civil Procedure §1281.9 and Rule 20.

received the demand and filing fee.<sup>58</sup> We have never suspended an arbitrator for failure to submit an award.<sup>59</sup>

### G. Status of Open Cases Currently Administered by the OIA

As of December 31, 2001, the OIA was administering 766 open cases. In 32 of these cases, the OIA was waiting for payment of the filing fee or submission of a fee waiver application. In 102 cases, the parties were in the process of selecting a neutral arbitrator. In 632 cases, the neutral had been selected. In 466 of the 632 open cases, or 74%, the parties and the neutral arbitrator had held the arbitration management conference. In 106 open cases, the parties had held the mandatory settlement meeting. In two cases, the hearing had been held, but the case had not yet been decided. There were 1,433 closed cases. The following graph illustrates the status of open cases:



The number of open cases on December 31, 2001 (766) is larger than that on December 31, 2000 (617). This is to be expected of a system that is now predominantly mandatory. Of the 766 open cases, 551 are mandatory (72%).

<sup>58</sup> Exceptions to the 18 month rule are discussed in section IV.J, pages 32-35, *infra*.

<sup>59</sup> The award must be served within ten days of the closing of the hearing. Pages 38-39, *infra*, discuss the 10 day rule.

## H. Number of Cases Resolved and Types of Resolutions

Under the *Rules*, most cases must be completed within 18 months of the OIA receiving them.<sup>60</sup> The OIA has been accepting claims for 33 months. During our existence thus far, 65% of all OIA cases have closed (1,433 of 2,199). This is an increase from December 31, 2000, when 50% of all OIA cases had closed. All but one of these met the deadlines contained in the *Rules*.<sup>61</sup> All case closure deadlines that occurred during 2001 have been met.

The following sub-sections discuss the various manners in which cases have been resolved, the length of time it took to close cases based upon category, and the reasons for closure when the case was closed by summary judgment. The chart on page 28 shows the distribution of closed cases by manner of closure, while the chart on page 32 shows the length of time, again by manner of closure.<sup>62</sup>

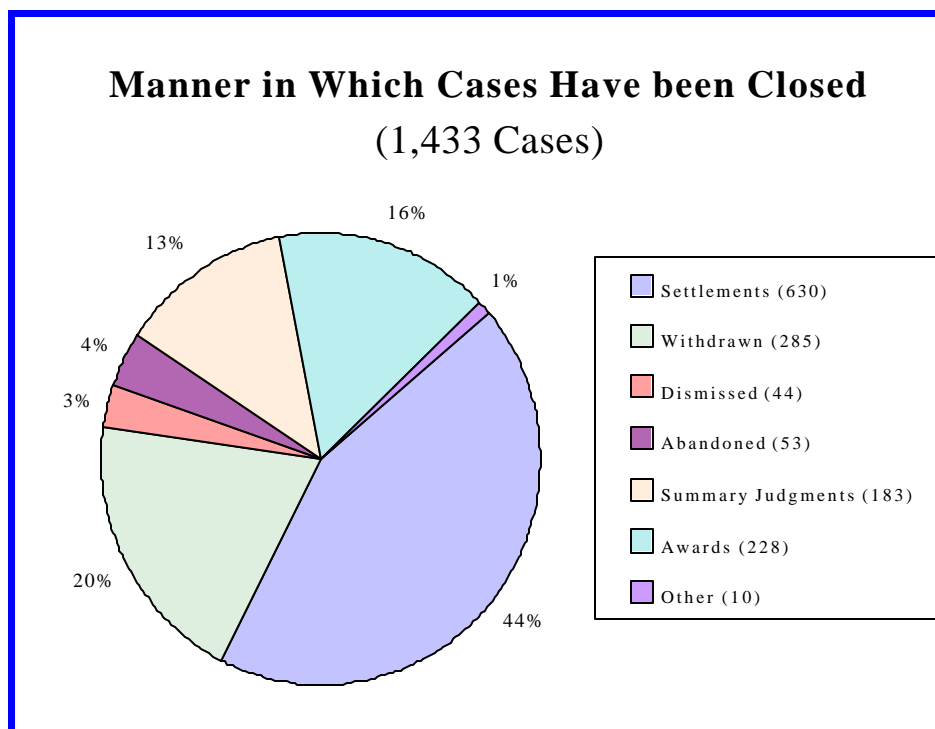
The amount of time for a case to close increased in 2001. In the second annual report, closed cases averaged 229 days to complete, or approximately eight months. As of December 31, 2001, this average had increased one month, to 259 days. When just 2001 is considered, the average is 281 days, or just over 9 months. Such an increase is not unexpected in a system as young as this. Easier cases, or cases with less contentious parties, would be expected to settle earlier. As the system becomes completely mandatory, the period of time to close a case will presumably lengthen somewhat and then stabilize. The new ethic standards that take effect July 1, 2002, may allow for disqualifications late in a case. This could expand the time needed to complete an arbitration. See section VI, page 42, *infra*.

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<sup>60</sup> Expedited, complex, and extraordinary cases may be resolved in more or less than 18 months. See *Rules* 24 and 33. Those cases are discussed at section IV.J, pages 32-35, *infra*, of this report.

<sup>61</sup> In the second annual report, we explained that one open case had failed to meet the 18 month deadline, when the first neutral arbitrator withdrew only days before the hearing date which had been continued several times to a date very close to the 18 month deadline. That case closed on August 6, 2001, following the second neutral arbitrator granting respondents' motion for summary judgment. It closed just over seven months after its December 29, 2000 deadline.

<sup>62</sup> There are ten cases that have been closed either because the claimant died or the case was consolidated with another case. As they represent less than one percent of the total of all closed cases, they are not further discussed in this section.



### 1. Settlements – 44% of Closures

As of December 31, 2001, 630 of 1,433 closed cases, or about 44%, settled. The average time to settlement was 253 days. The median was 253 days and the mode was 119 days. The range in settlement time was 4 to 802 days. In 65 settled cases, the claimant was in *pro per*.

During 2001, 350 of 805 cases settled, which represents 44% of the cases closed this period. The average time to settlement was 278 days. The median was 273 days and the mode was 119 days. The range in settlement time was 11 to 802 days.<sup>63</sup> In 39 settled cases, the claimant was in *pro per*. Thus, almost two-thirds of the cases in which *pro pers* settled their cases occurred during 2001.

### 2. Withdrawn Cases – 20% of Closures

The OIA has received notice that 285 out of 1,433 claimants have withdrawn their claims. In 131 of these cases, the claimant was in *pro per*. Withdrawals take place for many reasons, but the OIA has only anecdotal information on this point. We use this classification when a claimant writes us a letter withdrawing the claim, or when we receive a dismissal without prejudice. When we receive a dismissal with prejudice, we call the parties to ask whether the case was “withdrawn” or “settled” and enter the closure accordingly. About 20% of closed cases have been withdrawn.

<sup>63</sup> In the case that closed in 802 days, the neutral extended the deadline to complete the case beyond 18 months pursuant to Rule 28.

The average time to withdrawal of a claim is 190 days after the case entered the OIA system. The median is 165 days, and the mode is 112 days. The range is 5 to 744 days.

During 2001, 157 of 805 claims were withdrawn, and 72 of these claimants were in *pro per*. About 20% of the cases closed this period were withdrawn. The average time to withdrawal of a claim during 2001 is 199 days. The median is 160 days, and the mode is 245 days. The range is 5 to 744 days.

### **3. Dismissed and Abandoned Cases –7% of Closures**

Neutral arbitrators have dismissed 44 of the 1,433 closed cases, 3%, often for claimant's repeated failure to respond to hearing notices or otherwise to conform to the *Rules* or applicable statutes. Twenty-eight (28) of the 44 were in *pro per*. Fifty-three (53) of 1,433 cases, 4%, have been deemed abandoned for claimant's failure to pay the filing fee of \$150.<sup>64</sup> Thirty-six (36) of the 53 were in *pro per*.

In 2001, neutral arbitrators dismissed 23 of the 805 closed cases, about 3 percent of the cases closed this period. In 13 of these cases, claimants were in *pro per*. Thirty-eight (38) of the 805 cases this period, about 5 percent, were deemed abandoned for claimant's failure to pay the filing fee. Twenty-nine (29) of the 38 were in *pro per*.

### **4. Summary Judgment – 13% of Closures**

One hundred eighty-three (183) cases of 1,433, or 13%, have been decided by summary judgment, which was granted to the respondent. In 133 of these cases, claimants were in *pro per*.

An OIA attorney has reviewed the reasons given by the neutrals in their written dispositions for the grant of summary judgment. The most common reason (84 cases) for orders granting summary judgment is that the claimant had not obtained an expert witness, a requirement of California law in nearly all medical malpractice cases. In another 52 cases, the claimant filed no opposition to the motion for summary judgment. In 16 cases, summary judgment was granted because the case was beyond the statute of limitations. In 12 cases, summary judgment was granted because claimant failed to show causation. All of these cases state common reasons for the grant of summary judgment in the court system.<sup>65</sup> In 18 additional cases, the neutral arbitrator held that there was no

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<sup>64</sup> Before claimants are excluded from this system for not paying the filing fee, they are offered the opportunity to apply for fee waivers. Those excluded have either refused to apply or have failed to qualify. The fee is a uniform \$150 irrespective of how many claimants there may be in a single case.

<sup>65</sup> This arbitration system (like most) has no equivalent to the court system's demurrer or motion to dismiss where a case is closed at the outset because, construed in all ways favorable to the plaintiff, the complainant fails to state a claim for recovery. Since there is no complaint filed in Kaiser arbitration, there is no opportunity to demur or move to dismiss. Claims with such defects must be dealt with by summary judgment.

triable issue of fact. In one case, the matter was *res judicata*, i.e., it had been decided in a previous litigation.

The average time to entry of a summary judgment is 289 days after the case entered the OIA system. The median is 271 days, and the mode is 221 days. The range is 77 to 767 days.<sup>66</sup>

During 2001, 109 cases of 805 cases closed, or 14%, have been decided by summary judgment for respondent. In 77 of these cases, claimants were in *pro per*. In 50 cases, claimant had not obtained an expert witness; in 30 cases, claimant filed no opposition to the motion; in 12 cases, claimant failed to show causation; in 10 cases, the case was beyond the statute of limitations; and in 7 cases, the neutral held that there was no triable issue of fact. The average time to entry of a summary judgment in 2001 is 299 days after the case entered the OIA system. The median is 271 days, and the mode is 163 days. The range is 96 to 767 days.

## 5. Cases Decided After Hearing – 16% of Closures

About 16% of all cases (228 of 1,433) have proceeded through a full hearing to an award. Judgment was for Kaiser in 144 of these cases, or 63%. In 44 of these cases, the claimant was in *pro per*. In 84 of these cases, or 37%, the claimant prevailed. In five of these cases, the claimant was in *pro per*.

The 228 awards were decided by 136 different neutral arbitrators. Seventy-eight (78) of the arbitrators decided a single award, while 36 arbitrators decided two awards. Twenty-two (22) arbitrators decided the remaining awards, from 3 to 6 each. The 8 arbitrators who decided the greatest number of awards made 36, or 16%, of them. Considering only the awards made by these 8 neutral arbitrators, 64% were in favor of Kaiser.<sup>67</sup>

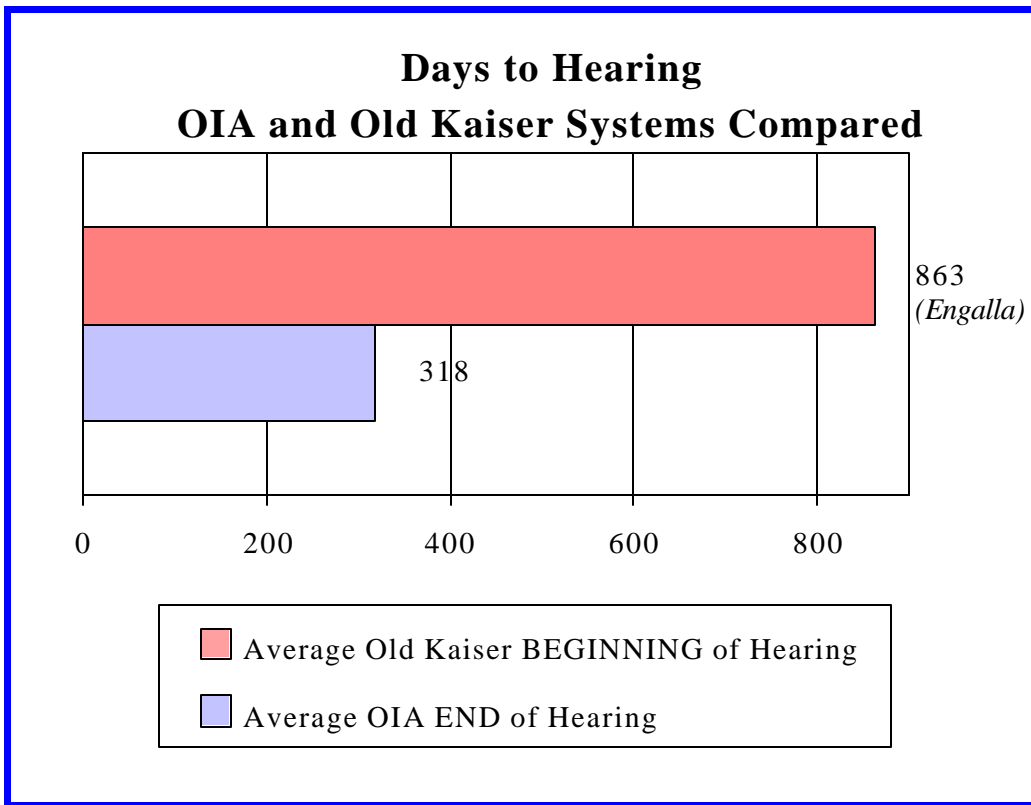
In the cases that have gone to hearing thus far in the OIA system, it has taken an average of 318 days from the time the case entered the system until the end of the hearing. The California Supreme Court in *Engalla* noted that under the Kaiser system, the hearing did not begin until 863 days, on average, after a case entered the system. The following chart displays this difference.

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<sup>66</sup> The summary judgment time average is only 39 days less than the average award in a case decided by hearing.

<sup>67</sup> An article in the March 18, 2002 *Sacramento Bee* reported that according to the California Research Bureau, the arbitration claims in 1999 on file with the California Department of Managed Health showed 30% of Kaiser cases decided by just 8 arbitrators and that 6 of the 8 ruled in Kaiser's favor in 80% of the cases.





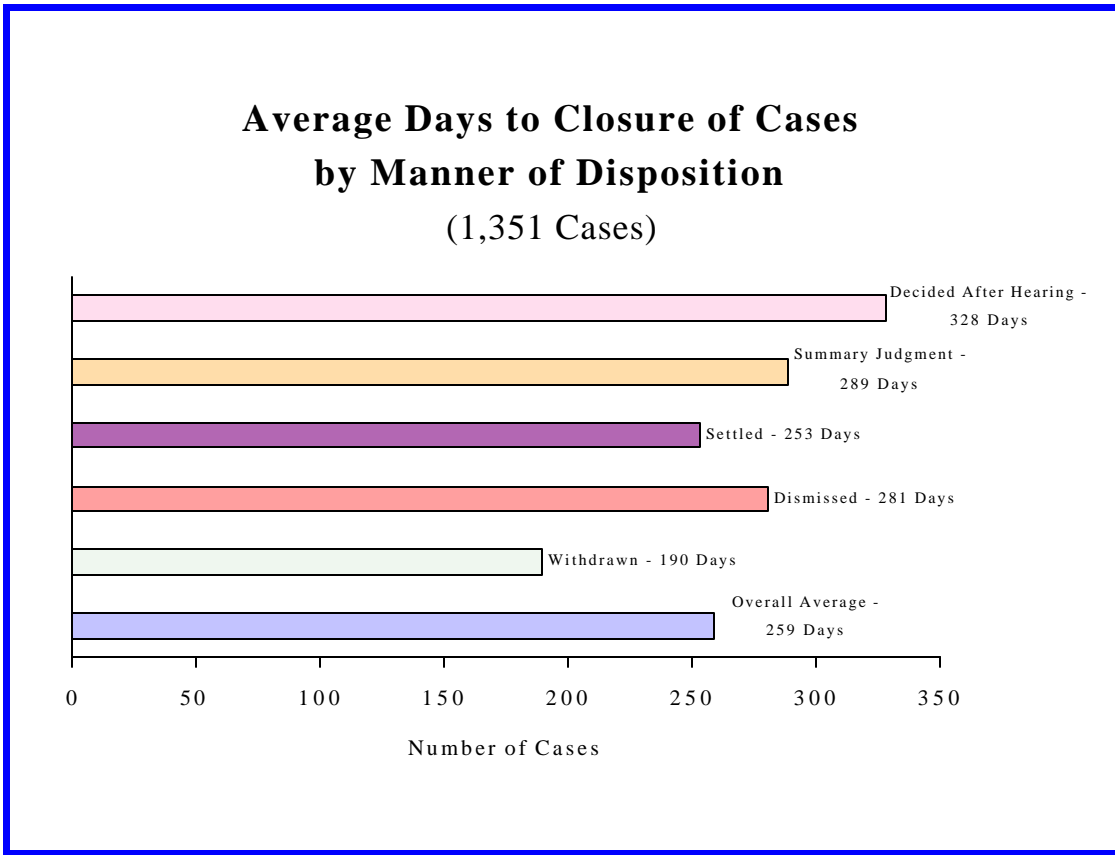
The 228 cases that have proceeded to a hearing thus far show an average of 328 days from the time the OIA began its process until the date the cases were resolved. That is almost 11 months. The median is 315 days, and the mode is 288 days. The range is from 39 to 737 days. One non-expedited case closed after a hearing in 45 days.

During 2001, 15% of all cases (122 of 805) have proceeded through a full hearing to an award. Judgment was for Kaiser in 76 cases, or 62% of the cases that went to hearing. In 18 (24%) of these cases, the claimant was in *pro per*. In 46 cases, or 38%, the claimant prevailed. In four, or nine percent, of these cases, the claimant was in *pro per*.

The 122 cases that proceeded to a hearing during 2001 showed an average of 372 days from the time the OIA began its process until the date the cases were resolved, or about 12 months. The median is 352 days and the mode is 265 days. The range is from 88 to 737 days.

#### 6. Average Time to Closure of All OIA Cases

All closed cases at the OIA average 259 days to completion or slightly less than 9 months. The median is 252 days. The mode is 288 days, and the range is from 4 to 802 days.



During this reporting period, all closed cases average 281 days to completion or slightly more than 10 months. The median is 271 days. The mode is 251 days, and the range is from 5 to 802 days.

#### **I. Amounts of Awards**

Of the 228 cases that have gone to hearing, there have been 84 awards to claimants, which is 37% of such cases. One was in the amount of \$5.6 million. The average amount of an award was \$207,571. The median was \$80,421. The mode was \$175,000. The range was \$2,500 to \$5,594,605.

During 2001, of the 122 cases that have gone to hearing, there have been 46 awards to claimants, or 38% of awards. The average amount of an award was \$156,001. The median was \$79,024. The mode was \$175,000. The range was \$2,500 to \$1,100,000.

A list of all awards in chronological order is attached as Exhibit J.

#### **J. Number of Cases Using Special Procedures**

The *Rules* include provisions for cases which need to be expedited, that is, resolved in less time than 18 months. Grounds for expedited procedures 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.<sup>68</sup> The *Rules* also include provisions for cases which need more than 18 months for resolution. Complex cases are those that need 24 to 30 months for resolution, while extraordinary cases are those that need more than 30 months for resolution.<sup>69</sup> This section discusses those cases.

## 1. Expedited Procedures

A total of 32 claimants have requested to have their cases resolved in less than the standard 18 months and 22 have received such status. The OIA received 26 of those requests from claimants before a neutral arbitrator was selected in the case. In such cases, under *Rule 34*, the OIA makes the decision. The OIA granted requests in 19 cases,<sup>70</sup> and denied 7 without prejudice to the claimant's ability to raise the issue again before the neutral arbitrator. Of the 26 requests made to the OIA, Kaiser objected to 6. The OIA denied two where Kaiser objected and granted four. Neutral arbitrators have granted four out of seven requests made to them for expedited status. One of those granted had previously been denied without prejudice by the OIA.

During 2001, ten claimants have requested expedited procedures, eight from the OIA, and two from neutral arbitrators. The OIA granted requests in seven cases,<sup>71</sup> and denied one without prejudice to the claimant's ability to raise the issue before the neutral arbitrator. Of the eight requests made to the OIA, Kaiser objected to three. The OIA granted all three of these requests. Neutral arbitrators have granted one out of two requests for expedited status.<sup>72</sup> These claimants had not previously requested expedited procedures from the OIA.

The 22 expedited cases in the OIA system thus far<sup>73</sup> equal 1% of our total caseload. Two of the 22 remain open. One case was closed in 20 days. While this case was settled, one expedited case closed after a hearing in 39 days. All closed cases were decided within the accelerated timetable set for the case. The two remaining open appear to be on schedule for a timely finish. The average length of time in which they have been

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<sup>68</sup> Exhibit C, Rules 33-36 (expedited cases).

<sup>69</sup> Exhibit C, Rule 24(b) (complex cases), and Rule 24(c) (extraordinary cases).

<sup>70</sup> In one case where the OIA granted a request for expedited procedures, the neutral arbitrator later removed the expedited status. See footnote 71, *infra*.

<sup>71</sup> One of these cases was the one where the neutral arbitrator and the parties subsequently decided it did not require expedited status.

<sup>72</sup> However, the claimant subsequently died in this case, and the neutral arbitrator removed the expedited status. The demand for arbitration was amended to wrongful death, and the heirs substituted in as claimants.

<sup>73</sup> This does not include the two cases discussed in footnotes 71 and 72, which were initially granted expedited procedures, but subsequently returned to regular status.

decided is 149 days, or 5 months. The range has been from 20 days to 436 days, or not quite 15 months.

As noted previously, 32 cases at the OIA involve benefits and coverage issues, about 1.5% percent of the caseload. Two of them are expedited. In one, the neutral served the award for the respondent in 118 days (4 months) after the case began. The other case settled in 104 days (about 3 months). All expedited benefits cases have been completed within the time period agreed to by the parties or set by the neutral arbitrator.

## **2. Complex Procedures**

Neutral arbitrators have notified the OIA in 40 cases that they have designated the cases as complex and therefore that they would be resolved in 24 to 30 months. Two were so designated in the first year, 8 were so designated in the second 9 month period, and 30 during 2001. The designation does not have to occur at the beginning of a case, but may be made as the case proceeds and the parties get a better sense of the information that may be required. The parties and the neutral arbitrator must inform the OIA if a case has been designated complex. Twenty-three (23) complex cases have closed. Twenty-two (22) complex cases have closed in 2001. The average length of time for complex matters to close thus far is 576 days; the median is 596 days, and the range is 228 to 798.

Cases are designated complex because they involve complex medical issues or complex discovery issues, by stipulation of the parties, or by order of the neutral arbitrator. The 40 complex cases include 17 designated complex based on complex medical issues and 14 based on complex discovery issues. Cases with complex medical issues include those where multiple liability issues exist, or the nature and quantification of damages is difficult to ascertain. Cases with complex discovery issues include those involving large document productions, many depositions, or extensive travel to complete discovery.

## **3. Extraordinary Procedures**

The OIA has notice that two cases have been designated extraordinary and therefore will take more than 30 months for resolution. Both cases were designated extraordinary during this reporting period. These two cases are still open. Both cases were designated extraordinary because the damages or injuries could not be ascertained within the thirty month deadline required for complex cases under Rule 24.

## **4. Rule 28 Postponements**

Through December 31, 2000, the neutral arbitrator had made a Rule 28 determination of "extraordinary circumstances" in 11 cases and extended these cases beyond their 18 month limit. During 2001, neutral arbitrators made such rulings in 43 cases. Of the total 54 cases, 22 are open, and 32 are closed. The average length of time for cases postponed under Rule 28 to close is 583 days (about 19 months), the median is 593 days (about 20 months), and the range is 292 days to 802 days (27 months).

When neutral arbitrators grant a Rule 28 postponement, they do not have to explain the circumstances that give rise to the postponement, although sometimes neutral arbitrators do provide this information.<sup>74</sup> Neutral arbitrators have granted Rule 28 postponements extending the 18 month deadline for a number of reasons. In some cases, the postponement was based on the death of a prior neutral arbitrator. In other cases, the postponement was based on the death or health problems of one of the parties or counsel for the parties. Other postponements were granted where the claimant's attorney withdrew close to the hearing date. In two cases, the postponements were granted because parallel court actions based on the same incident or facts were pending, and the parties agreed that the court action needed to be resolved prior to the arbitration. In other cases, the postponements were based on the availability of witnesses and other discovery issues.

In 21 cases, the neutral arbitrator has postponed the Arbitration Management Conference under Rule 28, without extending the case beyond its 18 month limit. Twenty (20) of these postponements occurred in 2001, and one occurred in 2000. Neutral arbitrators have granted postponements of the AMC because a related court case was pending; to allow a *pro per* claimant additional time to find an attorney and to allow the parties to designate their party arbitrators. They have also granted extra time because of illness or because there was a pending court action and the parties needed to determine the logical order of the hearing in the court action and the arbitration.

Neutral arbitrators in five other matters granted Rule 28 postponements in the proceedings, which did not extend the 18 month deadline. Three of these postponements occurred in 2001. In one of the 2001 cases, the neutral arbitrator granted a six month postponement in the matter due to claimant's physical and mental health. In a second case, the neutral arbitrator granted a postponement to schedule the hearing, to allow time to locate a doctor who had left Kaiser. In the third case, the neutral arbitrator postponed the hearing to a later date within the 18 month period.

In four cases, all in 2001, the OIA granted Rule 28 postponements to claimants who requested additional time to pay their \$150 filing fee. One of these claimants requested the additional time to complete her chemotherapy. The claimant did not pay her filing fee or request a waiver of the fee, and the matter was closed as abandoned under Rule 12. Two of the claimants requested the postponement in order to look for new attorneys. In the other case, the claimant attorney requested the postponement so that he could further investigate the merits of the case. These three claimants had not yet paid the filing fee, and the deadlines to do so had not expired by December 31, 2001.

In five cases, the OIA granted Rule 28 postponements to claimants who requested additional time to select a neutral arbitrator. Two of these postponements occurred in 2001.<sup>75</sup> In one case, the claimants received a 60 day postponement to allow the parties to

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<sup>74</sup> The amendments to the *Rules* that have been discussed in 2001 will require neutral arbitrators to provide reasons.

<sup>75</sup> Claimants in both cases had already received 90 day postponements under Rule 21.

resolve whether or not a doctor was bound to arbitration. In the other case, the OIA granted a 30 day postponement based on the claimant's medical condition.

**K. Number of Cases in Which Claimants Have Elected to Have Kaiser Pay the Fees and Expenses of the Neutral Arbitrator and to Proceed with a Single Arbitrator**

The Blue Ribbon Panel Report recommended that Kaiser pay the neutral arbitrator's fees and expenses when a claim proceeds with a single neutral arbitrator.<sup>76</sup> The Panel made this recommendation both to lower the cost of arbitration to the claimant and because it questioned whether the value added by party arbitrators justified their expense and the extra delay of obtaining and scheduling two additional participants in the arbitration process.<sup>77</sup> Such delay and rescheduling lengthens cases and raises costs for all parties. In the interest of increased speed and lowered expense, the Panel suggested that the system create incentives for cases to proceed with one neutral arbitrator.<sup>78</sup> This recommendation intersects with a California statute which gives the parties in cases where the claimed damages exceed \$200,000 a statutory right to proceed with three arbitrators, one neutral arbitrator and two party arbitrators.<sup>79</sup>

At this point, it appears that few party arbitrators are being used in our system, and most cases are proceeding with a single neutral.<sup>80</sup> In only 14 of the 228 cases in which we have received an award after a hearing have we received a designation of a party arbitrator. That would mean that a single neutral arbitrator decided the remaining 214 cases.

We have received a designation of a party arbitrator from one or both parties in only 20 of the 766 open cases. In 4 of these 20 cases, we have received designations from both parties. In 5 cases, we have received a party arbitrator designation from claimant only, and in 11 cases, we have received a party arbitrator designation from respondent only.

In implementing the Blue Ribbon Panel's recommendation that Kaiser for pay the neutral, the *Rules* include procedures that allow claimants to shift the responsibility for payment to Kaiser.<sup>81</sup> The procedures are simple, voluntary, and rely entirely upon the

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<sup>76</sup> Blue Ribbon Panel Report at 41-42, Exhibit B at Recommendation 27.

<sup>77</sup> Blue Ribbon Panel Report at 42.

<sup>78</sup> Blue Ribbon Panel Report at 42.

<sup>79</sup> See California Health & Safety Code §1373.19.

<sup>80</sup> It could be that the greatest inducement to proceed with a single arbitrator which the *Rules* provide is a fast, workable way to appoint the neutral. Formerly, the party arbitrators were picked first, and they selected the neutral.

<sup>81</sup> Rules 14 and 15 explain how claimants may shift responsibility for payment of the neutral arbitrator's fees and expenses to Kaiser.

claimant's election. Claimants making claims of \$200,000 or less can have Kaiser pay by signing a waiver of objection to the respondent paying the neutral arbitrator's fees and expenses. This waiver means that if Kaiser pays the neutral arbitrator's fees and expenses, the claimant cannot later claim that the arbitration was unfair because Kaiser paid these fees.

Additionally, Kaiser will pay the fees and expenses of the neutral arbitrator if claimants with a claim greater than \$200,000 waive their right to a party arbitrator and waive any objection to Kaiser's payment of the fees. Once claimants have done this, Kaiser will pay the neutral arbitrator's fees and expenses even if it declines to waive its right to a party arbitrator.<sup>82</sup> In this way, the *Rules* create a financial incentive for claimants who are entitled to proceed with a tripartite panel of arbitrators to proceed with a single neutral arbitrator as the BRP recommended.

Through execution of the appropriate waiver forms, claimants have shifted the responsibility for paying the neutral arbitrator's fees and expenses to Kaiser in 891 cases out of a total of 2,071 cases, or 43% of all cases administered by the OIA. This is a rise of three percent from the second annual report. In 240 of these cases, the claimant is in *pro per*. In 651 of these cases, the claimant is represented by counsel.

During 2001, claimants have elected to have Kaiser pay the neutral arbitrator's fees and expenses in 400 cases. In 92 of these cases, the claimant is in *pro per*. In 308 of these cases, the claimant is represented by counsel. The 400 cases in 2001 is 45% of all cases in which a designation has been made, so it may be becoming more frequent.

These numbers are somewhat fluid. This is graphically illustrated by the statement which opened this section – that in only 14 cases in which we have received an award after hearing has the OIA received signed statements of agreement to serve from party arbitrators. Until we receive those executed forms, we cannot truly say that a panel of three will be used in a given case. It is possible that although neither side affirmatively waives the right to proceed with a party arbitrator, the case actually proceeds with a single neutral. This would be true, for example, in cases where both sides wish to proceed with a single neutral arbitrator or in cases seeking less than \$200,000, but claimant does not elect to have Kaiser pay the fees and expenses of the neutral arbitrator. In these cases, there would be no need for the OIA to receive notice that either side waives party arbitrators.

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<sup>82</sup> As far as we know, in all cases where claimant has waived the right to a party arbitrator, Kaiser has also waived its right to a party arbitrator.

#### **L. Number of Cases in Which Kaiser Has Agreed to Waive Its Party Arbitrator**

In a total of 386 cases, 147 of them open and 239 of them closed, the OIA has received notice that Kaiser has agreed to proceed without a party arbitrator. Two hundred and forty-two (242) of these notices were received during this reporting period. Claimants have notified the OIA that they are waiving party arbitrators in 673 cases. This includes 331 notices this reporting period.

Several factors may account for the difference in these two numbers. First, claimants usually give notice that they are willing to waive their party arbitrators before respondents, in order to gain the benefit of having Kaiser pay the neutral arbitrator's fees and expenses. In some of these cases, Kaiser is in the process of deciding whether or not to waive its party arbitrator. Second, the statutory right to proceed with a panel of three arbitrators belongs to both parties. Under Rules 14 and 15, respondent pays the neutral arbitrator's fees and expenses when a claimant waives party arbitrators, whether or not respondent also agrees to waive its right to proceed with party arbitrators. When a claimant waives the right to a party arbitrator and the respondent does not, the matter proceeds with a tripartite panel. However, respondent still pays the neutral arbitrator's fees and expenses. As far as we know, this has not occurred in our system.

#### **M. Neutral Arbitrator Evaluations of 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.<sup>83</sup> The information is solicited to evaluate and improve the system. The OIA designed this form with input and comment from Kaiser and the AAC, and began using it during 2000. At the end of the year 2001, the form had been returned by 964 arbitrators<sup>84</sup> in 1,177 closed cases<sup>85</sup> for a response rate of 82%. We received 493 of these responses during 2001 (out of 622 sent), for a response rate of 79%. Considering either all of the responses, or just the responses from 2001, the results show a high degree of approval of and satisfaction with the *Rules* and the OIA.

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<sup>83</sup> The form and the entire analysis of responses to it are attached as Exhibit M.

<sup>84</sup> There were an additional 25 forms returned blank and marked to indicate that because the case closed so early the neutral had no reportable involvement with it. And an additional 59 were simply returned blank. The total returned was thus 1,048, or 89%, but the discussion above concerns only those with substantive responses above.

<sup>85</sup> The 1,177 closed cases include all those in which a questionnaire was mailed to the neutral arbitrator. We do not send questionnaires to neutral arbitrators in cases that close before the neutral arbitrator has held the arbitration management conference. This eliminates cases that settle or are withdrawn by claimants shortly after the neutral arbitrator is selected.



The questionnaires sent to the neutral arbitrators include three statements and ask the neutral arbitrators to state whether, on a scale from 1 to 5, they agree or disagree. Once again, 5 represents the highest level of agreement.

The neutrals averaged 4.7 in saying that the procedures set out in the *Rules* had worked well in the specific case; 705 out of the 931 answering this question rated the *Rules* a “5.” The responses averaged 4.9 in saying that they would participate in another arbitration in the OIA system; 849 out of the 930 answering this question responded with a “5.” They averaged 4.9 in saying that the OIA had accommodated their own questions and concerns in the specific case; 615 out of the 903 answering this questions responded with a “5.” The 4.9 average is the same average as the responses in 2000.<sup>86</sup> The median and mode overall for the responses to each of these statements was 5.

The questionnaires also include 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 about all areas except one, which received mixed results. While some left these questions completely blank, these are the responses of those who did not:

The manner of a neutral arbitrator’s appointment was checked as working well by 693 neutrals, while only 17 thought it needed improvement.

The early management conference was checked as working well by 734 neutrals and as needing improvement by only 21

The availability of expedited procedures was checked as working well by 257 neutrals and as needing improvement by 5.

The claimant’s ability to have the respondent pay the cost of the neutral was checked as working well by 349 neutrals and as needing improvement by 22.

The system’s *Rules* overall were seen as working well by 574 and as needing improvement by 20.

The requirement that a hearing be held in 18 months was marked as working well by 321 neutrals and as needing improvement by 23.

Only one area was controversial. The *Rules* require that a written decision be served on the parties and the OIA within ten days after a hearing. Neutral arbitrators have called the OIA about this rule, and have been late in serving decisions.<sup>87</sup> On this survey, 62 marked the category “award within 10 days of hearing” as needing

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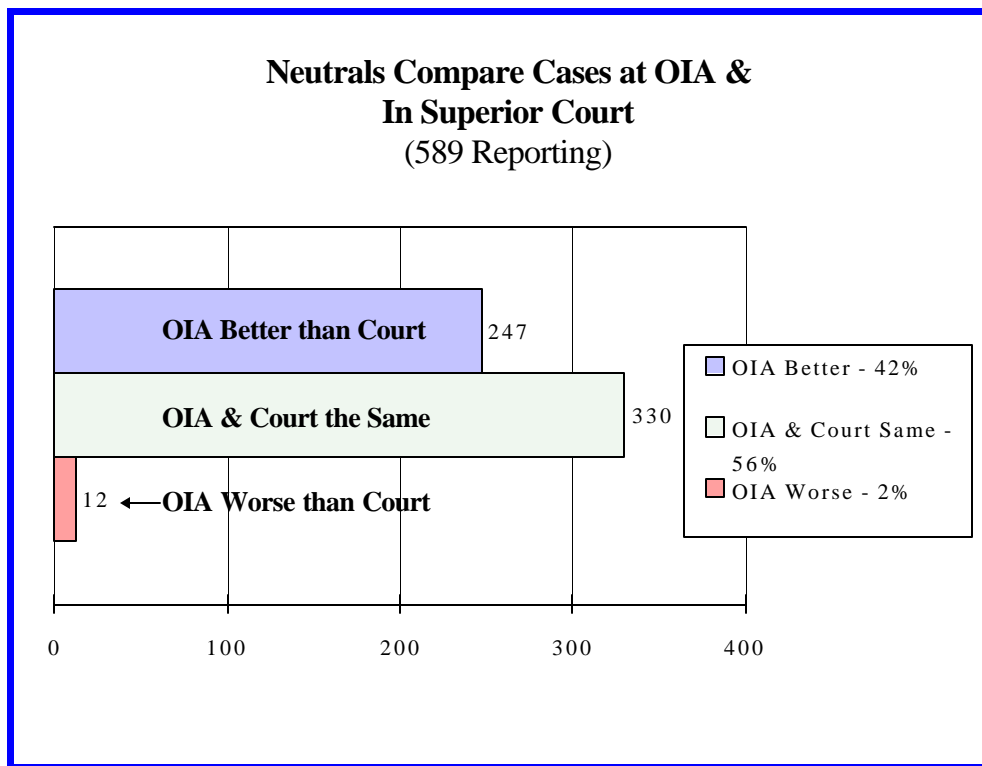
<sup>86</sup> The last report incorrectly reported this number due to an error in generating the computer reports. The correct numbers for last year are included in Exhibit M.

<sup>87</sup> Of our 228 decisions following a hearing, neutrals have been beyond the 10 day limit for service of decision in 103 of them (45%). Fifty-one (51) of these late decisions were received in 2001.

improvement, and 66 commented that the time for final decision should be increased to a period greater than 10 days. However, 193 neutrals marked the award within 10 days of hearing as working well. The neutral arbitrators' opinions about the 10 day rule have remained consistent over the two years we have measured it. In the last annual report, 41% of the neutral arbitrators who responded to the issue said that the award within 10 days of hearing needed improvement (28 out of 150) or commented that the time for final decision must be increased (33 out of 150). This year, 40% of the neutral arbitrators so responded.

One of the modifications to the *Rules* the OIA discussed with the AOB and Kaiser in 2001 concerns the ten day deadline for serving awards. Under the amended rule, awards in ordinary cases will be due in 15 business days after an arbitration hearing closes and awards in extraordinary and complex cases will be due in 30 business days.

Finally, the questionnaires asked the neutrals whether they had experienced a similar case in the Superior Court, and if so, whether they would rank the OIA experience as better, worse or about the same. Five hundred eighty-nine (589) neutrals answered saying that they had such parallel experience and made the comparison. Two hundred forty-seven (247) said that the OIA experience was better, and 330 said it was the same. Only 12 – 2% of those responding to this question – said that the OIA experience was worse.



## **V. The Role of the Arbitration Oversight Board (AOB)**

On April 13, 2001, Kaiser announced the formation of a new oversight board. The Arbitration Oversight Board (“AOB”) replaced the earlier Arbitration Advisory Committee, which had served for over two years and from which several members had resigned due to life changes. The AOB is headed by David Werdegar, M.D. Dr. Werdegar is the former director of Office of Statewide Health Planning and Development and Professor of Community Medicine, Emeritus, at the UCSF School of Medicine. The board members were chosen by Dr. Werdegar and several previously served on the AAC.

The board members are:

Terry Bream, RN, Manager of Clinical Services at Kaiser Foundation Hospitals (served on the AAC);

Lark Galloway-Gilliam, Executive Director, Community Health Councils, Inc. in Los Angeles;

Cornelius Hopper, M.D., Vice President for Health Affairs, Emeritus, University of California;

Tessie Guillermo, Executive Director of the Asian & Pacific Islander American Health Forum and former Commissioner to President’s Advisory Commission on Asian Americans and Pacific Islanders;

Dan Heslin, former Director of Employee Benefits at Boeing (served on the AAC);

Mary Patricia Hough, a plaintiff’s attorney practicing in San Francisco;

Phil Madvig, M.D., Associate Executive Director for Quality at Permanente Medical Group (served on the AAC);

Kenneth Pivo, a medical malpractice attorney, representing respondents, practicing in Irvine (served on the AAC);

Honorable. Cruz Reynoso, Professor of Law at UC Davis School of Law and former California Supreme Court Justice;

Charles Sabatino, Vice President, Claims at Kaiser Foundation Health Plan; and

Linda Sanchez-Valentine, Executive Secretary-Treasurer, Orange County Labor Council and member of Workforce Investment Board of the City of Santa Ana.

The AOB had three board meetings in 2001 that the OIA attended to discuss the operation of its systems, answer questions, and consult about proposed changes to the *Rules*. During these meetings, the AOB also became familiar with the pre-arbitration, dispute resolution procedures at Kaiser, as well as some of its quality assurance mechanisms. The AOB has drafted its bylaws. A draft copy of its bylaws is attached as Exhibit K.

Early in 2001, Dr. Werdegar also spent two days in the OIA office observing how it operates and speaking with its staff. The OIA has invited all AOB members to visit its office.

The AOB has reviewed a draft of this report. The AOB discussed the draft report with us at its March 12, 2002 board meeting. Its written response is attached as Exhibit N.

## **VI. Significant Event During 2002: State Mandated Ethics Code for Neutral Arbitrators**

During this reporting period, the California Legislature passed a statute mandating the Judicial Council to draft a code of ethics for neutral arbitrators. Neutral arbitrators must follow them beginning July 1, 2002. Because no state ethical standards had previously existed, our *Rules* require all arbitrators to follow the AAA Code of Ethics for Arbitrators in Commercial Disputes. Our *Rules* will be amended to include the state's new code.

We contemplate, however, that the need for rule changes may be more extensive than that. While a panel of experts was named in November 2001 to advise the Judicial Council in drafting the guidelines, no draft circulated to the public during 2001. Indeed, a final version of the code is not expected until April 2002. It is possible that the code may create certain obligations for neutral arbitrators (to obtain permission of the parties in current cases before accepting an additional case) or rights for the parties (of continuing automatic disqualification) that require that our *Rules* be modified and may increase the time needed to select a neutral arbitrator and/or to arbitrate a case. We may also need to increase the number of individuals in our pool and/or limit the number of cases a neutral arbitrator can have at any time, even if jointly selected.

The AOB and Kaiser are aware of the upcoming ethics code and are prepared to work quickly in consultation with the OIA to fashion any immediate changes that will be required. Obviously, we will be carefully following the effects of the code, and we will report fully in the 2002 annual report.

## VII. Conclusion

In keeping with the recommendations of the California Supreme Court and the Blue Ribbon Panel on Kaiser Permanente Arbitration, the Office of the Independent Administrator has created and is operating an independently administered system of arbitration for Kaiser and its members that is fast, fair, low cost, and confidential.

This report describes the degree to which these goals are being met. The OIA, the AAC, and Kaiser set qualifications for neutral arbitrators hearing Kaiser arbitrations. The OIA has created a panel of 306 neutral arbitrators willing to hear Kaiser cases throughout the state of California. The OIA, the AAC, and Kaiser negotiated a set of rules that provide deadlines and procedures for Kaiser arbitrations. The AOB provides ongoing oversight of the OIA. So far, a total of 2,199 claimants have entered the system governed by the *Rules* and administered by the OIA. In the OIA system, neutral arbitrators are selected quickly. Parties and arbitrators are holding early management conferences and setting hearing dates at the outset of the cases, and the OIA is monitoring cases to ensure that hearings and other events are being completed by their deadlines. Thus far, in the cases we have administered, all but one have met their final deadlines.

Of particular note, the OIA system has greatly reduced the amount of time that elapses from the time the health plan receives a demand for arbitration until a neutral arbitrator is selected. In the OIA system, the average for all cases combined is 44 days. This is 15 times faster than the average of 674 days to appointment of a neutral arbitrator reported by the California Supreme Court in *Engalla v. Permanente Medical Group*.

The OIA system has existed for 33 months. The data provided in this report show that thus far the OIA is ensuring that the deadlines and procedures found in the *Rules* are being followed in all of the Kaiser arbitrations it is administering.

## **EXHIBIT A**

### **Firm Profile and Description of OIA Staff**

## EXHIBIT A

### Firm Profile and OIA Staff Descriptions

#### I. Firm Profile

The Law Offices of Sharon Lybeck Hartmann is a boutique firm specializing in monitoring consent decrees and in alternative dispute resolution, primarily in the field of civil rights. The firm's expertise results from assisting large, complex organizations at junctures where they seek substantial and lasting change. Sharon Lybeck Hartmann is now the appointed Monitor in a state matter involving the California Department of Corporations in the area of legal compliance in franchise sales. In 1998, the firm was selected by the City of Los Angeles to review, evaluate and report upon the city's compliance with a settlement entered in an employment discrimination case. Between 1994 and 1999, Ms. Hartmann was the national Civil Rights Monitor for the consent decrees that settled the class action litigation against Denny's restaurants. The firm's outstanding work monitoring the Denny's cases was recognized in a commendation from U.S. Attorney General Janet Reno.

The firm's work has also included the following activities. It decided over 5,000 claims appealed by individuals denied membership in a national class action based on race and color discrimination for which it was commended by the presiding federal district court. It has conducted neutral, confidential investigations for racial discrimination in public accommodations across the United States. It has created, designed and conducted national and statewide anti-discrimination training. It has designed and conducted state-wide training geared toward eliminating fraudulent practices in consumer contracts. It has published confidential reports describing its activities and the progress made toward the goals of each project in which it has participated. The firm is highly computer-literate, and has a great deal of expertise formulating rules and processes where none existed, monitoring timely compliance with those rules, and ensuring compliance where problems have occurred in the past.

For the past three years, the firm has brought its expertise to bear on operating the Kaiser Mandatory Arbitration System for disputes with its members.

#### II. Staff of the Office of the Independent Administrator

**Sharon Lybeck Hartmann, Esq., Independent Administrator.** Ms. Hartmann is the principal and sole owner of the Law Offices of Sharon Lybeck Hartmann. She is a second-career lawyer who first spent twelve years as a high school English teacher, two of them in Tanzania, East Africa, with a Peace Corps predecessor program. In 1979, she graduated from Boalt Hall Law School, at the University of California, Berkeley, where she served as Editor-in-Chief of the *Industrial Relations Law Journal*. She served as a federal law clerk both at the district court level and on the 9<sup>th</sup> Circuit. Ms. Hartmann has over twenty years' experience in the areas of civil rights monitoring of consent decrees, civil rights litigation and civil litigation. She is a past recipient of the Maynard Toll Pro Bono Award of the Legal Aid Foundation of Los Angeles for the work co-directing the litigation in *Paris v. Board of Supervisors*, a *pro bono* case brought to improve conditions in emergency shelter for the homeless in Los Angeles County. She has

taught at Boalt Hall and at the UCLA and Loyola Law Schools. Ms. Hartmann supervised the creation of the OIA system and supervises the overall operation of the OIA.

**Marcella A. Bell, Esq., Director.** Ms. Bell is a graduate of Loyola Marymount University and the University of West Los Angeles School of Law, where she served on the Moot Court Board of Governors. Her legal experience is primarily in the areas of civil rights and alternative dispute resolution. Ms. Bell has been an attorney with the Hartmann firm since 1995. She served as a volunteer attorney at the Domestic Violence Prevention Clinic from 1998 to 2000. As Director of the OIA, Ms. Bell decides fee waiver applications and petitions for expedited proceedings, selects neutral arbitrators based on parties' responses, speaks with neutral arbitrators about their selection and the process of their cases, compiles and analyzes statistical data, answers substantive questions from and concerns of claimants and attorneys, and supervises the day to day operation of the OIA and its staff. Ms. Bell is fluent in Spanish and Italian.

**Stephanie L. O'Neal, Esq., Assistant Director.** Ms. O'Neal is a graduate of Dartmouth College and UCLA School of Law. She also received a Masters in Urban Planning from UCLA School of Architecture and Urban Planning. Her legal experience is primarily in the areas of civil rights and alternative dispute resolution. Ms. O'Neal has been an attorney with the Hartmann firm since 1996. At the OIA, Ms. O'Neal reviews arbitrator applications and fee waiver applications, decides fee waiver applications and petitions for expedited proceedings, selects neutral arbitrators based on parties' responses, speaks with neutral arbitrators about their selection and the process of their cases, and answers substantive questions from and concerns of claimants and attorneys. She assists Ms. Bell in supervision of the OIA and its staff.

**Tracy Holler, Management Information Systems.** Ms. Holler is a graduate of California State Polytechnic University, Pomona. She studied Business Administration, with a concentration in Management and Human Resources. She has worked at the Hartmann firm since 1994. She is the Computer Network Administrator and is responsible for all parts of the computer network. She designed, set up, and maintains the OIA's extensive computer databases. She generates the statistical reports upon which these annual reports are based.

**Vivian Arroyo, Administrative Staff.** Ms. Arroyo has worked as an administrator at the Hartmann firm since 1997. Prior to joining the firm, she worked for Mexicana Airlines as a sales representative for fifteen years. Ms. Arroyo traveled all over the world during her career with the airline. At the OIA, Ms. Arroyo is responsible for tracking each case's compliance with the *Rules* to the extent it can be tracked through our computer database, sending form letters reminding parties and neutrals of deadlines, and maintaining case files. She is fluent in Spanish.

**Kelly Besser, Administrative Staff.** Ms. Besser is a graduate of UCLA's Communications Studies Department, where she also served as Editor-in-Chief of the campus women's newsmagazine. Ms. Besser did graduate work at New York University's Tisch School of the Arts. She has experience as a legal intake investigator, as an independent music publicist, and as an editorial assistant. She founded and operated a performance art space in Brooklyn, New York. Ms. Besser has worked at the Hartmann firm since 1994. At the OIA, Ms. Besser reviews arbitrator applications against the published standards, maintains the neutral arbitrator files, and generates and sends out Lists of Possible Arbitrators to the parties along with their supporting materials.



**Mary Destouet, Administrative Staff.** Ms. Destouet was on disability leave from May through December of 2001.

**Griselda Luna, Administrative Staff.** Ms. Luna has worked at the Hartmann firm since 1996. She is a graduate of Watterson College, where she studied Business Administration. At the OIA, Ms. Luna is responsible for answering incoming telephone calls and responding to questions from lawyers, members and the public. She also does data input, and miscellaneous projects. Ms. Luna is fluent in Spanish.

**Lynda Tutt, Legal Assistant.** A native of Philadelphia, Pennsylvania, Ms. Tutt completed course work at Temple University. She has many years' experience as a Legal Assistant, and has worked for the Hartmann firm since 1995. Ms. Tutt is a licensed notary and is a member of the Legal Secretaries Association, Beverly Hills/Century City Chapter. She is responsible for creating case files, maintaining information in the OIA's computer database, sending letters to neutral arbitrators confirming their selection, and sending letters regarding payment of filing fees.

**Sharon Oxborough, Esq., Of Counsel.** Ms. Oxborough is a graduate of Hamline University, *summa cum laude*, and Harvard Law School, *cum laude*. She was a federal law clerk in the Central District of California. She has nearly twenty years experience in general civil litigation, appeals, and alternative dispute resolution. She has been associated with the Hartmann firm since 1994. Ms. Oxborough drafted and negotiated the original *Rules* and forms used by the OIA and consults about issues that arise. During 2001, she stepped in when Ms. Bell was on maternity leave, drafted amendments to the *Rules*, and discussed these amendments with the AOB.

**EXHIBIT B**

**Blue Ribbon Panel Report**  
**Recommendations and Report on Achievement**

## EXHIBIT B

### Status Report on Blue Ribbon Panel Recommendations

This appendix sets out in bold type each of the recommendations made by the Blue Ribbon Advisory Panel on Kaiser Permanente Arbitration in the report that it issued in January 1998. Each recommendation is followed by the status of the recommendation as known to the Office of the Independent Administrator (“OIA”) on December 31, 2001.

#### A. Independent Administration

- 1. Independent Administrator should manage the Kaiser Permanente Arbitration System and the individual cases within it. The Kaiser Foundation Health Plan, Inc. should fund the Independent Administrator.**

**Status:** Ongoing. Kaiser has informed the OIA that as of December 31, 2000, all member service agreements had been amended to require use of the OIA. During 2001, 724 of the cases Kaiser sent to the OIA were mandatory and 306 were opt in. Of the 766 open cases as of December 31, 2001, 551 (72%) are mandatory. However, since malpractice claims arise at the date of discovery rather than the date of the incident, some claims will still arise under earlier contracts where use of the OIA is not required. We expect this to be so for several years. The OIA is funded by Kaiser and by the \$150 filing fee members pay when they make a demand for arbitration.

- 2. The mission of the Independent Administrator should be to ensure that the Kaiser Permanente process is fair, speedy, cost-effective, and protects the privacy interests of the parties. These goals should be reflected in the contract with the Independent Administrator and made available to all members and employer-purchasers.**

**Status:** Completed. The *Rules for Kaiser Permanente Member Arbitrations Overseen by the Office of the Independent Administrator* (“Rules”) set out a fair, speedy, cost-effective process. The system’s goals are set out in Rule 1, and mirror this recommendation. Rule 3 provides that the arbitrator and the Independent Administrator shall not divulge information disclosed to them in the course of an arbitration. The goals are also set out in the contract between Kaiser and the Law Offices of Sharon Lybeck Hartmann. The contract contains specific provisions related to confidentiality. The entire contract between the Independent Administrator and Kaiser is available to anyone who requests it from the OIA. Many copies of the contract have been distributed.

3. **The Independent Administrator selected should not be a provider of neutral arbitrators or mediators.**

**Status:** Completed. The Law Offices of Sharon Lybeck Hartmann is not a provider of neutral arbitrators or mediators.

#### **B. Advisory Committee**

4. **Kaiser Permanente should establish, an on-going, volunteer Advisory Committee, comprised of representatives from Kaiser membership, Permanente Group physicians, Kaiser health care personnel, employer-purchasers of Kaiser Permanente services, an appropriate consumer advocacy organization and the plaintiffs' and defense bar involved in medical malpractice in the Kaiser Permanente arbitration system. Kaiser Permanente should consult with the Advisory Committee prior to the selection of the Independent Administrator and at other critical points described later in this report.**

**Status:** Completed. In April 1998, Kaiser announced appointment of the Arbitration Advisory Committee ("AAC") and its membership. The AAC participated in the selection of the Independent Administrator and worked closely with Kaiser and the OIA in creating the new system. On April 13, 2001, Kaiser announced a new oversight board. The Arbitration Oversight Board ("AOB") replaced the AAC. The AOB reviewed this report. Section V., at pages 40-41, further describes the role of the AOB and its members.

#### **C. Goals of a Revised Kaiser Permanente Arbitration System**

##### **Time Frame for Resolution**

5. **The Independent Administrator, after consultation with Kaiser Permanente and the Advisory Committee, should establish arbitration process deadlines, which will serve as publicly stated benchmarks for the program.**

**Status:** Completed. Under the *Rules*, ordinary cases must be resolved within eighteen months of the OIA receiving the claim and the filing fee or a completed fee waiver application. The *Rules* set out events and deadlines that parties must meet enroute to a matter's completion. This helps ensure that target completion dates will be met. The *Rules* also contain provisions for cases that must be completed in more or less time than eighteen months.

6. **The Independent Administrator should supervise the progress of each case and should communicate regularly with the neutral arbitrator (and the parties, when appropriate) to assure that each case moves as expeditiously as possible. To this end, the Independent Administrator should encourage continuous hearings.**

**Status:** Ongoing. As described in section IV.F, at pages 24-25, of the annual report, the OIA tracks the progress of each case and communicates with the neutral arbitrator and the parties as necessary to ensure that each case moves forward as expeditiously as possible. Rule 2 (c)(ii) requires that arbitration hearings be scheduled for consecutive days if more than one day is necessary. Of the 228 cases that have had hearings since the OIA began its work, 206 had continuous hearings. That's 90%. Sixteen (16) of the remaining 22 cases were completed within approximately 2 weeks. The remaining 6 were completed between 33 and 137 days later. In the case that took 137 days, the neutral arbitrator was hospitalized.

7. **Although all cases should move as swiftly as possible, special expedited procedures, including those for appointing the neutral arbitrator and setting arbitration hearing dates, should be established for cases in which the member is terminally ill or in other catastrophic circumstances.**

**Status:** Completed. Rules 33 through 36 set out procedures for expedited cases. As described in section IV.J.1, at page 33, there have been a total of 22 expedited cases in the OIA system since it began. Twenty are now closed. All have finished within their allotted time periods. We handled one from beginning to end in 20 days. Two remain open and appear to be on track for timely completion.

### **Documentation and Availability of Procedures**

8. **The Independent Administrator should formalize and make available Kaiser Permanente's new arbitration goals and procedures in writing and take actions, where necessary, to assure all participants are properly informed.**

**Status:** Completed. The OIA sends a written System Description, the *Rules*, and a detailed letter to all claimants and/or counsel each time Kaiser forwards a demand for arbitration to the OIA. These items are also available to anyone who requests them from the OIA, and through the OIA's website at [www.slhartmann.com/oia](http://www.slhartmann.com/oia). Kaiser members may also obtain much of this information from the Kaiser Permanente Member Service Customer Center. The OIA has done outreach to the plaintiff's bar and the media regarding its goals and procedures. Published accounts have appeared as a consequence of these efforts. OIA staff have also appeared and spoken at such organizations as the National Health Policy

Forum in order to describe the system. Copies of the annual report are also available to anyone who asks and are available on the OIA website.

### **Establishing a List of Qualified Arbitrators**

- 9. The Independent Administrator should develop the largest possible list of qualified neutral arbitrators.**

**Status:** Completed. The OIA's panel of neutral arbitrators currently has 306 members, made up of 117 in Northern California, 169 in Southern California and 40 in San Diego. Twenty are in two pools. The OIA has continued to recruit arbitrators through advertising and targeted mailing, to accept applications from interested parties, and to admit those qualified to the panel. Thirty-three percent, or 102 members, of the total panel are retired judges.

- 10. The Independent Administrator should solicit applications from firms and individuals in California who provide neutral arbitration services and who are interested in serving in Kaiser Permanente cases. The qualifications for applicants should be established by the Independent Administrator after discussion with the Advisory Committee and Kaiser Permanente.**

**Status:** Completed. In a series of meetings held in November and December 1998, and January 1999, the OIA, the AAC, and Kaiser jointly agreed upon the qualifications for neutral arbitrators. The OIA advertised them widely. The OIA has communicated extensively with JAMS, Alternative Resolution Centers, Action Dispute Resolution Services, Judicate West, and Resolution Remedies. We have neutral arbitrators from all of these organizations on our panel as well as individuals, some of whom belong to AAA.

- 11. The Independent Administrator should select those applicants who meet standards of qualifications and experience and who demonstrate that they will implement the program's goals of fairness, timeliness, low cost and protection of the parties' privacy interest.**

**Status:** Completed. The OIA reviews each arbitrator's application and makes sure that the applicant meets the published qualifications. When an applicant is rejected, she or he receives a letter citing the specific, numbered requirement which has not been met.

### **Prompt Selection of the Neutral Arbitrator**

- 12. Kaiser Permanente should be required to send the demand for arbitration, or other notice of arbitration, to the Independent Administrator within five (5) business days of receipt.**

**Status:** Completed as modified. Rule 11 requires that Kaiser Permanente forward Demands for Arbitration to the OIA within 10 business days of receipt. Kaiser and the AAC enlarged this number in our original discussions of the *Rules*. As stated in section III.A, page 12, of the third annual report, Kaiser has on average, forwarded new demands to the OIA in eight days. The mode is zero. The median is 4 days, and the range is from 0 to 330 days.

**13. The neutral arbitrator should be selected within thirty (30) days of the Independent Administrator's receipt of the arbitration demand.**

**Status:** Completed. As reported in section IV.A.1, page 17, of the third annual report, in the majority of cases administered by the OIA, the average time to the naming of a neutral arbitrator is 24 days. This figure excludes cases where parties have obtained postponements or have disqualified one or more neutral arbitrators.<sup>1</sup>

**14. The parties should have a short period within which they may agree upon any neutral arbitrator of their choosing.**

**Status:** Completed. Under Rule 17, the parties may select any neutral arbitrator of their choosing, as long as that person agrees to follow the OIA's rules. The parties may make their joint selection during the same 20 days they have for selecting a neutral arbitrator using a randomly generated list of possible arbitrators provided by the OIA. The parties notify the OIA of their joint selection instead of returning their lists with strikes and ranks. As reported in section IV.E, page 24, of the third annual report, in 1,260 out of 1,851 cases, or about 68% of the cases where parties have selected neutral arbitrators, the parties used the list provided by the OIA. In 588 cases, or 32%, the parties jointly selected a neutral arbitrator instead of returning the list provided by the OIA. In the 588 cases where parties have jointly selected a neutral arbitrator, 428 of them have selected an arbitrator who is on the OIA's panel.

**15. If no arbitrator is selected within that period (see Recommendation 14), the Independent Administrator should select the neutral arbitrator by providing a list of names to the parties and giving them ten (10) days to strike some number of those names. The procedure for this striking process should be established by the Independent Administrator.**

**Status:** Completed as modified. Rules 17 and 18 give the parties twenty days to either jointly select a neutral arbitrator or return a strike and rank list provided by the OIA.

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<sup>1</sup> The Blue Ribbon Panel also recommended including the ability to obtain postponements in the system's rules. See Recommendation 17. The disqualification procedure is statutory. See California Code of Civil Procedure §1281.9.

- 16. In creating lists of potential neutral arbitrators, the Independent Administrator should rotate among the qualified neutral arbitrators.**

**Status:** Completed. The OIA creates lists of possible arbitrators by randomly selecting names from its computer database. The OIA uses a computer lottery program to make random selections. As reported in section II.B.6, page 9, of the third annual report, all of the members of our pool have been named on our lists of possible arbitrators and 79%, (241 out of 306), have been selected to serve as neutral arbitrators on Kaiser arbitrations. The number of neutrals actually selected has risen 17% since our second report. The average number of selections to serve per neutral is five. The median is two and mode is zero.

- 17. A one-time delay in appointment of up to ninety (90) days may be allowed by the Independent Administrator upon written request of the plaintiff. Counsel requesting a delay should be required to provide a copy of the written request to his or her client.**

**Status:** Completed as modified. Rule 21 provides for this postponement upon the request of a claimant. Rule 21 does not require counsel requesting a delay to provide a copy of the request to his or her client. In the discussions that created the *Rules*, the AAC felt that this was not necessary.

- 18. The Independent Administrator should be able to grant further continuances in unusual circumstances.**

**Status:** Completed. See Rule 28. As described in section IV.J.4, at pages 34-35, the OIA and the neutral arbitrators have granted 54 Rule 28 continuances that extended the deadline past 18 months and 35 other continuances that did not affect the 18 month deadline.

### **Arbitration Management**

- 19. The neutral arbitrator should promptly convene an arbitration management conference, in person or by phone, to set deadlines for key events, establish the date of the arbitration hearing and assist in resolving any issues that might impede the progress of the case. The neutral arbitrator should hold additional conferences as necessary to assure that the case continues to move expeditiously. The Independent Administrator should monitor the cases and supervise the neutral arbitrators to assure efficient progress.**

**Status:** Completed. Rule 25 requires that the neutral arbitrator call an arbitration management conference within 45 days of appointment. Items to be discussed at the conference cited in Rule 25(b) and (c) track this Blue Ribbon Panel recommendation. Rule 25(f) provides for additional conferences as the parties and the arbitrator need them. As described in



section IV.F, pages 24-25, of the annual report, the OIA monitors each case and ensures that the neutral arbitrator is complying with the deadlines set out in the Rules. Four hundred sixty six (466), or 74%, of the 632 open cases which have neutral arbitrators appointed, have held the arbitration management conference. Others, for the most part, are in the very early stages of a case and have not yet reached the arbitration management conference deadline.

### **Disclosures by Potential Arbitrators**

- 20. The Independent Administrator should maintain a list of all qualified neutral arbitrators and arbitration organizations and maintain a file on each. An individual neutral arbitrator's file should contain the history of the arbitrator's rulings in Kaiser arbitrations, written decisions (if any) in those cases, a biography and any additional information necessary to enable parties to screen for bias and possible conflicts of interest.**

**Status:** Completed. A list showing arbitrators on the OIA's panel is available from the OIA and is posted on the OIA's website at [www.slhartmann.com/oia](http://www.slhartmann.com/oia). The OIA maintains a file for each arbitrator. The files contain copies of the arbitrators' lengthy applications, and may contain redacted decisions that the OIA has received under Rule 39(c), evaluations by parties, and other documents such as biographies and resumes. The application includes a question in which arbitrators must set forth any previous involvement in a Kaiser matter within the last five years. As described in section II.B.3, page 6, in 2001, the OIA required its panelists to update the information they provided on their applications. When the OIA issues a list of possible arbitrators to parties, each side receives a copy of the files for the twelve randomly selected arbitrators on the list. Any neutral arbitrator selected by the parties must also make extensive disclosures as required by law. See Rule 20.

- 21. These files should be made available to parties and counsel in pending Kaiser Permanente arbitrations. When a list of potential neutral arbitrators is sent to parties and counsel, a summary of the file information on the proposed neutral arbitrators should be included in that mailing.**

**Status:** Completed. Copies of each arbitrator's file are sent to the parties when an arbitrator's name appears on a list issued by the OIA. To avoid the appearance of altering or shaping information about an arbitrator, the OIA sends copies of actual documents in the file rather than a summary of documents.

## Written Decisions

22. **Neutral arbitrators should be required to issue brief written decisions to the parties in Kaiser Permanente arbitrations and the Independent Administrator. These decisions should include the name of the prevailing party; the amount and other relevant terms of the award, if any; and reasons for the judgment rendered.**

**Status:** Completed. See Rule 38. Neutral arbitrators have issued written awards to the parties and the OIA in all cases in which an arbitration hearing has occurred.

23. **The Independent Administrator should maintain a complete set of the written decisions in Kaiser Permanente arbitration cases. In addition, a copy of a neutral arbitrator's decision should be kept in that arbitrator's file. These documents should be made available, as described above, to parties and counsel in pending Kaiser Permanente arbitrations.**

**Status:** Completed. The OIA keeps copies of written arbitration decisions in each case file. Under Rule 39(c), Kaiser is required to provide the OIA with a redacted version of each decision. The OIA places a copy of redacted decisions in neutral arbitrators' files. Copies of redacted decisions are part of the information that is sent to parties or their counsel whenever the name of a neutral arbitrator who has rendered a decision appears on a list of possible arbitrators.

## Protection of Privacy

24. **In developing principles to govern the Independent Administrator and the neutral arbitrators who will serve in Kaiser Permanente cases, Kaiser Permanente and the Advisory Committee should give substantial care to ensure the privacy of members, physicians and Kaiser personnel. Prior to making past awards and written decisions available, as recommended above, the Independent Administrator should remove the names of parties, members, physicians and Kaiser Permanente personnel, as well as the name and location of the Kaiser facility.**

**Status:** Completed. Rule 39(c) requires Kaiser to provide the OIA with copies of redacted decisions. Redacted decisions become part of the OIA file for the neutral arbitrator who issued the decision. Except for including the names of the attorneys involved, the redacted decisions are the same as those Kaiser prepares for California's Department of Managed Health Care.

## Enhancement of Settlement Opportunities

25. **The Independent Administrator should ensure that the neutral arbitrator schedules, but does not attend, an early meeting between the parties to consider settlement, either through direct negotiations or with the assistance of a mediator.**

**Status:** Completed. Under Rule 26, the parties must hold a mandatory settlement meeting within 6 months of the neutral arbitrator being appointed. The OIA tracks the scheduling and the holding of this settlement meeting. See section IV.F.3, page 25, of the annual report.

26. **Within twelve (12) months of this report, Kaiser Permanente should consult with the Independent Administrator and the Advisory Committee and begin implementation of a mediation program.**

**Status:** Not completed. No such program is planned. Kaiser believes that its other internal dispute resolution mechanisms, its voluntary external review, and the statutory changes requiring DMHC intervention in benefits and coverage disputes have met the spirit of this recommendation and that it has significantly reduced its number of open claims by utilizing its present devices. It does not believe that a mediation program is needed now and does not plan to start one.

## Encouraging Use of the Sole Arbitrator

27. **If the member requests a single, neutral arbitrator, Kaiser Permanente should consent and pay the full fee of the neutral arbitrator. If Kaiser Permanente insists upon a tripartite panel in these circumstances, it should pay for all fees of the neutral arbitrator as well as its own party arbitrator.**

**Status:** Completed. Rules 14 and 15 provide these features. In at least 43% of the cases the OIA is administering (891 of 2,017 cases), claimants have elected to shift the responsibility for paying the neutral arbitrator's fees and expenses to Kaiser. This is about the same as the second annual report. See section IV.K, pages 36-37, of the annual report.

## Oversight and Monitoring

28. **The Independent Administrator should report annually to Kaiser Permanente and the Advisory Committee. The report should discuss the actions taken to achieve the program's goals and whether those goals are being met. The annual report shall be made available to the Advisory Committee and, upon request, to Kaiser Permanente members, employer/purchasers and the general public.**

**Status:** Completed. This is the third annual report. Hard copies of the annual report are available without cost from Kaiser and from the OIA. The report can also be read or downloaded from the OIA's website at [www.slhartmann.com/oia](http://www.slhartmann.com/oia). We have left the two prior reports posted and simply added the third one.

- 29. No less than every five years, an independent audit of the Independent Administrator should be undertaken. This audit shall also be made available to the Advisory Committee and upon request, to Kaiser Permanente members, employer/purchasers and the general public.**

**Status:** Not completed. The OIA has only been in existence for three years. However, the contract between Kaiser and the Law Offices of Sharon Lybeck Hartmann provides that the Law Offices will make the OIA available for independent audits not to exceed one per calendar year.

- 30. Kaiser Permanente should conduct on-going, internal research to assess the extent to which the arbitration system is meeting its stated goals**

**Status:** Unknown. This recommendation does not call for the OIA's participation.

#### **D. Improvement of the Pre-arbitration System**

- 31. Kaiser Permanente should establish and fund a formal Ombudsperson program to assist members in the complaint and grievance processes.**

**Status:** Unknown. This recommendation does not call for the OIA's participation.

- 32. The Kaiser Permanente dispute resolution system should be standard across all facilities in California and should be communicated more clearly and directly, in writing, to its members.**

**Status:** Ongoing. To the extent that this recommendation involves systems other than arbitration, the OIA has no information because it is not involved. With regard to the OIA, the system is standardized across the state. The OIA treats each demand for arbitration received from Kaiser in the same fashion, sending a written description of its system and a copy of the *Rules* to all claimants who file demands. All OIA cases are administered in the same manner.

#### **E. Cases Not Involving Medical Malpractice**

- 33. Kaiser Permanente should consult with the Advisory Committee and the Independent Administrator to determine whether different**

**arbitration procedures are needed for benefits and coverage cases and matters other than medical malpractice.**

**Status:** Ongoing. At this point 91.5% of all cases in this system are medical malpractice. In the OIA's first 33 months of operation, benefits and coverage cases constituted less than 2 percent of the entire case load (32 cases). Two of them have requested expedited status. Kaiser, the AOB and the OIA will continue to watch to see whether benefits and coverage cases and types of cases other than medical malpractice need different arbitration procedures from those now provided. Kaiser has forwarded claims of the following types to the OIA: medical malpractice, premises liability, other tort, benefits, and unknown because the demand did not contain this information. No one has yet suggested developing different procedures for cases other than medical malpractice.

**F. Speed of Implementation**

- 34. The Advisory Committee should be appointed no later than February 1, 1998.**

**Status:** Completed late. The Arbitration Advisory Committee was appointed in April of 1998.

- 35. The Independent Administrator should be selected no later than April 1, 1998.**

**Status:** Completed late. Kaiser and the Law Offices of Sharon Lybeck Hartmann executed their contract on November 4, 1998.

- 36. Kaiser Permanente should develop and publish an implementation schedule for these recommendations as rapidly as possible.**

**Status:** Unknown. The OIA is not aware of a published implementation schedule for the Blue Ribbon Panel's recommendations. However, as noted above, 27 out of 36 recommendations have been completed, with another four well on the way to completion. Two recommendations, mediation and the audit of the OIA, have not been done, and we have no information on recommendations 30, 31 and 36 since they do not involve us. However, the AOB may have such information.

## **EXHIBIT C**

### **Rules for Kaiser Permanente Member Arbitrations**

**EXHIBIT C**

**RULES FOR KAISER PERMANENTE MEMBER  
ARBITRATIONS**

**OVERSEEN BY**

**THE OFFICE OF THE INDEPENDENT ADMINISTRATOR**

**March 2002**

**TABLE OF CONTENTS**

**A. GENERAL RULES .....1**

**1. Goal .....1**

**2. Administration of Arbitration .....1**

**3. Confidentiality.....1**

**4. Code of Ethics.....1**

**5. Meaning of Arbitrator .....1**

**6. Authority of Arbitrators.....1**

**7. Contents of the Demand for Arbitration .....2**

**8. Serving Demand for Arbitration .....2**

**9. Serving Other Documents .....3**

**10. Representation.....3**

**B. RULES ON COMMENCEMENT OF ARBITRATION AND SELECTION OF ARBITRATORS .....3**

**11. Initiation of Arbitration .....3**

**12. Filing Fee .....4**

**13. Waiver of Fees .....4**

**14. Number of Arbitrators .....4**

**15. Payment of Neutral Arbitrator Fees and Expenses .....5**

**16. List of Possible Arbitrators .....6**

**17. Joint Selection of the Neutral Arbitrator.....6**

**18. Selection of the Neutral Arbitrator When the Parties Do Not Agree .....7**



19.	Acceptance by the Neutral Arbitrator .....	9
20.	Disclosure and Challenge .....	9
21.	Postponement of Selection of Neutral Arbitrator .....	9
22.	Selection of the Party Arbitrator .....	9
23.	Appointment of Chairperson .....	10
<b>C.</b>	<b>RULES FOR REGULAR PROCEDURES .....</b>	<b>10</b>
24.	Deadline for Disposing of Arbitrations .....	10
25.	Arbitration Management Conference.....	11
26.	Mandatory Settlement Meeting .....	12
27.	Discovery.....	13
28.	Postponements.....	13
29.	Failure to Appear .....	14
30.	Securing Witnesses for the Arbitration Hearing .....	14
31.	Close of Hearing or Proceeding .....	14
32.	Documents .....	14
<b>D.</b>	<b>RULES FOR EXPEDITED PROCEDURES.....</b>	<b>15</b>
33.	Expedited Procedures.....	15
34.	Seeking Expedited Procedures from the Independent Administrator.....	15
35.	Seeking Expedited Procedures from the Neutral Arbitrator .....	16
36.	Telephonic Notice.....	16
<b>E.</b>	<b>RULES ON AWARD AND ENFORCEMENT .....</b>	<b>16</b>
37.	Time of Award.....	16
38.	Form of Award.....	17

39.	Delivery of the Award.....	17
40.	Notice after Settlement .....	17
41.	Sanctions .....	17
42.	Release of Documents for Judicial Proceedings.....	18
<b>F.</b>	<b>RULES OF ADMINISTRATION .....</b>	<b>18</b>
43.	Counting of Days.....	18
44.	No Limit on Immunity.....	18
45.	Neutral Arbitrator Fees.....	18
46.	Expenses.....	18
47.	Forms .....	18
48.	Questionnaire .....	19
49.	Evaluation.....	19
50.	Amendment of Rules.....	19
51.	Conflict with Law.....	19
52.	Acknowledgment of No Warranty .....	19
53.	Public Reporting .....	20

## **A. GENERAL RULES**

### **1. Goal**

**These Rules are intended to provide an arbitration process that is fair, timely, lower in costs than litigation, and that protects the privacy interest of all Parties.**

### **2. Administration of Arbitration**

**The arbitrations conducted under these Rules shall be administered by the Office of the Independent Administrator.**

### **3. Confidentiality**

**Information disclosed to and documents received by an Arbitrator or the Independent Administrator by or from the Parties, their representatives, or witnesses in the course of the arbitration shall not be divulged by the Arbitrator or the Independent Administrator. With respect to the Independent Administrator, this Rule shall not apply to communications concerning Arbitrators, or statistical information used in its annual reports.**

### **4. Code of Ethics**

**Arbitrators shall comply with the AAA Code of Ethics for Arbitrators in Commercial Disputes.**

### **5. Meaning of Arbitrator**

**The term “Arbitrator” in these Rules refers to the arbitration panel, whether composed of one or more Arbitrators or whether the Arbitrators are Neutral or Party. The term “Party Arbitrator” means an Arbitrator selected by one of the sides to the arbitration. The term “Neutral Arbitrator” means any Arbitrator other than a “Party Arbitrator.”**

### **6. Authority of Arbitrators**

**Once appointed, the Neutral Arbitrator will resolve disputes about the interpretation and applicability of these Rules, including disputes relating to the duties of the Arbitrator and the conduct of the Arbitration Hearing. In cases involving more than one Arbitrator, however, issues that are dispositive with respect to a claim, including summary judgment motions, will be ruled on by all three Arbitrators and decided by a majority of them. Upon commencement of the Arbitration Hearing and thereafter, all substantive decisions shall be made by a majority of the full panel or as otherwise agreed by them.**

**7. Contents of the Demand for Arbitration**

The Demand for Arbitration shall include the basis of the claim against the Respondent(s); the amount of damages the Claimant(s) seeks in the Arbitration; the name, address and telephone number of the Claimant(s) and their attorney, if any; and the name of all Respondent(s). Claimant(s) shall include all claims against Respondent(s) that are based on the same incident, transaction, or related circumstances in the Demand for Arbitration.

**8. Serving Demand for Arbitration**

- a. In Northern California Kaiser Foundation Health Plan, Inc. (“Health Plan”), Kaiser Foundation Hospitals, and/or The Permanente Medical Group, Inc. shall be served with a Demand for Arbitration by mailing the Demand for Arbitration addressed to that Respondent(s) in care of:

Kaiser Foundation Health Plan, Inc. Legal Department P. O. Box 12916 Oakland, CA 94604	or	Kaiser Foundation Health Plan, Inc. Legal Department 1950 Franklin Street, 17 <sup>th</sup> Floor Oakland, CA 94612
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Service on that Respondent shall be deemed completed when received.

- b. In Southern California, Health Plan, Kaiser Foundation Hospitals, and/or Southern California Permanente Medical Group, shall be served with a Demand for Arbitration by mailing the Demand for Arbitration to that Respondent(s) in care of:

Kaiser Foundation Health Plan, Inc.,  
Legal Department  
393 East Walnut Street  
Pasadena, CA 91188

Service on that Respondent shall be deemed completed when received.

- c. All other Respondent(s), including individuals, must be served as required by the California Code of Civil Procedure for a civil action.
- d. All Respondent(s) served with a Demand for Arbitration in the manner described above shall be Parties to the Arbitration. The Arbitrator shall have jurisdiction only over Respondent(s) actually served. If Claimant(s) serves any Respondent(s) other than an organization affiliated with Kaiser Permanente, the Claimant(s) shall serve a proof of service of that Respondent(s) on the Independent Administrator.

**9. Serving Other Documents**

- a. Service of other documents required by these Rules will be made on the Parties or Arbitrator at their last known address. If the Party is represented in this arbitration, that counsel shall be served instead of the Party. Service may be made by personal service, Federal Express or other similar service, facsimile transmission, or by U.S. mail.
- b. Service for the Independent Administrator shall be directed to:

**Office of the Independent Administrator for the  
Kaiser Foundation Health Plan, Inc.  
P. O. Box 76587  
Los Angeles, California 90076-0587  
Or  
Fax: 213.637.8658**

- c. If a Party or Arbitrator serves the Independent Administrator by fax, the Party or Arbitrator shall call the Independent Administrator's office at 213.637.9847 to confirm receipt.
- d. Service on the Independent Administrator is effective on the date the Independent Administrator receives the document.

**10. Representation**

**Parties represented by counsel shall not contact the Independent Administrator except through counsel.**

**B. RULES ON COMMENCEMENT OF ARBITRATION AND SELECTION OF ARBITRATORS**

**11. Initiation of Arbitration**

**Demands for Arbitration shall be served in accordance with Rule 8. Whether or not the Claimant(s) has enclosed a filing fee, within ten (10) days of such service upon the Health Plan at the address set forth in Rule 8, Health Plan shall transmit the Demand for Arbitration and the envelope it came in to the Independent Administrator using the Transmission Form. If the Claimant(s) submitted a filing fee with the Demand, the Health Plan shall transmit the filing fee as well. Health Plan shall also serve a copy of the Transmission Form on the Claimant(s).**

**12. Filing Fee**

- a. The Claimant(s) seeking arbitration shall pay a single, non-refundable, filing fee of \$150 per arbitration payable to “Arbitration Account” regardless of the number of claims asserted in the Demand for Arbitration or the number of Claimant(s) or Respondent(s) named in the Demand for Arbitration.**
- b. If Claimant(s) fails to pay the filing fee or obtain a waiver of that fee within seventy-five (75) days of the date of the Transmission Form, the Independent Administrator will not process the Demand and it shall be deemed abandoned.**

**13. Waiver of Fees**

**Any Claimant(s) who claims extreme hardship may request that the Independent Administrator waive the filing fee and Neutral Arbitrator’s fee and expenses. A Claimant(s) who seeks such a waiver shall complete the Fee Waiver Form and submit it to the Independent Administrator and simultaneously serve it upon Respondent(s). The Fee Waiver Form sets out the criteria for waiving fees and is available from the Independent Administrator or by calling the Kaiser Permanente Member Service Customer Center at 1-800-464-4000. Respondent(s) may submit any response to the Independent Administrator within ten (10) days of the date of Claimant’s Fee Waiver Form, and shall simultaneously serve any submission upon Claimant(s). Within fifteen (15) days of receipt of a Fee Waiver Form, the Independent Administrator shall determine whether the fees should be waived and notify the Parties in writing of the decision. In those cases where the Independent Administrator grants the waiver of fees, the Independent Administrator shall waive the filing fee and Health Plan shall pay the Neutral Arbitrator’s fees and expenses.**

**14. Number of Arbitrators**

- a. The Blue Ribbon Advisory Panel on Kaiser Permanente Arbitration concluded that Party Arbitrators increase the cost and cause more delay than would occur with a single Neutral Arbitrator. The Independent Administrator therefore encourages Parties to use a single Neutral Arbitrator to decide cases.**
- b. The number of Arbitrators may affect the Claimant(s) responsibility for paying the Neutral Arbitrator’s fees and expenses, as set out in Rule 15.**
- c. If the Demand for Arbitration seeks total damages of \$200,000 or less, the dispute shall be heard and determined by one Neutral Arbitrator, unless the Parties otherwise agree in writing that the arbitration shall be heard by two Party Arbitrators and a Neutral Arbitrator. Such**

**Neutral Arbitrators shall not have authority to award monetary damages that are greater than \$200,000.**

- d. If the Demand for Arbitration seeks total damages of more than \$200,000, the dispute may be heard and determined by one Neutral Arbitrator and two Party Arbitrators, one appointed by the Claimant(s) and one appointed by the Respondent(s). Parties who are entitled to select a Party Arbitrator under these Rules may agree to waive this right. If both Parties agree, these arbitrations will be heard by a single Neutral Arbitrator.**
- e. A Party who is entitled to a Party Arbitrator and decides to waive this right shall sign a Waiver of Party Arbitrator Form and serve a copy of it upon the Independent Administrator, Neutral Arbitrator, and other Party. The Claimant(s) shall serve this form on the Neutral Arbitrator and Respondent(s) no later than the date of the Arbitration Management Conference set out in Rule 25 and shall serve the Independent Administrator no later than five (5) days after serving the other Parties. If a Claimant(s) serves Respondent(s) with a signed Waiver of Party Arbitrator Form, Respondent(s) shall inform Claimant(s) within five (5) days of the date of that Form if Respondent(s) will also waive the Party Arbitrator.**

**15. Payment of Neutral Arbitrator Fees and Expenses**

- a. Health Plan shall pay for the fees and expenses incurred by the Neutral Arbitrator if**
  - i. Claimant(s) agrees to waive any potential objection arising out of such payment, signs the Waiver of Objection Form, and serves a copy of it on the Independent Administrator and Respondent(s); and**
  - ii. either the arbitration has only a single Neutral Arbitrator or the Claimant(s) has served a Waiver of Party Arbitrator Form as set out in Rule 14.d.**
- b. In Arbitrations where the Independent Administrator has granted Claimant's Fee Waiver request, Health Plan shall pay the fees and expenses incurred by the Neutral Arbitrator.**
- c. In all other arbitrations, the fees and expenses of the Neutral Arbitrator shall be paid one-half by the Claimant(s) and one-half by the Respondent(s).**
- d. Nothing in this Rule shall prohibit an order requiring the payment of the Neutral Arbitrator's fees and expenses which were incurred as a result of conduct which causes the Neutral Arbitrator to incur**

needless fees and expenses. Such conduct includes, but is not limited to, failure to respond to discovery requests, abusive discovery practices, and the filing of frivolous motions. In the event that such a finding is made by the Neutral Arbitrator, those fees and expenses shall be paid by the responsible Party or counsel. The Neutral Arbitrator shall make such a finding in writing, shall specify what fees and expenses are covered by the order, and shall serve a copy of the finding on the Independent Administrator with the Parties' names redacted, for inclusion in the Neutral Arbitrator's file.

**16. List of Possible Arbitrators**

- a. Within three (3) business days after it has received both the Demand for Arbitration and the filing fee, or it has granted a request for waiver of fees, the Independent Administrator shall simultaneously send to each Party an identical List of Possible Arbitrators, along with the Application forms of and redacted Awards, if any, by each of the possible Neutral Arbitrators.
- b. The List of Possible Arbitrators shall contain the names of twelve (12) persons. The Independent Administrator will choose the twelve (12) names at random from the Independent Administrator's arbitration panel for Southern or Northern California, based on the location where the cause of action arose.
- c. Unless there is a ninety (90) day continuance pursuant to Rule 21, the Parties shall serve the Independent Administrator with their response to the List of Possible Arbitrators within twenty (20) days of the date appearing on the List of Possible Arbitrators. Rules 17 and 18 specify how the Parties may respond.

**17. Joint Selection of the Neutral Arbitrator**

- a. The Parties may all agree upon a person listed on the List of Possible Arbitrators. If they do, the Parties shall contact the person they have chosen. If the person agrees to act as Neutral Arbitrator, the Parties and counsel shall sign the Joint Selection of Neutral Arbitrator Form and have the Neutral Arbitrator sign the Agreement to Serve Form. Unless there is a ninety (90) day continuance pursuant to Rule 21, the Parties shall serve both forms on the Independent Administrator within twenty (20) days of the date appearing on the List of Possible Arbitrators.
- b. Rather than selecting a Neutral Arbitrator from the List of Possible Arbitrators, the Parties may agree to select another person to serve as Neutral Arbitrator, provided that the person agrees in writing to comply with these Rules. If the Parties collectively select a person not



on the list, all the Parties and counsel shall complete and sign the Joint Selection of Neutral Arbitrator Form and have the Neutral Arbitrator sign the Agreement to Serve Form. Unless there is a ninety (90) day continuance pursuant to Rule 21, the Parties shall serve both forms on the Independent Administrator within twenty (20) days of the date appearing on the List of Possible Arbitrators.

- c. After the Independent Administrator has received these forms, it will send a Letter Confirming Service to the person who has agreed to act as Neutral Arbitrator, with a copy to the Parties.

#### **18. Selection of the Neutral Arbitrator When the Parties Do Not Agree**

- a. If the Parties do not collectively agree upon a Neutral Arbitrator, the Neutral Arbitrator shall be selected from the List of Possible Arbitrators in the following manner. Claimant(s) and Respondent(s) may each strike up to four (4) names to which the Party objects and shall rank the remaining names in order of preference with “1” being the strongest preference. Unless there is a ninety (90) day continuance pursuant to Rule 21, the Parties shall serve their preference on the Independent Administrator within twenty (20) days of the date appearing on the List of Possible Arbitrators.
- b. Regardless of the number of Claimants or Respondents, the Claimant(s) shall return only one list of preferences and the Respondent(s) shall return only one list of preferences. All the counsel or all the Parties on one side must sign the list of preferences. If they do not, Rule 18.c. will apply.
- c. Unless there is a ninety (90) day continuance pursuant to Rule 21, if a Party does not serve the Independent Administrator with a response within the twenty (20) days from the date appearing on the List of Possible Arbitrators, all persons named on the List of Possible Arbitrators shall be deemed equally acceptable Neutral Arbitrators to that Party.
- d. At any time before the Party’s response is due, a Party or representative may request to review further information, if any, which the Independent Administrator has in its files about the persons named on the List of Possible Arbitrators. Parties and their representatives may call the Independent Administrator at 213.637.9847 to request such information. The Parties and their representatives may review the information by going to the Independent Administrator’s office. If requested, the Independent Administrator will also send the information to the Party or attorney by mail or fax. Parties who request that further information be sent to them shall be responsible for the Independent Administrator’s cost

of providing it, with no charge made for duplication of the first twenty-five (25) pages. Time spent requesting or waiting for the additional information shall not extend the twenty (20) day limit to respond to the List of Possible Arbitrators.

- e. Working from the returned List of Possible Arbitrators, the Independent Administrator shall invite the Neutral Arbitrator to serve, asking first the person with the lowest combined rank whose name has not been stricken by either Party. If the person with the lowest combined rank is not available, the Independent Administrator will ask the second lowest ranked person who was not stricken by either party, and will continue until a person whose name was not stricken agrees to serve. When the Independent Administrator contacts the persons, it shall inform them of the names of the parties and their counsel and ask them not to accept if they know of any conflict of interest. If there is a tie in ranking, the Independent Administrator shall select a person at random from those choices who are tied.
- f. If, for any reason, a Neutral Arbitrator cannot be obtained from the first List of Possible Arbitrators, the Independent Administrator shall send a second List of Possible Arbitrators to the Parties. The procedure and timing in that case shall be the same as that for the first List of Possible Arbitrators. If, for any reason, a Neutral Arbitrator cannot be obtained from the second List of Possible Arbitrators, the Independent Administrator shall randomly select a Neutral Arbitrator from the other members on the panel who have not been named on either prior List of Possible Arbitrators.
- g. If a Neutral should die, become incapacitated, or otherwise become unable or unwilling to proceed with the arbitration after appointment, the Independent Administrator shall serve the Parties with a new List of Possible Arbitrators and the selection process as set out in Rules 16 and 18 shall begin again.

**19. Acceptance by the Neutral Arbitrator**

When a person agrees to act as a Neutral Arbitrator under Rule 18, the Independent Administrator shall send the person a copy of these Rules, an Agreement to Serve Form, and a Letter Confirming Service. The Independent Administrator shall also serve the Parties with a copy of the Letter Confirming Service. The prospective Neutral Arbitrator shall sign and serve the Agreement to Serve Form as soon as possible.

**20. Disclosure and Challenge**

**The person who has agreed to serve as Neutral Arbitrator shall make disclosures as required by law, including California Code of Civil Procedure Section 1281.9 or its successor statute, simultaneously upon the Parties and the Independent Administrator. Party responses, if any, shall be in accordance with the Code, with a copy served to the Independent Administrator. After the time for any response has passed, the Independent Administrator will deem that the Neutral Arbitrator has been appointed.**

**21. Postponement of Selection of Neutral Arbitrator**

- a. The Claimant(s) may obtain a single ninety (90) day postponement of the appointment of the Neutral Arbitrator by serving a written request for postponement on the Independent Administrator before the date that the response to the List of the Possible Arbitrators is due under Rule 16. Claimant(s) shall serve a written request for postponement on the Respondent(s). Regardless of the number of Claimants, Claimant(s) is entitled to only a single ninety (90) day postponement of the appointment of the Neutral Arbitrator.**
- b. If the Claimant(s) agrees in writing, Respondent(s) may obtain a single ninety (90) day postponement of the appointment of the Neutral Arbitrator. Respondent(s) shall serve a written request for postponement on the Independent Administrator before the date that the response to the List of the Possible Arbitrators is due under Rule 16.**
- c. There shall be only one postponement whether made by either Claimant(s) or Respondent(s) pursuant to this Rule in any arbitration.**

**22. Selection of the Party Arbitrator**

- a. If the Parties are entitled to a Party Arbitrator and have not waived that right, the Claimant(s) and the Respondent(s) shall each select a Party Arbitrator and notify the Independent Administrator and the Neutral Arbitrator of the Party Arbitrator's name, address, and telephone and fax numbers. Each Party Arbitrator shall sign the Agreement to Serve, and submit it to the Independent Administrator before serving in the arbitration.**
- b. If possible, the Parties should select the Party Arbitrators before the Arbitration Management Conference that is set forth in Rule 25. Any Party Arbitrator who is selected after the Arbitration Management Conference shall conform to any arbitration schedule established prior to his or her selection. Notwithstanding any other Rule, if a Party Arbitrator has not been selected, or has not signed the**

**Agreement to Serve, or does not attend a hearing, conference or meeting set by the Neutral Arbitrator of which the Party Arbitrator had notice, the remaining Arbitrators may act in the absence of such Party Arbitrator.**

- c. Regardless of the number of Claimants or Respondents, all of the Claimant(s) are entitled to only one Party Arbitrator and all of the Respondent(s) are entitled to only one Party Arbitrator.**
- d. No Claimant, Respondent, or attorney may act as Party Arbitrator in an arbitration in which he or she is participating in any other manner.**

### **23. Appointment of Chairperson**

**In cases involving more than one Arbitrator, the Neutral Arbitrator will chair the arbitration panel. Absent objection by any Party, the Neutral Arbitrator shall have the authority to decide all discovery and procedural matters, but may not decide dispositive issues without the Party Arbitrators. Dispositive issues shall be decided by a majority of the Arbitrators. The Neutral Arbitrator will also set the time and location of hearings and be responsible for submitting all necessary forms to the Independent Administrator. Upon commencement of the Arbitration Hearing and thereafter, all substantive decisions shall be made by a majority of the Arbitrators or as otherwise agreed by them.**

## **C. RULES FOR REGULAR PROCEDURES**

### **24. Deadline for Disposing of Arbitrators**

- a. Unless Rule 24.b, 24.c, or 33 applies, the Neutral Arbitrator shall serve an Award on the Parties and the Independent Administrator, or the arbitration shall be otherwise concluded, within eighteen (18) months of the Independent Administrator receiving the Demand for Arbitration and filing fee or granting the fee waiver.**
- b. If all of the Parties and their counsel agree that the claim is a complex case and the Neutral Arbitrator agrees at the Arbitration Management Conference, the Neutral Arbitrator shall serve an Award on the Parties and the Independent Administrator, or the arbitration shall be otherwise concluded, within twenty-four (24) to thirty (30) months of the Independent Administrator receiving the Demand for Arbitration and filing fee or granting the fee waiver. The Parties, counsel, and the Neutral Arbitrator shall sign and serve the Complex Case Designation Form upon the Independent Administrator.**
- c. There may be some small number of extraordinary cases which cannot be disposed of within thirty (30) months, such as those where**

**the damages or injuries cannot be ascertained within that time. If all the Parties, counsel, and Neutral Arbitrator agree, the Neutral Arbitrator may select a later date for disposition of the case. The Parties, counsel, and the Neutral Arbitrator shall sign and serve the Extraordinary Case Designation Form upon the Independent Administrator. This form will set forth the reason for this designation and the target disposition date.**

- d. The Parties and Arbitrator are encouraged to complete the arbitration in less time than the maximums set forth in the Rule, if that is consistent with a just and fair result. While failure by the Parties, counsel, or Neutral Arbitrator to comply with this Rule may subject them to sanction, removal as Neutral Arbitrator, or removal from the pool of Neutral Arbitrators, this Rule is not a basis to dismiss an arbitration or a claim. Nothing in this paragraph affects the remedies otherwise available under law for violation of any other Rule.**

**25. Arbitration Management Conference**

- a. The Neutral Arbitrator shall hold an Arbitration Management Conference with the Parties and their attorneys within forty-five (45) days of the date of the Letter Confirming Service. The Neutral Arbitrator shall give notice to the Parties of the time and location at least ten (10) days in advance. The Arbitration Management Conference may be conducted by telephone or by video conference if such facilities are available.**
- b. The Neutral Arbitrator shall discuss, but is not limited to, the following topics:**
  - i. the status of the Parties, claims, and defenses;**
  - ii. a realistic assessment of the value of the case;**
  - iii. any pending or intended motions;**
  - iv. completed and intended discovery;**
  - v. the procedures to be followed, including any written submissions the Neutral Arbitrator requires; and**
  - vi. if appropriate, whether the Parties have or will waive any Party Arbitrator.**

- c. At the Arbitration Management Conference, the Arbitrator shall establish:
  - i. the schedule for motions and the mandatory settlement meeting and**
  - ii. the dates of the Arbitration Hearing. The Arbitrator and the Parties shall schedule the Arbitration Hearing for consecutive days if more than one day is necessary.****
- d. If any of the Parties is not represented by counsel, the Neutral Arbitrator should explain the process to be followed at the Arbitration Hearing, use of motions, costs, etc.**
- e. The Neutral Arbitrator shall record all deadlines established by the Neutral Arbitrator during the Arbitration Management Conference on the Arbitration Management Conference Form. The Neutral Arbitrator shall serve the Arbitration Management Conference Form on the Parties and the Independent Administrator within five (5) days of the Arbitration Management Conference. The Neutral Arbitrator shall also serve a copy of the Arbitration Management Conference Form on the Party Arbitrators if and when they are named.**
- f. At any time after the Arbitration Management Conference, the Neutral Arbitrator may require, or the Parties may request, additional conferences to discuss administrative, procedural, or substantive matters and to assure that the case continues to move expeditiously. Such conferences may be conducted by telephone or video conference if facilities are available.**

**26. Mandatory Settlement Meeting**

- a. No later than six (6) months after the Arbitration Management Conference, the Parties and their counsel shall conduct a mandatory settlement meeting. The Parties shall jointly agree on the form these settlement discussions shall take. The Neutral Arbitrator shall not take part in these discussions. Within five (5) days after the mandatory settlement meeting, the Parties and their counsel shall sign the Mandatory Settlement Meeting Form and serve a copy on the Independent Administrator to confirm that the meeting occurred. If the Parties have settled the claim, they shall give notice as required in Rule 40.**
- b. This Rule sets a deadline for the Parties to conduct a mandatory settlement meeting. The Parties are encouraged to engage in settlement discussions at an earlier date.**

**27. Discovery**

- a. Discovery may commence as soon as the Health Plan serves Claimant(s) with a copy of the Transmission Form, unless some Party objects in writing. If a Party objects, discovery may commence as soon as the Neutral Arbitrator is appointed. Discovery shall be conducted as if the matter were in California state court. Any extension of time for completion of discovery shall not affect the date of the Arbitration Hearing.**
- b. The Parties should address problems stemming from the discovery process to the Neutral Arbitrator for rulings. The time for serving any discovery motions shall commence as required by the California Code of Civil Procedure or upon the appointment of the Neutral Arbitrator, whichever is later.**
- c. If the Claimant(s) requests and at the Claimant's expense, Health Plan or the affiliated entities that are named as Respondent(s) shall serve a copy of that portion of Claimant's medical records requested on the Claimant(s) within thirty (30) days of Claimant's request.**
- d. At the request of the Parties, the Neutral Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets, or other sensitive or private information.**

**28. Postponements**

**Any postponement of dates other than that set out in Rule 21 shall be requested in writing from the Neutral Arbitrator if one has been appointed or from the Independent Administrator if the Neutral Arbitrator has not been appointed or has become incapacitated. The request shall set out good cause for the postponement and whether the other Party agrees. Postponements, absent extraordinary circumstances, shall not prevent the Arbitration Hearing from being completed within the time periods specified in Rule 24.**

**29. Failure to Appear**

- a. The arbitration may proceed in the absence of a Party, a Party's attorney, or a Party Arbitrator who, after due notice of the date, time, and location of the Arbitration Hearing, or any other conference or hearing, fails to be present and failed to obtain a postponement. If the date of the Arbitration Hearing has not been changed, service of the Arbitration Management Conference Form on a Party shall constitute due notice.**
- b. An Award shall not be made solely on the default of a Party. The Arbitrator may require each Party who attends to submit such**

evidence as the Arbitrator requires for the making of an Award.

**30. Securing Witnesses for the Arbitration Hearing**

The Party's attorney, the Neutral Arbitrator, or other entity authorized by law may issue subpoenas for the attendance of witnesses or the production of documents. The Independent Administrator shall not.

**31. Close of Hearing or Proceeding**

- a. When the Parties have rested, the Neutral Arbitrator shall declare the Arbitration Hearing closed.
- b. The Neutral Arbitrator may defer the closing of the Arbitration Hearing until a date agreed upon by the Neutral Arbitrator and the Parties, to permit the Parties to submit post-Hearing papers. The date for the post-Hearing submissions shall not be more than fifteen (15) days after the Parties have rested. If post-Hearing papers are to be submitted, the Arbitration Hearing will be deemed closed on the date set for the submission. If a Party fails to submit the papers by the closing date, the Neutral Arbitrator need not accept or consider them.
- c. The time limit under Rule 37 for the Neutral Arbitrator to make the Award shall begin to run upon the closing of the Arbitration Hearing or proceeding. The late filing of a post-hearing paper shall not affect the deadline for making the Award.

**32. Documents**

After making the Award, the Neutral Arbitrator has no obligation to preserve copies of the exhibits or documents the Neutral Arbitrator has previously received.

**D. RULES FOR EXPEDITED PROCEDURES**

**33. Expedited Procedures**

- a. Expedited Procedures are available in an arbitration where the Claimant(s) requires an Award in less time than that set out in Rule 24.a. The need for the Expedited Procedures shall be based upon any of the following:
  - i. a Claimant or member suffers from an illness or condition raising substantial medical doubt of survival until the time set for an Award according to Rule 24.a; or



- ii. a Claimant or member seeks a determination that he or she is entitled to a drug or medical procedure that the Claimant or member has not yet received; or
      - iii. other good cause.
    - b. The Claimant(s) and Respondent(s) may submit evidence, including declarations by physicians or others, to establish any of these criteria.
    - c. If either the Independent Administrator or the Neutral Arbitrator decide that Expedited Procedures are required, the arbitration shall be disposed of within the time set out in that order. No extension of that time is allowed.
    - d. Except when inconsistent with orders made by the Neutral Arbitrator to meet the deadline for the disposition of the case, the other Rules shall apply to cases with Expedited Procedures.
- 34. Seeking Expedited Procedures from the Independent Administrator**
- a. If Claimant(s) believes that Expedited Procedures are required and a Neutral Arbitrator has not yet been appointed, the Claimant(s) may serve a written request, with a brief statement of the reason for request for Expedited Procedures and the length of time in which an Award is required, on the Independent Administrator, with a copy to Respondent(s). Respondent(s) shall provide written opposition to the request for Expedited Procedures, if any, with seven (7) days of the date of the request. The Independent Administrator shall decide the request and inform the Parties of the decision no later than five (5) days after any opposition by Respondent(s) is due.
  - b. Should the Independent administrator determine that Expedited Procedures are necessary, the selection procedures set out in Section B of these Rules shall be followed except that no ninety (90) day continuance shall be allowed and the Independent Administrator shall require that the Neutral Arbitrator agree to render an Award within the period required.
  - c. After the Neutral Arbitrator is appointed, he or she shall promptly confer with the Parties to decide what schedule, actions, or modifications of these Rules will be needed to meet the deadline. The Neutral Arbitrator shall issue any additional orders that are necessary to assure compliance with that deadline and serve the Independent Administrator with a copy of such orders. The orders may require, by way of example and without limitation, shortening the length of time for discovery responses or motions.

**35. Seeking Expedited Procedures from the Neutral Arbitrator**

If a Neutral Arbitrator has been appointed, the Party seeking Expedited Procedures may, at any time, petition the Neutral Arbitrator to proceed on an expedited basis. If the Neutral Arbitrator issues an order to proceed on an expedited basis, he or she shall issue any additional orders that are necessary to assure compliance with that decision. The orders may require, by way of example and without limitation, shortening the length of time for discovery responses or motions. The Neutral Arbitrator shall serve a copy of any such orders on the Independent Administrator, including the date by which such Award shall be served.

**36. Telephonic Notice**

When Expedited Procedures apply, the Parties shall accept all notices, process, and other communications (other than the List of Possible Arbitrators) from the Independent Administrator and Arbitrator by telephone. The Independent Administrator and the Arbitrator shall promptly confirm any such oral notices, process, and other communications in writing to the Parties.

**E. RULES ON AWARD AND ENFORCEMENT**

**37. Time of Award**

The Neutral Arbitrator shall serve the Award on the Parties and the Independent Administrator promptly. Unless otherwise specified by law, the Neutral Arbitrator shall serve the Award no later than ten (10) days after the date of the closing of the Arbitration Hearing.

**38. Form of Award**

A majority of the Arbitrators shall sign the Award. The Award shall specify the prevailing Party, the amount and terms of the relief, if any, and the reasons for the decision. The reasons for the decision will not become part of the Award nor be admissible in any judicial proceeding to enforce or vacate the Award. The Arbitrator may use the Arbitration Award Form. The Neutral Arbitrator shall be responsible for preparing the written Award.

**39. Delivery of the Award**

- a. The Neutral Arbitrator shall serve a copy of the Award on the Parties and Independent Administrator by mail.

- b. Respondent(s) shall redact the award by eliminating the names of the enrollees, the plan, witnesses, attorneys, providers, health plan employees, and health facilities. Respondent(s) shall otherwise identify the name of the attorneys who represented Parties in the arbitration.
- c. Respondent(s) shall serve the redacted Award on the Independent Administrator and Claimant(s). The redacted version of the Award will become part of the Neutral Arbitrator's file.

**40. Notice after Settlement**

At any point in the proceedings, if the Parties reach a settlement, they shall promptly inform the Neutral Arbitrator and the Independent Administrator. Upon receiving such notice, the Independent Administrator shall deem the arbitration terminated.

**41. Sanctions**

The Neutral Arbitrator may order appropriate sanctions for failure of any Party to comply with its obligations under any of these rules or applicable law. These sanctions may include any sanction available under applicable law, as well as payment of all or a portion of the other Party's expenses for its Party Arbitrator or the Neutral Arbitrator's fees and expenses.

**42. Release of Documents for Judicial Proceedings**

The Independent Administrator shall, upon the written request of and payment by a Party, furnish to the Party, at the Party's expense, copies of any papers, notices, process or other documents in the possession of the Independent Administrator that may be required in judicial proceedings relating to that Party's arbitration.

**F. RULES FOR ADMINISTRATION**

**43. Counting of Days**

- a. Unless a Rule specifies otherwise "days" mean calendar days. Thus, all days, including holidays, Saturdays and Sundays are to be counted when counting the number of days. In determining the date an action is required, the date of the event or document that triggers the action is not included, but the date by which the action must occur is included.
- b. If a Rule refers to "business days," federal holidays, Saturdays and Sundays are excluded when counting the number of days.

- c. **If the date on which some action is to be taken, or a notice, process, or other communication would otherwise be required to be sent or a period would otherwise expire, falls on a holiday, a Saturday, or a Sunday, the date is extended to the next succeeding business day.**

**44. No Limit on Immunity**

**Nothing in these Rules limits any statutory or common law immunity that the Independent Administrator or Neutral Arbitrator may otherwise possess.**

**45. Neutral Arbitrator Fees**

- a. **If the Neutral Arbitrator was selected from the List of Possible Arbitrators, the Neutral Arbitrator's compensation for an arbitration shall accord with the fees and terms sent out to the Parties by the Independent Administrator with the List of Possible Arbitrators.**
- b. **The Independent Administrator is not responsible for, or involved in the collection of, the Neutral Arbitrator's fees.**

**46. Expenses**

**The expenses of witnesses for any Party shall be paid by the Party producing them. The fees and expenses of the Party Arbitrator shall be paid by the Party who selected that Party Arbitrator.**

**47. Forms**

**The Parties and the Neutral Arbitrator may request blank copies of any forms mentioned in these Rules from the Independent Administrator.**

**48. Questionnaire**

**At the conclusion of the arbitration, the Neutral Arbitrator shall complete and timely return the arbitration questionnaire supplied by the Independent Administrator. This information may be used by the Independent Administrator to evaluate the arbitration system.**

**49. Evaluation**

**At the conclusion of the arbitration, each Party shall complete and timely return the evaluation form supplied by the Independent Administrator**

**50. Amendment of Rules**

- a. **The Independent Administrator may amend these Rules in consultation with the Arbitration Advisory Committee. The Rules in effect on the date the Independent Administrator receives the**

**Demand for Arbitration will apply to that arbitration throughout unless the Parties agree in writing that another version of the Rules applies. The Parties shall serve a copy of that agreement on the Independent Administrator.**

- b. If an event occurs which is not contemplated by these Rules, the Independent Administrator may adopt a new Rule(s) to deal adequately with that event. Any such new Rule(s) shall not be inconsistent with existing Rules and shall be created in consultation with the Arbitration Advisory Committee. The Independent Administrator shall serve all Parties and Arbitrators in pending arbitrations with a copy of any such new Rule(s) and it shall be binding upon the Parties and Arbitrators.**

**51. Conflict with Law**

**If any of these Rules, or a modification of these Rules agreed on by the Parties, is discovered to be in conflict with a mandatory provision of applicable law, the provision of law will govern, and no other Rule will be affected.**

**52. Acknowledgment of No Warranty**

**The Independent Administrator makes no representation about, or warranty with respect to, the accuracy, or completeness of any information furnished or required to be furnished in any Application Form or with respect to the competence or training of any Neutral Arbitrator. Information is supplied to allow Parties to conduct their own inquiries.**

**53. Public Reporting**

**Annually, the Independent Administrator will report in a collective fashion the lengths of times it took to complete various tasks in the process of adjudicating the claims, how the arbitrations were disposed of, and the choices made by the Parties and Arbitrators. This report may be available to the public.**

## **EXHIBIT D**

### **Application for Neutral Arbitrators**

**EXHIBIT D**

Neutral Arbitrator Application  
Kaiser Permanente Arbitration System

Answer each of the following questions completely. Type or clearly print your responses. Attach additional answer sheets as necessary. You may attach your resume, but please do not reference your resume in your answers unless a question specifically permits you to do so. Copies of your application will be provided to participants in Kaiser's arbitration system.

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**I. PROFILE**

Name: \_\_\_\_\_  
Title Preference: \_\_\_\_\_  
Business or Firm Name: \_\_\_\_\_  
Business or Firm Address: \_\_\_\_\_  
Business Telephone: \_\_\_\_\_ Business Fax: \_\_\_\_\_  
Business E-mail Address: \_\_\_\_\_

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**II. ADMISSIONS AND AFFILIATIONS**

Date admitted to the California Bar \_\_\_\_\_ Bar No \_\_\_\_\_  
Active: \_\_\_ Inactive: \_\_\_ Date First Inactive (if judge, date of resignation): \_\_\_\_\_  
Other state bars to which you are admitted (include states, dates of admission and bar numbers):  
\_\_\_\_\_  
\_\_\_\_\_

Memberships and positions held in bar, ADR professional or other panels, boards, agencies and associations relevant to arbitration, health care, or medical malpractice law:  
\_\_\_\_\_  
\_\_\_\_\_

Courts or organizations for which you serve as a neutral arbitrator (list court/organization and program):  
\_\_\_\_\_  
\_\_\_\_\_

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**III. LANGUAGES** List any languages other than English which you speak and understand and in which you would be willing to conduct arbitrations:

\_\_\_\_\_  
\_\_\_\_\_

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**IV. KAISER MEMBERSHIP**

I \_\_\_am/\_\_\_am not currently a member of Kaiser Foundation Health Plan.  
I \_\_\_have/\_\_\_have not been a member of Kaiser Foundation Health Plan within the last five years.

\_\_\_\_\_  
\_\_\_\_\_

**V. EDUCATION (College and Graduate)** List all schools attended, degrees and years received: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**VI. EMPLOYMENT** Set forth all employment (without omissions) for the last ten years. Provide employer, primary occupation, and dates of employment. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**VII. LEGAL EXPERIENCE** Summarize your legal experience (including teaching) since admission to the bar, particularly in the past ten years. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Percentage of practice in the last ten years representing: plaintiff \_\_\_% defense \_\_\_%

Percentage of federal or state court practice in the last ten years: federal \_\_\_% state \_\_\_%

Number of years in the last ten years in which litigation occupied more than 50% of your time:

I have had at least three civil trials or arbitrations within the past five years in which I have served as \_\_\_ the lead attorney for one of the parties or \_\_\_ an arbitrator.

**VIII. CURRENT PRACTICE** State the percentages of your current practice in the following roles: \_\_\_\_\_  
As a neutral arbitrator, judge, or hearing officer: \_\_\_%  
  
As a defense party arbitrator: \_\_\_% As a plaintiff-s party arbitrator: \_\_\_%  
  
As a defense attorney: \_\_\_% As a plaintiff-s attorney: \_\_\_%  
  
As an expert: \_\_\_% As an \_\_\_\_: \_\_\_%  
(list other role)



In descending order, list the subject areas of law in which you are currently most active.

Area of Law

Percentage of Practice

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_

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**IX. ARBITRATION EXPERIENCE** Summarize your arbitration experience in the last ten years. Include your role or roles (e.g., neutral arbitrator, party arbitrator, hearing officer, plaintiff's counsel, defense counsel, expert, etc.), number of years in each role, approximate number of cases in which you have participated in each role, and whether you are currently serving in any of these roles.

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Have your actions as an arbitrator figured in a published legal opinion? If so, please provide the citation.

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**X. ARBITRATION TRAINING** Describe any arbitration training you have received. For each training, list the training providers name, length of training, dates of training, and a brief description of the training. You may reference a specific section of your resume that sets out your training related to arbitration.

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**XI. MEDICAL MALPRACTICE EXPERIENCE** Have you been involved in any medical malpractice case within the past ten years? If so, set forth the years of your involvement, your role (e.g., plaintiff's counsel, defense counsel, neutral arbitrator, party arbitrator, hearing officer, expert, litigant, etc.), and the approximate number of cases in each role.

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**XII. OTHER RELEVANT EXPERIENCE** Describe any other relevant experience.

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**XIII. PREVIOUS INVOLVEMENT IN KAISER CASES** Set forth your involvement, if any, in any case involving Kaiser Permanente or any affiliated entity or individual within the past five years. For each case, identify your role (e.g., neutral arbitrator, plaintiff/claimant party arbitrator, defense party arbitrator, judge, hearing officer, plaintiff/claimant counsel, defense counsel, expert, litigant etc.), whether the case went to verdict and, if so, for which side the verdict was rendered (plaintiff or defense), and the amount of the award, if any. \_\_\_\_\_

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To the best of your recollection, were you involved in any Kaiser case prior to five years ago? If so, to the best of your recollection, state your role or roles. State the approximate number of cases in which you were involved. Be as specific as your records or recollection will permit. \_\_\_\_\_

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**XIV. EXPEDITED HEARING** Are you willing to act as a neutral arbitrator for expedited claims that must be completed within five months or less of the date you are appointed?

Yes \_\_\_ No \_\_\_

**XV. PRO PER CASES** Are you willing to act as neutral arbitrator for cases in which one or both parties are not represented by counsel?

Yes \_\_\_ No \_\_\_

**XVI. INSURANCE** Do you carry insurance that covers your activities as a neutral arbitrator?

Yes \_\_\_ No \_\_\_ If no, do you intend to obtain such coverage before working on arbitrations administered by the Office of the Independent Administrator?

Yes \_\_\_ No \_\_\_

**XVII. CONVICTIONS, SANCTIONS AND DISCIPLINE** Answer each question:

Have you ever been convicted of a crime? Yes \_\_\_\_\_ No \_\_\_\_\_

If so, attach an explanation.

Have you ever been sanctioned by a court for \$1,000 or more? Yes \_\_\_\_\_ No \_\_\_\_\_

If so, attach an explanation.

Have you ever been disciplined by any court, administrative agency, bar association, or other professional group? Yes \_\_\_\_\_ No \_\_\_\_\_

If so, attach an explanation.

**XVIII. REFERENCES**

I am providing references for my work (check your role(s) and provide references as set forth below):

\_\_\_\_ as an arbitrator. List the name, addresses, and telephone numbers of counsel for the plaintiff and the defense **in the last five** arbitrations or civil trials for which you served as a neutral arbitrator, judge or hearing officer. Provide a total of ten contacts.

\_\_\_\_ as an attorney. List the name, addresses, and telephone numbers of opposing counsel and neutral arbitrators, judges, or hearing officers **for the last five** arbitrations or civil trials in which you participated. Provide a total of ten contacts.

\_\_\_\_ as a \_\_\_\_\_. (Other - please describe.) List the names addresses, and telephone numbers of counsel and/or arbitrators, judges, or hearing officers **in the last five** arbitrations or civil trials in which you participated. These references must reflect different sides in the arbitration or civil trials and must be able to provide a report of how you handled yourself in an arbitration or civil trial:

You may provide references for yourself in different roles (e.g., two references for your work as an arbitrator and three references for your work as an attorney).

**Matter #1.** My role \_\_\_\_\_

Reference's role \_\_\_\_\_ Reference's name, address and telephone number:

\_\_\_\_\_  
Reference's role \_\_\_\_\_ Reference's name, address and telephone number:

**Matter #2.** My role \_\_\_\_\_

Reference's role \_\_\_\_\_ Reference's name, address and telephone number:

\_\_\_\_\_  
Reference's role \_\_\_\_\_ Reference's name, address and telephone number:

**Matter #3.** My role \_\_\_\_\_

Reference's role \_\_\_\_\_ Reference's name, address and telephone number:

\_\_\_\_\_  
Reference's role \_\_\_\_\_ Reference's name, address and telephone number:

**Matter #4.** My role \_\_\_\_\_

Reference's role \_\_\_\_\_ Reference's name, address and telephone number:

\_\_\_\_\_  
Reference's role \_\_\_\_\_ Reference's name, address and telephone number:

**Matter #5.** My role \_\_\_\_\_

Reference's role \_\_\_\_\_ Reference's name, address and telephone number:

\_\_\_\_\_  
Reference's role \_\_\_\_\_ Reference's name, address and telephone number:

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**XIX. TRAVEL** Complete the following:

Check one.  I am applying to conduct arbitrations in Northern California.

Northern California includes Alameda, Contra Costa, Marin,

San Francisco, San Mateo, Sonoma, Napa, Solano, Sacramento,

Yolo, San Joaquin, Santa Clara, Stanislaus, Placer and Fresno counties.

I am applying to conduct arbitrations in Southern California.

Southern California includes Kern, Ventura, Los Angeles,

Orange, San Bernardino, Riverside and San Diego counties.

Are you willing to travel anywhere within the half of the state you check above to hear arbitration cases?

Yes  No

Check all that apply. I am willing to travel to the following counties without charging for travel time or travel expenses:

Northern California: Alameda County  Contra Costa County  Marin County

San Francisco County  San Mateo County  Sonoma County  Napa County

Solano County  Sacramento County  Yolo County  San Joaquin County

Santa Clara County  Stanislaus County  Placer County  Fresno County

Southern California: Kern County  Ventura County  Los Angeles County

Orange County  San Bernardino County  Riverside County  San Diego County

Indicate your terms and charges, if any, for time spent in transit. \_\_\_\_\_

\_\_\_\_\_

Indicate your terms and charges, if any, for transportation costs. \_\_\_\_\_

\_\_\_\_\_

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**XX. AFFIRMATION**

My signature on this form affirms that the foregoing statements and all attached information are true and correct to the best of my knowledge. I understand that any misrepresentation, or any failure on my part to supply information requested by the Office of the Independent Administrator may constitute a basis for my disqualification or withdrawal of my name as an arbitrator for Kaiser Permanente matters. I understand that if I am selected as a member of the Office of the Independent Administrator's panel of neutral arbitrators, copies of this application and all information I attach to it will be available to claimants, their attorneys, Kaiser Permanente, its attorneys, the Office of the Independent Administrator, and Kaiser Permanente's Arbitration Advisory Committee. I also understand that the Independent Administrator may attempt to verify any of the information contained in it. I consent to that process.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Schedule of Fees and Costs**

**Answer each of the following questions completely. Type or clearly print your responses. Attach additional answer sheets as necessary. Copies of this form will be provided to participants in Kaiser’s arbitration system.**

**Arbitrator’s Name** \_\_\_\_\_

1. State the fees and charges for your services.
  - a. Hearing fees: \_\_\_\_\_ per hour or \_\_\_\_\_ per day.  
If daily, what are your charges for partial days? \_\_\_\_\_
  - b. Meeting fees: \_\_\_\_\_ per hour or \_\_\_\_\_ per day.  
If daily, what are your charges for partial days? \_\_\_\_\_
  - c. Fees for study or document review: \_\_\_\_\_ per hour or \_\_\_\_\_ per day  
If daily, what are your charges for partial days? \_\_\_\_\_
  - d. Do you charge for travel time? Yes \_\_\_\_ No \_\_\_\_  
If so, what do you charge? \_\_\_\_\_
  - e. Do you charge for expenses? Yes \_\_\_\_ No \_\_\_\_  
If so, for what expenses, and how much? \_\_\_\_\_
  - f. Do you charge for any postponed or canceled proceeding (conference, telephone call, meeting, hearing, etc.) during the course of an arbitration?  
Yes \_\_\_\_ No \_\_\_\_  
If so, what are the terms and charges? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  - g. Do you charge a cancellation fee if a case settles before the hearing date?  
Yes \_\_\_\_ No \_\_\_\_  
If so, describe the terms and charges in this situation. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  - h. Describe any requirements you have regarding the timing of payments.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Can you provide space for any or all of the arbitration proceedings? Yes \_\_\_ No \_\_\_  
If so, set forth the location of the space and any applicable charges. Also, please state whether you require the use of such space. \_\_\_\_\_

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3. Set forth any other fees, terms or conditions you require in the event that you are selected to sit as a neutral arbitrator for an arbitration administered by the Office of the Independent Administrator. Include a copy of any stipulations or other agreements that you require be signed by the parties in order for you to serve as a neutral arbitrator in any such matter.

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4. My signature on this form affirms that the foregoing statements and all attached information is true and correct to the best of my knowledge. I understand that I may not change the fees I charge for arbitrations administered by the Office of the Independent Administrator during my first year of service, but may do so annually thereafter. I understand that any misrepresentation, or any failure on my part to supply information requested by the Office of the Independent Administrator may constitute a basis for my disqualification or withdrawal of my name as an arbitrator for matters administered by the Office of the Independent Administrator.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

### **Certificate of Veracity, Consent and Understanding**

**The information contained in my application, and any attachments thereto, is true and accurate to the best of my knowledge, information and belief. In addition, I consent to and understand the following:**

1. I understand that if my application is accepted, I will not be an employee or agent of the Office of the Independent Administrator. I understand that, if selected, I will become a member of the Neutral Arbitrator Panel organized and maintained by the Office of the Independent Administrator. The Office of the Independent Administrator may include my name on lists of neutral arbitrators from which claimants, their counsel, Kaiser Permanente, and its counsel will select one arbitrator.
2. I understand that submission of an application for the Neutral Arbitrator Panel does not guarantee that I will be accepted on the panel and that the Office of the Independent Administrator has complete discretion to make additions, changes and deletions to the composition of the Neutral Arbitrator Panel at any time.
3. I understand that my acceptance as a member of the Neutral Arbitrator Panel does not obligate the Office of the Independent Administrator to propose me for appointment as a neutral in any case, nor guarantee that I will be selected by the parties to serve as a neutral arbitrator. Further, I recognize that I am under no obligation to accept appointments.
4. I consent to disclosure of the information contained in my application to parties and their counsel, the Office of the Independent Administrator and Kaiser Permanente's Arbitration Advisory Committee. I further consent that the information in this application is subject to verification by any or all of them.
5. I understand that the Office of the Independent Administrator will undertake to update information contained in my application at least once per year. I consent to provide such updated information. Notwithstanding the annual update, I agree to promptly notify the Office of the Independent Administrator if there is any material change in the information provided in my application. I agree to notify the Office of the Independent Administrator and parties in any proceedings administered by it of any change of address, telephone number, or fax number within five days.
6. I understand and agree that I am responsible for billing and collecting fees and expenses directly from the parties to any arbitration. I understand that compensation that may become due me for services as a neutral arbitrator is the sole and direct obligation of the parties to the dispute and that the Office of the Independent Administrator has no liability to me for billing or payment.

7. I understand that I may not change the fees I charge for arbitrations administered by the Office of the Independent Administrator during my first year of service. Further, I understand that changes in the terms of my compensation, following my first year of acceptance to the panel, may be made once per year as part of the application update process conducted by the Office of the Independent Administrator.
8. I understand that when being considered as a neutral arbitrator by prospective parties, I will be required to disclose any potential conflicts of interest either I or my firm or my employer may have. I understand that these conflicts may result in my disqualification by one or more of the parties.

Print Name \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_



## **EXHIBIT E**

### **Qualifications for Neutral Arbitrators**

## **EXHIBIT E**

### **Qualifications for Neutral Arbitrators for Kaiser Permanente's Mandatory Arbitration System**

1. Neutral arbitrators shall be members of the State Bar of California, members of the state bar of another state with extensive practice in California during the past five years, or retired state or federal judges.
2. Neutral arbitrators shall not have received public discipline or censure from the state bar of California or any other state bar in the past five years. In case of former judges, they shall not have received public discipline or censure from any government body that has authority to discipline judges in the past five years.
3. Neutral arbitrators shall
  - (1) have been admitted to practice for at least ten years, with substantial litigation experience; AND
  - (2) have had at least three civil trials or arbitrations within the past five years in which they have served as either (i) the lead attorney for one of the parties or (ii) an arbitrator; OR
  - (3) have been a state or federal judge; OR
  - (4) have completed within the last five years a program designed specifically for the training of arbitrators.
4. Neutral arbitrators shall provide satisfactory evidence of ability to act as an arbitrator based upon judicial, trial, or legal experience.
5. Neutral arbitrators shall not have served as party arbitrators on any matter involving Kaiser Permanente, or any affiliated organization or individual, within the last five years.
6. Neutral arbitrators shall not presently serve as attorney of record or an expert witness or a consultant for or against Kaiser Permanente, or any organization or individual affiliated with Kaiser Permanente, or have had any such matters at anytime within the past five years.
7. Neutral arbitrators shall successfully complete an application provided by the Independent Administrator.
8. Neutral arbitrators shall follow applicable arbitration statutes, substantive law of the issues addressed, and procedures of the Independent Administrator.
9. Neutral arbitrators shall comply with the provisions of code of ethics selected by the Office of the Independent Administrator.
10. Neutral arbitrators shall administer Kaiser arbitrations in a fair and efficient manner.

## **EXHIBIT F**

### **Statement of Annual Update**

**EXHIBIT F**

**Statement of Annual Update  
May 2001**

**Arbitrator's Name** \_\_\_\_\_

Since I submitted my application, I have not been involved in any case involving Kaiser Permanente or any affiliated entity or individual, I have not been involved with any arbitrations or civil trials, and I do not need to make any other changes or additions to my application. (Skip Sections I, II, and III, and I and sign and date Section IV.)

**I. Previous Involvement in Kaiser Cases.** Set forth your involvement, if any, in any case involving Kaiser Permanente or any affiliated entity or individual, since you submitted your application. For each case, identify your role, whether the case went to verdict and, if so, for which side the verdict was rendered, and the amount of the award, if any.

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**II. References.** Provide references as set forth below for the most recent five arbitrations or civil trials in which you have participated since you submitted your application. If you have participated in less than five arbitrations or trials since you submitted your application, include references for those matters in which you have participated.

I am providing references for my work (check your role(s) and provide references as set forth below):

\_\_\_ as an arbitrator. List the names, addresses, and telephone numbers of counsel for the plaintiff and the defense **in the last five** arbitrations or civil trials in which you served as a neutral arbitrator, judge or hearing officer. Provide a total of ten contacts.

\_\_\_ as an attorney. List the names, addresses, and telephone numbers of opposing counsel and neutral arbitrators, judges, or hearing officers **for the last five** arbitrations or civil trials in which you participated. Provide a total of ten contacts.

\_\_\_ as a \_\_\_\_\_. (Other – please describe.) List the names, addresses, and telephone numbers of counsel and/or arbitrators, judges, or hearing officers **in the last five** arbitrations or civil trials in which you participated. These references must reflect different sides in the arbitration or civil trial and must be able to provide a report of how you handled yourself in an arbitration or civil trial.

You may provide references for yourself in different roles (e.g., two references for your work as an arbitrator and three references for your work as an attorney).

**Matter #1.** My role \_\_\_\_\_

Reference's role \_\_\_\_\_ Reference's name, address and telephone number:

\_\_\_\_\_  
Reference's role \_\_\_\_\_ Reference's name, address and telephone number:

**Matter #2.** My role \_\_\_\_\_

Reference's role \_\_\_\_\_ Reference's name, address and telephone number:

\_\_\_\_\_  
Reference's role \_\_\_\_\_ Reference's name, address and telephone number:

**Matter #3.** My role \_\_\_\_\_

Reference's role \_\_\_\_\_ Reference's name, address and telephone number:

\_\_\_\_\_  
Reference's role \_\_\_\_\_ Reference's name, address and telephone number:

**Matter #4.** My role \_\_\_\_\_

Reference's role \_\_\_\_\_ Reference's name, address and telephone number:

\_\_\_\_\_  
Reference's role \_\_\_\_\_ Reference's name, address and telephone number:

**Matter #5.** My role \_\_\_\_\_

Reference's role \_\_\_\_\_ Reference's name, address and telephone number:

\_\_\_\_\_  
Reference's role \_\_\_\_\_ Reference's name, address and telephone number:

**III. Other Information.** Provide any other information necessary to update your application. You may attach an updated resume or profile.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**IV. Affirmation.** My signature on this form provides the same affirmation of the information contained herein as the affirmation provided by my signature in Section XX of my application to serve as a neutral arbitrator with the Office of the Independent Administrator.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## **EXHIBIT G**

### **Lists of Neutral Arbitrators on the OIA Panel**

## **EXHIBIT G**

### **OIA Panel of Neutral Arbitrators**

#### **Northern California**

Justice Nat Anthony Agliano  
Judge Demetrios P. Agretelis, (Ret.)  
Judge Paul J. Aiello, (Ret.)  
Mr. Roger F. Allen, Esq.  
Justice Carl West Anderson, (Ret.)  
Ms. Karen G. Andres, Esq.  
Judge Michael E. Ballachey, (Ret.)  
Ms. Eileen Barker, Esq.  
Judge Michael J. Berger  
Mr. Daniel V. Blackstock, Esq.  
Mr. Brenton A. Bleier, Esq.  
Judge Allan J. Bollhoffer  
Ms. Barri Kaplan Bonapart, Esq.  
Judge Cecily Bond, (Ret.)  
Mr. Marc P. Bouret, Esq.  
Mr. Thomas J. Brewer, Esq.  
Mr. Robert J. Brockman, Esq.  
Mr. Fred D. Butler, Esq.  
Judge Robert K. Byers  
Mr. Harve Eliot Citrin, Esq.  
Mr. Casey Clow, Esq.  
Judge John S. Cooper, (Ret.)  
Mr. James S. Crawford, Esq.  
Mr. Lawrence E. Curfman, Esq.  
Judge Thomas Dandurand  
Judge Benjamin A. Diaz, (Ret.)  
Mr. Paul J. Dubow, Esq.  
Judge James Duvaras  
Judge Mark L. Eaton  
Mr. Jeffrey Eckber, Esq.  
Mr. Joseph Elie, Esq.  
Mr. Eric S. Emanuels, Esq.  
Mr. Douglas L. Field, Esq.  
Judge John A. Flaherty, (Ret.)  
Mr. Lester Friedman, Esq.  
Judge John J. Gallagher  
Mr. James L. Gault, Esq.  
Mr. Delbert C. Gee, Esq.  
Judge Wm. R. Giffen, (Ret.)  
Justice John J. Golden  
Ms. Shelley A. Gordon, Esq.

Mr. Stephen B. Gorman, Esq.  
Judge Arnold Greenberg, (Ret.)  
Judge Sheldon H. Grossfeld  
Mr. Arnold B. Haims, Esq.  
Judge Zerne P. Haning  
Mr. Michael G. Harper, Esq.  
Ms. Catherine C. Harris, Esq.  
Judge Richard A. Hodge, (Ret.)  
Mr. Douglas W. Holt, Esq.  
Mr. Garry J.D. Hubert, Esq.  
Ms. Nancy Hutt, Esq.  
Judge Ellen Sickles James  
Judge William E. Jensen  
Mr. Thomas A. Johnson, Esq.  
Justice Robert F. Kane, (Ret.)  
Mr. John P. Kelly, Esq.  
Judge Harold A. Kennedy, (Ret.)  
Mr. Donald H. Kincaid, Esq.  
Mr. Alfred P. Knoll, Esq.  
Mr. Martin David Koczanowicz, Esq.  
Ms. Barbara Kong-Brown, Esq.  
Mr. Ernest B. Lageson, Esq.  
Judge Henry B. Lasky  
Mr. Stewart I. Lenox, Esq.  
Mr. B. Scott Levine, Esq.  
Judge Darrel Lewis, (Ret.)  
Judge John A. Marlo  
Ms. Carol J. Marshall, Esq.  
Mr. James S. Martin, Esq.  
Mr. Allan J. Mayer, Esq.  
Mr. Brick E. McIntosh, Esq.  
Judge Winton McKibben  
Mr. David J. Meadows, Esq.  
Mr. Carl Meyer, Esq.  
Mr. Jeffrey Scott Nelson, Esq.  
Mr. William J. O'Connor, Esq.  
Ms. Deirdre A. O'Reilly, Esq.  
Mr. Allan J. Owen, Esq.  
Mr. Samuel C. Palmer III  
Judge George E. Paras  
Ms. Julia J. Parranto, Esq.  
Judge Richard L. Patsey, (Ret.)  
Judge Irving H. Perluss  
Mr. John E. Peterson, Esq.  
Mr. William J. Petzel, Esq.  
Ms. Andrea M. Ponticello, Esq.  
Justice Robert K. Puglia  
Judge Raul A. Ramirez



Mr. Joe Ramsey, Esq.  
Mr. Thomas D. Reese, Esq.  
Mr. Alan R. Rothstein, Esq.  
Mr. Geoffrey E. Russell, Esq.  
Mr. Lucien Salem, Esq.  
Judge Rex Sater  
Ms. Patricia Shuler Schimbor, Esq.  
Judge Howard L. Schwartz  
Judge Aram Serverian, (Ret.)  
Mr. Melvyn D. Silver, Esq.  
Mr. Douglas L. Smith, Esq.  
Judge Peter A. Smith  
Judge Leonard B. Sprinkles  
Mr. Frederick R. Stevens, Esq.  
Judge Charles V. Stone  
Mr. Charles O. Thompson, Esq.  
Ms. Katherine J. Thomson, Esq.  
Mr. Ronald I. Toff, Esq.  
Judge Harlan K. Veal  
Mr. Gregory D. Walker, Esq.  
Judge Noel Watkins  
Mr. Gary A. Weiner, Esq.  
Judge Rebecca Westerfield  
Judge Max Wilcox  
Mr. Barry S. Willdorf, Esq.  
Judge Raymond D. Williamson, Jr.  
Mr. Philip Young, Esq.

## OIA Panel of Neutral Arbitrators

### Southern California

Judge David J. Aisenson  
Mr. Leon J. Alexander, Esq.  
Judge James J. Alfano  
Mr. Clifford R. Anderson, Esq.  
Mr. Maurice J. Attie, Esq.  
Ms. Ornah Becker, Esq.  
Judge Michael Berg, (Ret.)  
Mr. Stuart Berkley, Esq.  
Mr. Stephen M. Biersmith, Esq.  
Mr. Philip C. Blanton, Esq.  
Ms. Marianne P. Borselle, Esq.  
Mr. Frank R. Brown, Esq.  
Mr. Michael D. Brown, Esq.  
Judge William E. Burby  
Ms. Adriana M. Burger, Esq.  
Judge Raymond Cardenas, (Ret.)  
Mr. Richard A. Carrington, Esq.  
Judge Eli Chernow, (Ret.)  
Mr. Walter K. Childers, Esq.  
Judge Sam Cianchetti  
Mr. Laurence R. Clarke, Esq.  
Mr. John B. Cobb, Esq.  
Judge Barnet M. Cooperman, (Ret.)  
Mr. Edward J. Costello, Esq.  
Mr. James A. Crary, Esq.  
Mr. John P. Daniels, Esq.  
Ms. Paula Daniels, Esq.  
Mr. John P. DeGomez, Esq.  
Judge George M. Dell  
Mr. Richard A. DeSantis, Esq.  
Justice Robert R. Devich, (Ret.)  
Judge Bruce Wm. Dodds  
Mr. Charles I. Dolginer, Esq.  
Ms. Wendy L. Doo, Esq.  
Justice David N. Eagleson  
Mr. John E. Edwards, Esq.  
Ms. Katherine J. Edwards, Esq.  
Mr. James M. Eisenman, Esq.  
Mr. Eric M. Epstein, Esq.  
Ms. Margaret Esquiroz, Esq.  
Mr. David R. Flyer, Esq.  
Mr. Thomas I. Friedman, Esq.  
Ms. Dolly M. Gee, Esq.  
Mr. Martin S. Goldberg, Esq.

Judge Leonard Goldstein  
Judge Norman W. Gordon  
Mr. Ernest S. Gould, Esq.  
Mr. Bruce A. Greenberg, Esq.  
Mr. John H. Hachmeister, Esq.  
Mr. Jon Anders Hammerbeck, Esq.  
Mr. Robert T. Hanger, Esq.  
Mr. Richard C. Henderson, Esq.  
Ms. Roseann Herman, Esq.  
Mr. Hassel Bud Hill, Esq.  
Mr. Mandel E. Himelstein, Esq.  
Mr. Jerry W. Howard, Esq.  
Mr. Godfrey Isaac, Esq.  
Judge James A. Jackman, (Ret.)  
Mr. J. Craig Jenkins, Esq.  
Mr. B. Elliott Johnson, Esq.  
Mr. Samuel D. Kahn, Esq.  
Mr. Raymond T. Kaiser, Esq.  
Judge Edward Y. Kakita, (Ret.)  
Mr. Kevin M. Kallberg, Esq.  
Judge John W. Kennedy, Jr.  
Mr. John G. Kerr, Esq.  
Mr. Robert J. Kilpatrick, Esq.  
Ms. Jill Klein, Esq.  
Mr. Martin David Koczanowicz, Esq.  
Ms. Wendy L. Kohn, Esq.  
Ms. Eileen Kramer, Esq.  
Mr. Bryan Kravetz, Esq.  
Mr. Martin Krawiec, Esq.  
Mr. Paul L. Krentzman, Esq.  
Judge Peter Krichman  
Ms. Adrienne L. Krikorian, Esq.  
Mr. Jeffrey Krivis, Esq.  
Judge Stephen M. Lachs  
Mr. Theo Lacy, Esq.  
Mr. Dennis O. LaRochelle, Esq.  
Ms. June Lehrman, Esq.  
Mr. Boyd Lemon, Esq.  
Mr. Philip R. LeVine, Esq.  
Mr. Stuart Libicki, Esq.  
Judge Richard Luesebrink  
Ms. Christine Masters, Esq.  
Mr. Allan J. Mayer, Esq.  
Judge John D. McCabe  
Judge Harry R. McCue, (Ret.)  
Mr. Donald McGrath, Esq.  
Mr. James J. McKee, Esq.  
Mr. Joseph D. McNeil, Esq.

Ms. Barbara E. Miller, Esq.  
Mr. Jerry Miller, Esq.  
Mr. John E. Millers, Esq.  
Judge David B. Moon, Jr., (Ret.)  
Mr. Jeffrey Cabot Myers, Esq.  
Justice Richard C. Neal, (Ret.)  
Mr. Robert W. Northup, Esq.  
Judge Thomas F. Nuss, (Ret.)  
Mr. Robert J. O'Connor, Esq.  
Mr. Gilbert G. Ochoa, Esq.  
Mr. Kenan Oldham, Esq.  
Mr. Jeffrey P. Palmer, Esq.  
Mr. Samuel C. Palmer III  
Mr. Roger A. Parkinson, Esq.  
Mr. Charles B. Parselle, Esq.  
Mr. Carl B. Pearlston, Esq.  
Mr. David C. Peterson, Esq.  
Mr. Alexander S. Polsky, Esq.  
Mr. Robert A. Rees, Esq.  
Mr. Roy G. Rifkin, Esq.  
Mr. William Thayer Rintala, Esq.  
Mr. Richard G. Ritchie, Esq.  
Mr. Edward J. Roberts, Esq.  
Mr. Troy D. Roe, Esq.  
Judge Paul Rosenthal  
Judge Edward M. Ross, (Ret.)  
Mr. Charles Rossman, Esq.  
Judge David M. Rothman  
Judge Jack T. Ryburn  
Judge Philip M. Saeta  
Mr. Myer J. Sankary, Esq.  
Mr. Alan H. Sarkisian, Esq.  
Ms. Cathy R. Schiff, Esq.  
Mr. Steven A. Schneider, Esq.  
Judge Thomas Schneider, (Ret.)  
Judge R. William Schoettler  
Judge Robert L. Schouweiler  
Judge Philip E. Schwab  
Mr. Herbert E. Selwyn, Esq.  
Mr. C. David Serena, Esq.  
Mr. John P. Shaby, Esq.  
Mr. Robert M. Shafton, Esq.  
Mr. Donald S. Sherwyn, Esq.  
Mr. James L. Smith, Esq.  
Judge Sherman W. Smith, Jr.  
Justice Steven J. Stone  
Mr. Jeffrey D. Stulberg, Esq.  
Mr. John A. Sullivan, Esq.

Mr. Mitchell R. Sussman, Esq.  
Judge Venetta S. Tassopoulos, (Ret.)  
Judge Howard J. Thelin  
Judge Robert W. Thomas, (Ret.)  
Mr. Jeffrey A. Tidus, Esq.  
Justice William L. Todd  
Mr. Peter C. Tornay, Esq.  
Judge Don A. Turner  
Judge Robert Weil  
Mr. Bernard L. Weiner, Esq.  
Mr. Richard Weissman, Esq.  
Judge Andrew J. Weisz, (Ret.)  
Judge Robert A. Wenke  
Mr. Garry W. Williams, Esq.  
Mr. Joseph Winter, Esq.  
Mr. Alan E. Wisotsky, Esq.  
Ms. Deborah Z. Wissley, Esq.  
Mr. Gary Wittenberg, Esq.  
Mr. William R. Wolanow, Esq.  
Judge Leonard S. Wolf  
Judge Delbert E. Wong  
Judge Charles H. Woodmansee  
Mr. Julius G. Wulfsohn, Esq.  
Judge Eric E. Younger  
Mr. John Zanghi, Esq.  
Ms. Irene E. Ziebarth, Esq.  
Judge Kenneth G. Ziebarth, (Ret.)  
Mr. Scott L. Zimmerman, Esq.

**OIA Panel of Neutral Arbitrators**

**San Diego, California**

Mr. Marc D. Adelman, Esq.  
Mr. Richard N. Appleton, Esq.  
Ms. Randi R. Bradstreet, Esq.  
Mr. Richard R. Castillo, Esq.  
Mr. John B. Cobb, Esq.  
Ms. Toni Diane Donnet, Esq.  
Mr. John E. Edwards, Esq.  
Mr. Alfred G. Ferris, Esq.  
Mr. David R. Flyer, Esq.  
Ms. Virginia H. Gaburo, Esq.  
Ms. Greta Glavis, Esq.  
Mr. Thomas E. Gniatkowski, Esq.  
Mr. Martin S. Goldberg, Esq.  
Judge Norman W. Gordon  
Mr. Jon Anders Hammerbeck, Esq.  
Mr. Mandel E. Himelstein, Esq.  
Judge Herbert B. Hoffman  
Mr. Jerry W. Howard, Esq.  
Mr. William B. Irvin, Esq.  
Judge Ronald L. Johnson  
Judge Arthur W. Jones, (Ret.)  
Judge Anthony C. Joseph, (Ret.)  
Judge Gerald J. Lewis  
Judge Alfred Lord  
Mr. Daniel B. MacLeod, Esq.  
Mr. Thomas L. Marshall, Esq.  
Judge Harry R. McCue, (Ret.)  
Mr. Donald McGrath, Esq.  
Mr. Joseph D. McNeil, Esq.  
Judge Kevin W. Midlam  
Judge David B. Moon, (Ret.)  
Mr. Kenan Oldham, Esq.  
Mr. Charles D. Richmond, Esq.  
Mr. Michael F. Saydah, Esq.  
Ms. Cathy R. Schiff, Esq.  
Judge Robert L. Schouweiler  
Justice William L. Todd  
Mr. William J. Tucker, Esq.  
Ms. Sherry Van Sickle, Esq.  
Ms. Irene E. Ziebarth, Esq.

## **EXHIBIT H**

### **Information for Claimants Who Do Not Have Attorneys**

## EXHIBIT H

### **Information for Claimants Who Do Not Have Attorneys**

Lawyers say that a claimant who represents him or herself in a legal action without an attorney's help is acting *in propria persona*, or *in pro per*.<sup>o</sup> The Office of the Independent Administrator provides the following information to assist claimants who are acting in *pro per*. We make this offer in order to help *pro pers* understand our system and its procedures. However, we can never provide legal advice because we do not take sides in any case.

#### **What is the Office of the Independent Administrator?**

The Office of the Independent Administrator, or OIA, is a neutral, independent body that oversees arbitrations brought by Kaiser members under the Health Plan's contracts with its members and their employers. These arbitrations are controlled by the *Rules for Kaiser Permanente Member Arbitrations Overseen by the Office of the Independent Administrator*. Claimants acting in *pro per* should carefully and thoroughly read these *Rules*. The OIA will answer questions about these Rules at any time. Just call us at the number which appears below. However, we do not give legal advice. This means that we will tell you what our *Rules* mean and how to follow them, but we will not advise you on how they might affect your specific case.

#### **What is arbitration?**

Arbitration is a legal process. An arbitration hearing is like a court hearing. You and the other side present witnesses, including medical experts, and other evidence. Unlike many court trials, there is no jury. Throughout the process, a neutral arbitrator acts as a judge, or neutral fact finder. The neutral arbitrator cannot give legal advice to you or to the other party. The neutral arbitrator decides the case based on his or her interpretation of the law, as it applies to the evidence presented by the parties. The decisions of the neutral arbitrator are final, legally binding and enforceable in court. Only very rare exceptions allow the decision to be changed.

#### **Are arbitration and mediation different?**

Yes. Arbitration is not mediation. Mediation is a process where the people involved in a dispute attempt to solve their problem with the help of a neutral person, called *the mediator*.<sup>o</sup> Unlike an arbitrator, a mediator has no authority to impose a decision on the parties.

#### **Is a medical expert always necessary to prove a claim of medical malpractice?**

Under California law, testimony from a medical expert is nearly always required to prove medical malpractice. This is true in both arbitration and in court. Almost always, if you do not have a medical expert, you will lose your claim. Neither the neutral arbitrator nor the OIA can assist any party in locating or hiring a medical expert.

#### **What is summary judgment and why is it important to my claim of medical malpractice?**

If you do not have a medical expert, the respondent (Kaiser) will almost always bring a motion for summary judgment, and the arbitrator will almost always grant this motion because the law requires it. Summary judgment motions can also be brought on other bases. The case is over if summary judgment is granted. This means that, at a hearing on a motion for summary judgment,



## EXHIBIT H

if a claimant does not offer expert medical testimony, or otherwise offer effective legal reasons in opposition to the motion, the arbitrator must grant the motion and close the case. Summary judgment is a decision on the law alone, and no facts are involved. Please note that when a case ends in this fashion, there will be no hearing on the facts, and no opportunity to present witnesses and other evidence. Cases heard in court also end in summary judgment.

### **Are any other expert witnesses needed during the arbitration process?**

Sometimes there are. For example, claimants seeking damages for lost wages may need the testimony of an economist. Other experts may be needed depending on the nature of the claim.

### **May I ask a friend or relative for assistance in presenting my case?**

You may not be represented by someone who is not an attorney. This means that you may not ask a friend or relative to help you present your case at a hearing or conference, unless that person is an attorney representing you in the matter.

### **What is *ex parte* communication?**

*Ex parte* communication occurs when one party (claimant or respondent) talks or writes to the neutral arbitrator or judge without giving the other party a chance to participate or respond. *Ex parte* communication is prohibited, unless it concerns the schedule or location of a hearing or conference. If you need to contact the neutral arbitrator for any other reason, you should write a letter to the neutral arbitrator and send a copy of the letter to the respondent. You may also request a conference call with the neutral arbitrator and respondent.

### **What are my responsibilities when I decide to proceed without a lawyer?**

Both in court and in arbitration, people may represent themselves and do not have to hire attorneys. However, in doing so, the person assumes all the responsibilities of a lawyer. That means, for example, that the person must learn the California law that applies to the case, meet deadlines, locate and subpoena witnesses where that is necessary, and identify, hire and pay expert witnesses where they are needed. Some of these tasks take time, are complicated, are expensive and must be prepared for some time in advance. If the person's lawyer would normally have done a task, the claimant representing him or herself must do that task both in arbitration and in court. If this sounds like a lot of work, it is. It is difficult, and an arbitrator is not supposed to make the requirements any easier to meet because a person has chosen to represent him or herself. We encourage people to retain attorneys for arbitration. However, a quarter of the OIA case load is individuals acting in pro per. We help them to understand our *Rules* and procedures as much as we can. However, we stress that neither the OIA nor the neutral arbitrator can help parties by giving them legal advice or by assisting them on factual matters such as how to locate an expert witness.

### **Are there any other resources to help claimants acting in pro per?**

There are useful books written for claimants acting in pro per. Please check your local library or bookstore. If you need help finding a lawyer, call the State Bar or local County Bar Association.

*If you have any questions, please call the OIA at (213) 637-9847. You may obtain extra copies of the Rules, our forms and other helpful items at our website: [www.slhartmann.com/oia](http://www.slhartmann.com/oia).*

# **EXHIBIT I**

## **Instructions and Application for Fee Waiver**

**EXHIBIT I**

**INFORMATION SHEET AND INSTRUCTIONS FOR WAIVER OF FILING FEE AND FEES AND EXPENSES OF THE NEUTRAL ARBITRATOR**

**Criteria:** If you wish to arbitrate a claim in this system but cannot afford to pay the filing fee or the fees and expenses of the Neutral Arbitrator, you may not have to pay them if you establish:

**EITHER**

1. You are receiving financial assistance under any of the following programs:
  - SSI and SSP (Supplemental Security Income and State Supplemental Payments Programs)
  - CalWORKs (California Work Opportunity and Responsibility to Kids Act, implementing TANF (Temporary Assistance for Needy Families))
  - The Food Stamps Program, County Relief, General Relief (G.R.) or General Assistance (G.A.)

If you are claiming eligibility for a waiver of these fees because you receive financial assistance under one or more of these programs, you must produce *either* a letter confirming benefits from a public assistance agency *or* one of the following documents:

Program	Verification
SSI/SSP	MediCal Card <i>or</i> Notice of Planned Action <i>or</i> SS Computer Generated Printout <i>or</i> "Passport to Services"
CalWORKs/TANF (formerly known as AFDC)	MediCal Card <i>or</i> Notice of Action <i>or</i> Income and Eligibility Verification Form <i>or</i> Monthly Reporting Form <i>or</i> Electronic Benefit Transfer Card <i>or</i> "Passport to Services"
Food Stamp Program	Notice of Action <i>or</i> Food Stamp ID Card <i>or</i> "Passport to Services"
General Relief /General Assistance	Notice of Action <i>or</i> copy of check stub <i>or</i> County voucher

**OR**

2. Your total gross monthly household income is less than the following amounts:

Number in Family	Family Income	Number in Family	Family Income	Number in Family	Family Income
One	\$ 838.54	Four	\$1,713.54	Seven	\$2,588.54
Two	\$1,130.21	Five	\$2,005.21	Eight	\$2,880.21
Three	\$1,421.88	Six	\$2,296.88	Each Add'l Person	\$ 291.87

**OR**

3. Your income is not enough to pay for the common necessities of life for yourself and the people you support and also to pay arbitration fees and costs.

**Instructions:** To apply, fill out the “Request Form for Waiver of Filing Fees and Fees and Expenses of the Neutral Arbitrator” (“Fee Waiver Form”). A copy of the Fee Waiver Form can be obtained by calling the Kaiser Permanente Member Service Call Center at 1-800-464-4000 or the office of the Independent Administrator at 213-637-9847.

1. All of the Claimants must fill out a Fee Waiver Form, include copies of the necessary documents, sign it, and return a copy to the Independent Administrator at:

Law Offices of Sharon Lybeck Hartmann  
Independent Administrator  
P.O. Box 76587  
Los Angeles, CA 90076-0587  
Fax: 213-637-8658

2. If you seek a fee waiver because you are receiving financial assistance, you will need to fill out items 1-3 on the Fee Waiver Form.

If you seek a fee waiver because of the number of persons in your family and your family’s gross monthly income, you will need to fill out items 1, 2, 4, 6, and 7 on the Fee Waiver Form.

If you seek a fee waiver because your income is not enough to pay for the common necessities of life and the fees of the arbitration, you will need to fill out items 1-2, and 5-10 on the Fee Waiver Form.

3. When you return a copy of the Fee Waiver Form to the Independent Administrator, also serve a copy on the Respondent(s). Send it to the same address you used to serve your “Demand for Arbitration.” The Independent Administrator, Respondent(s), and counsel shall keep the information provided on the Fee Waiver Form confidential
4. Health Plan is entitled to file a response to your request for a fee waiver. The Independent Administrator will make a decision about your request for a fee waiver within fifteen days of the date you sent your Fee Waiver Form and notify both you and the Respondent(s).

**Note:** If your request for a fee waiver is denied, you will be required to pay the filing fee or your “Demand for Arbitration” will be deemed abandoned. If you waive your right to a Party Arbitrator, you will not be required to pay the Neutral Arbitrator’s fees and expenses. If your request for a fee waiver is granted, you will be required to pay any attorney’s fees and Party Arbitrator fees.

If you have any questions and cannot afford an attorney, you may wish to consult the legal aid office, legal service office, or lawyer referral service in your county. (These services may be listed in the yellow pages of your telephone book under “Attorneys.”)

**Request Form for Waiver of Filing Fee  
and Fees and Expenses of Neutral Arbitrator**

*All information on this form is kept confidential.*

My Name \_\_\_\_\_

Arbitration Name \_\_\_\_\_

Arbitration Number \_\_\_\_\_ Date \_\_\_\_\_

**I request an order by the Independent Administrator indicating that I do not have to pay the \$150 filing fee or the fees and expenses of the Neutral Arbitrator.**

1. a. My current street or mailing address is: (Please include apartment number, if any, city, and zip code.) \_\_\_\_\_  
\_\_\_\_\_

b. My attorney's name, address and phone number is: \_\_\_\_\_  
\_\_\_\_\_

2. a. My occupation, employer, and employer's address is: \_\_\_\_\_  
\_\_\_\_\_

b. My spouse's occupation, employer, and employer's address is: \_\_\_\_\_  
\_\_\_\_\_

3. I am receiving financial assistance under one or more of the following programs:

\_\_\_\_ **SSI and SSP:** Supplemental Security Income and State Supplemental  
Payments Programs.

\_\_\_\_ **CalWORKs:** California Work Opportunity and Responsibility to Kids Act,  
implementing TANF, Temporary Assistance for Need Families, (formerly AFDC.)

\_\_\_\_ **Food Stamps:** The Food Stamps program.

\_\_\_\_ **County Relief:** General Relief (G.R.), or General Assistance (G.A.).

*For each line checked above, attach copies of documents to verify receipt of each benefit (the "Information Sheet and Instructions for Waiver of Filing Fee and Fees and Expenses of the Neutral Arbitrator" explains the acceptable documents), and sign the next page.*

4. \_\_\_\_\_ My total gross monthly household income is less than the amount shown on the “Information Sheet and Instructions for Waiver of Filing Fee and Fees and Expenses of the Neutral Arbitrator” form.

**Note:** *If you checked line 4 above, skip item 5, complete items 6 and 7, and sign below.*

5. \_\_\_\_\_ My family income is not enough to pay for the common necessities of life for me and the people in my family, plus also paying for the filing fee and the fees and expenses of the Neutral Arbitrator.

**Note:** *If you checked line 5 above, complete the rest of this form and sign below.*

I declare under penalty of perjury, under the laws of the State of California that the information provided on this form and all attachments are complete, true and correct. I waive any claim I may have based on Kaiser Foundation Health Plan, Inc., paying the Neutral Arbitrator’s fees.

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<b>Type or Print Name</b>	<b>Signature</b>	<b>Date</b>
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6. \_\_\_\_\_ My pay changes considerably from month to month.

**Note:** *If you check this line, each of the amounts reported in item 10 should be your average for the past 12 months.*

7. Monthly Income

a. My gross monthly pay is: \$\_\_\_\_\_.

b. My payroll deductions are: (specify purpose and amount.)

- i. \_\_\_\_\_ \$\_\_\_\_\_
- ii. \_\_\_\_\_ \$\_\_\_\_\_
- iii. \_\_\_\_\_ \$\_\_\_\_\_
- iv. \_\_\_\_\_ \$\_\_\_\_\_
- v. \_\_\_\_\_ \$\_\_\_\_\_
- vi. \_\_\_\_\_ \$\_\_\_\_\_

c. My total Net Income is: (a. minus the total of b.) \$\_\_\_\_\_

d. Other money I receive each month is: (indicate source and amount)

- i. \_\_\_\_\_ \$ \_\_\_\_\_
- ii. \_\_\_\_\_ \$ \_\_\_\_\_
- iii. \_\_\_\_\_ \$ \_\_\_\_\_
- iv. \_\_\_\_\_ \$ \_\_\_\_\_

Total of other money received each month is: \$ \_\_\_\_\_

e. My total Monthly Income is: (add c. + d.) \$ \_\_\_\_\_

f. Number of persons living in my home: \_\_\_\_\_

List all the persons living in your home, depending on you for support, or on whom you depend for support:

Name	Age	Relationship	Gross Monthly Income

Total amount of money earned by all the persons living in your home is: \$ \_\_\_\_\_

g. The Total Gross Monthly Household Income is: \$ \_\_\_\_\_  
(add items a., d., and f. for this total)

8. I own or have an interest in the following:

a. Cash \$ \_\_\_\_\_

b. Checking, savings, and credit union accounts (list the banks):

- i. \_\_\_\_\_ \$ \_\_\_\_\_
- ii \_\_\_\_\_ \$ \_\_\_\_\_
- iii \_\_\_\_\_ \$ \_\_\_\_\_

c. Cars and other vehicles; boats and RVs (make, year, fair market value, and loan balance on each):

Property	Fair Market Value	Loan Balance
1.		
2.		

d. Real estate (list address, full market value, and loan balance):

Property	Full Market Value	Loan Balance
1.		
2.		
3.		

e. Other personal property, such as jewelry, furniture, furs, stocks, bonds, etc.:

Property	Full Market Value	Loan Balance
1.		
2.		
3.		
4.		

9. My monthly expenses not already listed in item 7. b. are the following:

- a. Rent or house payment and maintenance \$ \_\_\_\_\_
  - b. Food and household supplies \$ \_\_\_\_\_
  - c. Utilities and telephone \$ \_\_\_\_\_
  - d. Clothing \$ \_\_\_\_\_
  - e. Laundry and cleaning \$ \_\_\_\_\_
  - f. Medical and dental payments \$ \_\_\_\_\_
  - g. Insurance (life, health, accident, etc.) \$ \_\_\_\_\_
  - h. School, child care \$ \_\_\_\_\_
  - i. Child, spousal support (prior marriage) \$ \_\_\_\_\_
  - j. Transportation and auto expenses (insurance, gas, repairs) \$ \_\_\_\_\_
  - k. Monthly installment payments: (indicate purpose & amount)
    - 1. \_\_\_\_\_ \$ \_\_\_\_\_
    - 2. \_\_\_\_\_ \$ \_\_\_\_\_
    - 3. \_\_\_\_\_ \$ \_\_\_\_\_
- Total amount of all monthly installment payments is: \$ \_\_\_\_\_



l. Amount deducted for wage assignments and earning withholding orders: \$\_\_\_\_\_

m. Other expenses (specify):

1.	\$
2.	\$
3.	\$

n. My Total Monthly Expenses are: \$ \_\_\_\_\_  
(add 9.a. through 9.m.)

10. Other facts that support this application:

Describe unusual medical needs, expenses for recent family emergencies, or other unusual circumstances or expenses to help the Independent Administrator understand your budget. (If more space is needed, please add another page and label it "Attachment to Item 10.")

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## **EXHIBIT J**

### **Lists of all Awards to Claimants**

## EXHIBIT J

### List of All Awards to Claimants

<b>Case Number (not actual OIA case number)</b>	<b>Amounts of Awards</b>	<b>Month/Year</b>
1	\$12,500.00	10/99
2	\$6,560.00	12/99
3	\$30,000.00	02/00
4	\$202,740.00	03/00
5	\$175,000.00	03/00
6	\$17,706.76	04/00
7	\$10,000.00	04/00
8	\$109,773.06	04/00
9	\$25,000.00	05/00
10	\$125,000.00	05/00
11	\$5,594,605.00	06/00
12	\$20,202.58	06/00
13	\$125,000.00	06/00
14	\$96,000.00	06/00
15	\$176,500.00	06/30
16	\$17,000.00	07/00
17	\$75,627.00	07/00
18	\$427,110.00	07/00
19	\$442,400.00	07/00
20	\$200,000.00	08/00
21	\$201,572.00	08/00
22	\$28,900.00	09/00
23	\$25,000.00	09/00
24	\$37,950.00	09/00
25	\$311,362.39	09/00
26	\$200,000.00	10/00
27	\$40,000.00	10/00
28	\$110,738.00	10/00
29	\$165,832.00	10/00
30	\$59,817.25	11/00
31	\$8,120.00	11/00
32	\$30,975.00	11/00

<b>Case Number</b> (not actual OIA case number)	<b>Amounts of Awards</b>	<b>Month/Year</b>
33	\$251,440.00	11/00
34	\$175,000.00	12/00
35	\$271,000.00	12/00
36	\$340,000.00	12/00
37	\$53,500.00	12/00
38	\$160,000.00	12/00
39	\$375,000.00	01/01
40	\$2,850.00	01/01
41	\$11,163.00	01/01
42	\$61,489.00	01/01
43	\$250,000.00	02/01
44	\$2,500.00	02/01
45	\$79,000.00	02/01
46	\$79,047.60	02/01
47	\$175,000.00	03/01
48	\$316,338.00	03/01
49	\$96,560.00	03/01
50	\$8,000.00	03/01
51	\$1,100,000.00	03/01
52	\$25,000.00	04/01
53	\$7,052.00	05/01
54	\$45,000.00	05/01
55	\$72,000.00	05/01
56	\$175,000.00	06/01
57	\$85,000.00	06/01
58	\$95,000.00	06/01
59	\$80,842.00	07/01
60	\$2,700.00	07/01
61	\$70,000.00	08/01
62	\$996,100.00	08/01
63	\$29,165.00	08/01
64	\$80,000.00	08/01
65	\$3,841.00	09/01
66	\$8,524.32	10/01
67	\$2,750.00	10/01
68	\$504,309.72	10/01

<b>Case Number</b> (not actual OIA case number)	<b>Amounts of Awards</b>	<b>Month/Year</b>
69	\$100,000.00	10/01
70	\$175,000.00	10/01
71	\$50,000.00	10/01
72	\$22,500.00	11/01
73	\$261,916.00	11/01
74	\$22,500.00	11/01
75	\$75,000.00	11/01
76	\$250,000.00	11/01
77	\$375,000.00	12/01
78	\$194,000.00	12/01
79	\$479,794.98	12/01
80	\$17,000.00	12/01
81	\$186,939.92	12/01
82	\$10,000.00	12/01
83	\$30,000.00	12/01
84	\$87,170.07	12/01

**EXHIBIT K**

**BYLAWS OF THE KAISER FOUNDATION HEALTH  
PLAN ARBITRATION OVERSIGHT BOARD**

**EXHIBIT K**

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**BYLAW  
OF  
THE KAISER FOUNDATION HEALTHPLAN  
ARBITRATION OVERSIGHT BOARD**

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**ARTICLE I.  
GENERAL TERMS**

1.1 **Name.** The name of the unincorporated association is The Kaiser Foundation Health Plan Arbitration Oversight Board (the “Association”).

1.2 **Filing of Statement of Unincorporated Association.** Kaiser Foundation Health Plan, Inc. (“Health Plan”) has caused to be filed, in the office of the Secretary of State of the State of California, the Association’s Statement of Unincorporated Association on \_\_\_\_\_, 2001 (the “Charter”).

1.3 **Mailing Address.** The Association’s mailing address shall be:

Kaiser Foundation Health Plan Arbitration Oversight Board  
C/O David Werdegar, M.D., Chair  
P.O. Box 22395  
San Francisco, California 94112.

The mailing address may be changed from time to time as determined by the Association.

1.4 **Purpose, Scope, Structure and Objectives.**

The sole purpose of the Association is to engage in the functions described in this Section 1.4 (the “Oversight”).

The Association shall set policy for and oversee the independent administration of the Kaiser Permanente Mandatory Arbitration System (the “Arbitration System”). The members of the Association shall constitute an oversight board (the “Board”), which shall be constituted and operated as provided in these bylaws.

The scope of the Oversight shall entail the following: (i) ensuring that the Arbitration System is fair, speedy, cost-effective and protects the privacy interests of the users of the Arbitration System; (ii) continuously improving the Arbitration System and the experience of the users of the Arbitration System; (iii) regularly reviewing the rules guiding the Arbitration System and revising them as needed in light of experience and evaluations; (iv) reviewing and evaluating the performance of the Office of the Independent Administrator (“OIA”) of the Arbitration System and participating in contract negotiations with the OIA; (v) reviewing where pertinent the operation of Kaiser Foundation Health Plan’s pre-arbitration procedures; (vi) offering recommendations to the Plan for possible improvements in those procedures; and (vii) periodically reporting on the state of the Arbitration System to Kaiser Foundation Health Plan and Hospitals and the Permanente Medical Groups for the benefit of Health Plan members and other interested parties.

The Association shall be a not-for-profit entity and shall administer funds for operating expenses of the Board using proceeds from the Kaiser Foundation Health Plan Arbitration Oversight Board Trust (the “Trust”). The Trust shall be funded by Health Plan in accordance with an annual memorandum of understanding, as provided in Section 2.7.

1.5 **Term of Association.** The term of the Association shall commence at the time of the filing of the Charter pursuant to Section 1.2, and shall continue until December 31, 2031, unless earlier dissolved in accordance with Article 5.



1.6 **Filings of Other Certificates.** The Association or its authorized agents shall cause to be executed, filed and published all such certificates, notices, statements or other instruments, and amendments thereto under the laws of the State of California and other applicable jurisdictions as the Association may deem necessary or advisable for the formation and operation of the Association.

**ARTICLE II.  
MANAGEMENT**

2.1 **Oversight Board.**

(a) **Authority.** The Board shall have the sole responsibility, authority and control over the management, conduct and operation and affairs of the Association, except as delegated by the Board or as otherwise provided herein.

(b) **Composition of the Board.** The Board shall be comprised of not more than 13 members. Members shall be selected so as to reflect a diversity of perspectives on the Arbitration System. The following are examples of perspectives that shall be reflected at all times, to the extent possible:

- Kaiser Permanente members
- Kaiser Permanente health care professionals
- Employers providing Kaiser Permanente coverage to employees
- Consumer advocacy
- Labor organizations
- Plaintiff's medical malpractice bar
- Defense medical malpractice bar
- Health Plan.

In the discretion of the Board, members may also be selected to reflect other appropriate perspectives or on account of their independent public stature.

(c) **Nomination and Election of Board Members.** The first members of the Board shall be appointed by the Chair in conformance with Section 2.1(b). Except in the case of the member representing the perspective of Health Plan, upon the resignation, removal or expiration of the term of a Board member, the Chair and the Vice-Chair shall nominate a replacement Board member who, to the extent possible, will maintain the diversity of perspectives described in Section 2.1(b). Health Plan shall nominate a Board member to replace the member reflecting the perspective of Health Plan upon the resignation, removal or expiration of his or her term. Members whose terms have expired may be nominated for additional terms.

(d) **Term of Board Membership.** The Chair shall have an initial term of office of 3 years. So as to achieve staggered terms of office, the remaining 12 initial members shall be divided into three groups of four, with one group having an initial term of office of three years, the second group having a term of office of four years and the third group having a term of office of five years. At the initial meeting of the Board, the initial members shall be assigned their terms of office by lot. Following the initial terms, all members, including the Chair, shall have terms of three years. In the event that any member fails to complete a term of office, the replacement board member shall serve

the remaining term of the replaced member and shall thereafter have a three-year term if re-elected by the Board.

(e) **Removal of Board Members.** Board members may be removed from the Board, with or without cause, upon the vote of two thirds of the members of the Board.

**2.2 Nontransferability of Board Membership.** Board membership shall not be transferable.

**2.3 Meetings of the Board.**

(a) **Regular Meetings.** The Board shall hold regular meetings at such times and places as are duly called and approved by the Board. Notices shall not be required with respect to regular meetings of the Board.

(b) **Special Meetings.** The Chair may call a special meeting of the Board in his discretion at any time. The Chair shall call a special meeting of the Board if so requested by three Board members. The Chair shall provide to each member of the Board at least five business days' advance written notice of such special meeting. Presence at a meeting shall constitute waiver of notice. Members may also waive notice of a special meeting by a written waiver, which shall be filed with the minutes of the meeting.

(c) **Telephonic Meetings.** Any meeting of the Board may be held by conference telephone call or through similar communications equipment which allows Board members participating in the meeting to hear one another. Participation in any such telephonic meeting shall constitute presence in person at such meeting.

(d) **Written Consents.** Any action required or permitted to be taken at a meeting of the Board may be taken without a meeting if the Board unanimously consents thereto in writing. Any such written consents shall be filed with the minutes of the proceedings of the Board.

(e) **Voting; Quorum.** Each member of the Board shall be entitled to one vote. A quorum of the Board shall be a majority of the members of the Board at the time of a Board meeting. A quorum must be present at the time of the vote in order for valid Board action to be taken. Votes must be cast in person, and proxy voting is not permitted.

(f) **Requirements for Board Action on Rules of the Arbitration System.** All actions of the Board directly affecting the rules of the Arbitration System, including the adoption, amendment or deletion of any rule and any modification or repeal of the voting requirement of this paragraph (f), shall require (i) the affirmative vote of 2/3 of the members of the Board at the time of the action, and (ii) the affirmative vote of a majority of non-Kaiser members of the Board. For this purpose, the non-Kaiser members of the Board shall be all members other than the member appointed by Health Plan, the member reflecting the perspective of the defense medical malpractice bar and any member employed by a Kaiser Permanente entity at the time of the action.

(g) **Requirements for Board Action on Matters other than Rules of the Arbitration System.** Except as otherwise provided in section 2.1(e) and section 2.3(f), all actions of the Board shall require the affirmative vote of a majority of the members of the Board at the time of such action.

(h) **Minutes.** The Board shall keep regular minutes of all of its meetings and shall file them with the official records of the Association.

**2.4 Officers of the Association.**

(a) Chair of the Board. The Chair of the Board shall preside at all meetings of the Board and shall appoint a Vice-Chair, who shall preside in the absence of the Chair. Both the Chair and Vice-Chair shall be Board members. The first Chair shall be selected by Health Plan. The successor to the first Chair and each subsequent successor shall be nominated by the then-current Chair and Vice-Chair jointly with Health Plan and shall be approved by the members of the Board. The Chair may serve successive terms.

(b) Secretary. The Board shall appoint a capable and qualified individual or organization to serve as the Secretary of the Association. The Secretary shall report to the Chair and shall perform such clerical and administrative duties as the Chair shall direct.

(c) Other Personnel. The Board may authorize the hiring of employees or contracting for services and other necessary personnel from time to time in conformity with procedures and policies adopted or approved by the Board and consistent with the Oversight.

**2.5 Board Compensation.**

(a) Chair of the Board. The Chair of the Board shall receive an annual stipend, payable in equal monthly installments, regardless of the number of meetings of the Board. The initial stipend of the Chair shall be as agreed in writing between Health Plan and the Chair, which shall remain in effect for a three-year term as specified in the writing. The stipend of the Chair for periods thereafter shall be subject to the approval of the Board. The Chair shall not be an employee of the Association.

(b) Board Members. Board members, other than the Chair of the Board, shall receive a stipend per meeting of the Board or committee thereof, regardless of whether such meeting is a physical meeting or telephonic meeting. Board members shall be reasonably available outside of Board meetings without compensation for informal consultation regarding the affairs of the Association.

(c) Board Expenses. The Board members, including the Chair of the Board, shall be paid their reasonable expenses, if any, incurred in connection with the activities of the Association, including the reasonable expenses of attendance at each meeting of the Board.

**2.6 Board Committees.** The Board may establish one or more committees, each committee to consist of one or more of the Board members. The Board may designate one or more members as alternate members of any committee, who may replace any member who is unable to participate at any meeting of the committee. Any committee shall have all the powers and authority delegated to it by the Board. Committee meetings and action shall be governed by the procedures outlined in Section 2.3.

**2.7 Memorandum of Understanding.** Not later than October 1 of each year, the Chair or his designee shall present detailed information to Health Plan regarding the Association's expense budget for the succeeding year and shall use his or her best efforts to reach an agreement with Health Plan regarding the budget. The Association and Health Plan will enter into an annual memorandum of understanding by December 31, which memorandum will set forth the time and amounts of Health Plan's contributions to the Trust for the purpose of funding the Association's budgeted expenses for the succeeding calendar year.

**ARTICLE III.  
INDEMNIFICATION AND INSURANCE**

Each Board member and the Secretary and any other personnel of the Association (each, an “Indemnified Person”), shall not be liable, responsible or accountable in damages or otherwise to the Association for any act or omission performed or omitted by such Indemnified Person (i) in good faith on behalf of the Association, (ii) in a manner reasonably believed by the Indemnified Person to be within the scope of the authority granted in accordance with these bylaws, and (iii) in a manner not constituting willful misconduct or gross negligence. Pursuant to a separate agreement, Health Plan shall indemnify, defend and hold harmless Indemnified Persons for any such acts or omissions, and for any acts or omissions not meeting such requirements to the extent that a court determines that in view of all the circumstances of the case, such Indemnified Person is fairly and reasonably entitled to indemnification for those expenses which the court deems proper. Such indemnification shall include advancement of reasonable legal defense costs incurred, including, without limitation, those incurred prior to any judgment. The Association or Health Plan shall purchase and maintain insurance, to the extent and in such amounts as the Board or Health Plan shall deem reasonable, on behalf of any of the Indemnified Persons and such other persons as the Board shall determine, against any liability that may be asserted against or losses or expenses that may be incurred by any such person in connection with the activities of the Association or such persons, regardless of whether the Association would have the power to indemnify such person against such liability under this Article 3. The indemnification and insurance provided under this Article may not be canceled or materially altered without 30 days advance notice to all Board members.

**ARTICLE IV.  
ACCOUNTING, RECORDS AND REPORTS**

- 4.1 **Fiscal Year.** The fiscal year of the Association shall be the calendar year.
- 4.2 **Books and Records.** The Secretary or its designee shall maintain proper and complete records and books of account of the Association.
- 4.3 **Progress and Other Reports.** At the conclusion of each fiscal year, the Board shall prepare a report describing the progress toward achieving the goals of the Oversight, as provided in Section 1.4 of these By-Laws.
- 4.4 **Audit.** No less than every three years, a financial audit of the affairs of the Association shall be undertaken and shall be made available to Health Plan. The auditing firm shall be selected by Health Plan.
- 4.5 **Inspection.** All Board members shall have the right to inspect the books and records of the Association upon reasonable notice to the Association.

**ARTICLE V.  
DISSOLUTION AND TERMINATION**

- 5.1 **Termination by Board Vote.** The Association may be terminated upon the vote of the Board, provided, however, that no vote to terminate the Association will be valid without the approval of the member reflecting the perspective of Health Plan.

**ARTICLE VI.  
MISCELLANEOUS PROVISIONS**

6.1 **Notices.** Any written notice or communication to any of the Board members required or permitted under these bylaws shall be deemed to have been duly given and received (i) on the date of service, if served personally or sent by telex or facsimile transmission to the member at the facsimile number set forth in the records of the Association, or (ii) on the third business day after mailing, if mailed by first class registered or certified mail, postage prepaid, and addressed to the member at the address set forth in the records of the Association, or (iii) on the next day, if sent by a nationally recognized courier for next day service and addressed to the party to whom notice is to be given at the address set forth in the records of the Association. Notices to the Association shall be similarly given and addressed to it at its principal place of business.

6.2 **Confidentiality.** Except as otherwise required by applicable law or as allowed by a policy adopted by the Board, no Board member shall disclose any information regarding the Association or the Oversight without obtaining the prior approval of the Board.

6.3 **Amendments.** These bylaws may be amended or restated in their entirety by action of the Board as provided in Section 2.3(f) and (g).

## **EXHIBIT L**

### **Party & Attorney Evaluations of Neutral Arbitrators -- Forms and Analyses**

**EXHIBIT L**

**Party or Attorney Evaluation of Neutral Arbitrator**

Instructions: In accordance with Rule 49 of the *Rules for Kaiser Permanente Member Arbitrations Overseen by the Office of Independent Administrator*, we ask that you complete the enclosed anonymous evaluation. It will be placed in the folder of the neutral arbitrator who handled your case and copies of it will be sent to other parties who are considering using your neutral arbitrator in the future. We ask for comments where you have them and are glad to receive any that you have the time to offer. Please feel free to add sheets if you need additional space. A stamped, self-addressed envelope is included for your convenience. Please send your response to the address below in the enclosed self-addressed envelope. Thanks for your help.

Office of Independent Administrator  
P.O. Box 76587  
Los Angeles, California 90076-0587

I am the Claimant \_\_\_\_\_ OR

I am the attorney who represented \_\_\_\_\_ the Claimant OR \_\_\_\_\_ the Respondent

This claim was:

- \_\_\_\_\_ Withdrawn
- \_\_\_\_\_ Settled
- \_\_\_\_\_ Dismissed by the Neutral Arbitrator
- \_\_\_\_\_ Decided by a Motion for Summary Judgment
- \_\_\_\_\_ Decided After a Hearing:
  - \_\_\_\_\_ For Claimant
  - \_\_\_\_\_ For Respondent
- \_\_\_\_\_ Other - please specify: \_\_\_\_\_

Type of injury:

- \_\_\_\_\_ Medical Malpractice
- \_\_\_\_\_ Benefits
- \_\_\_\_\_ Third Party Lien
- \_\_\_\_\_ Premises Liability
- \_\_\_\_\_ Other Tort
- \_\_\_\_\_ Other - please specify \_\_\_\_\_

Neutral Arbitrator-s Name \_\_\_\_\_  
\_\_\_\_\_ Chosen Jointly OR \_\_\_\_\_ Chosen through Strike and Rank Process

On the scale below, please rank your experiences with your Neutral Arbitrator. Please circle the number that applies. If the statement does not apply to your case, please circle the AN/A@ which appears at the right-hand side. We ask for your comments where you have time and inclination.

1. The neutral arbitrator was impartial and treated all parties fairly.

5	4	3	2	1	N/A
Agree				Disagree	

Please comment: \_\_\_\_\_  
\_\_\_\_\_

2. The neutral arbitrator treated all parties with respect.

5	4	3	2	1	N/A
Agree				Disagree	

Please comment: \_\_\_\_\_  
\_\_\_\_\_

3. The neutral arbitrator kept the case moving in a timely fashion.

5	4	3	2	1	N/A
Agree				Disagree	

Please comment: \_\_\_\_\_  
\_\_\_\_\_

4. The neutral arbitrator responded within a reasonable time to telephone calls or written communications.

5	4	3	2	1	N/A
Agree				Disagree	

Please comment: \_\_\_\_\_  
\_\_\_\_\_

5. The neutral arbitrator explained procedures and decisions clearly.

5	4	3	2	1	N/A
Agree				Disagree	

Please comment: \_\_\_\_\_  
\_\_\_\_\_

6. The neutral arbitrator understood the applicable law governing my case.

5	4	3	2	1	N/A
Agree				Disagree	

Please comment: \_\_\_\_\_  
\_\_\_\_\_



7. The neutral arbitrator understood the facts of my case.

5	4	3	2	1	N/A
Agree				Disagree	

Please comment: \_\_\_\_\_  
\_\_\_\_\_

8. The neutral arbitrator served his/her decision within a reasonable time.

5	4	3	2	1	N/A
Agree				Disagree	

Please comment: \_\_\_\_\_  
\_\_\_\_\_

9. The fees billed by the neutral arbitrator were consistent with those described in his/her application materials which I received from the OIA at the beginning of case.

5	4	3	2	1	N/A
Agree				Disagree	

Please comment: \_\_\_\_\_  
\_\_\_\_\_

10. The fees charged by the neutral arbitrator were reasonable given the work performed.

5	4	3	2	1	N/A
Agree				Disagree	

Please comment: \_\_\_\_\_  
\_\_\_\_\_

11. I would recommend this arbitrator to another person or another lawyer with a case like mine.

5	4	3	2	1	N/A
Agree				Disagree	

Please comment: \_\_\_\_\_  
\_\_\_\_\_

**ANALYSIS OF ALL EVALUATIONS  
THE OIA HAS RECEIVED**

# OIA - Party Evaluation / Total Counts

Report Date Range: 1/1/00 through 12/31/01

## General Counts

	<u>Sent</u>	<u>Received</u> (including 132 blanks)
Cnt Evaluations	2,354	1,074
Cnt of Pro Pers	344	63
Cnt of Claimant Counsel	833	304
Cnt of Respondents	1,177	668
Cnt Anonymous		39

## Counts of Received

### Blanks

Cnt Blank	132
Cnt Blank and Settled or Withdrawn Early	68

### By Disposition

Cnt Disp Withdrawn	182	Cnt Disp Hearing Claimant	88
Cnt Disp Settled	422	Cnt Disp Hearing Respondent	140
Cnt Disp Dismissed by NA	28	Cnt Disp Hearing	5
Cnt Disp MSJ	120	Cnt Disp Other	4

### Comments

Cnt NoComments	557
Cnt Any Comments	385
Cnt All POS	116
Cnt All NEG	105
Cnt All BOTH	50
Cnt All N/A	114

### By Method Arbitrator Chosen

Cnt JOINT	346
Cnt STRIKE	534



**ANALYSIS OF EVALUATIONS  
THE OIA HAS RECEIVED IN 2001**

# OIA - Party Evaluation / 2001 Counts

Report Date Range: 1/1/01 through 12/31/01

## General Counts

	<u>Sent</u>	<u>Received</u> (including 49 blanks)
Cnt Evaluations	1,244	635
Cnt of Pro Pers	174	37
Cnt of Claimant Counsel	448	186
Cnt of Respondents	622	390
Cnt Anonymous		22

## Counts of Received

### Blanks

Cnt Blank	49
Cnt Blank and Settled or Withdrawn Early	19

### By Disposition

Cnt Disp Withdrawn	107	Cnt Disp Hearing Claimant	47
Cnt Disp Settled	239	Cnt Disp Hearing Respondent	84
Cnt Disp Dismissed by NA	19	Cnt Disp Hearing	4
Cnt Disp MSJ	76	Cnt Disp Other	4

### Comments

Cnt NoComments	350
Cnt Any Comments	236
Cnt All POS	72
Cnt All NEG	58
Cnt All BOTH	29
Cnt All N/A	77

### By Method Arbitrator Chosen

Cnt JOINT	210
Cnt STRIKE	319

**OIA - Claimant and Attorney Evaluations of Neutrals; Statistical Summary of 2001 Responses**

As of 12/31/01

Claimant or Respondent?	Evals Rcvd	Comments							Fair	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9	Q10	Q11	Cnt/ Avg
		Any Comm.	No Comm.	All POS	All NEG	MIXED	All N/A's													
Unidentified Count	22	6	16	1	1	1	3	14	15	15	15	15	14	14	14	15	14	14	14	14
Unidentified Average								4.5	4.7	4.5	4.6	4.5	4.8	5.0	5.0	5.0	4.9	4.6	4.5	4.7
Unidentified Median								5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
Unidentified Mode								5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
Claimant Attorney Count	186	85	101	26	16	10	33	168	168	167	166	165	162	158	162	151	152	161		
Claimant Attorney Average								4.5	4.7	4.8	4.7	4.6	4.5	4.4	4.5	4.7	4.6	4.4	4.6	4.6
Claimant Attorney Median								5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
Claimant Attorney Mode								5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
Pro Per Count	37	24	13	3	12	5	4	34	32	32	32	32	31	31	30	26	25	31		
Pro Per Average								3.5	4.1	4.6	4.1	4.0	3.4	3.6	4.5	4.3	3.3	3.1	3.9	
Pro Per Median								5.0	5.0	5.0	5.0	5.0	5.0	4.0	5.0	5.0	4.0	3.0	5.0	
Pro Per Mode								5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	
Respondent Count	390	121	269	42	29	13	37	359	357	357	354	356	356	351	349	337	336	342		
Respondent Average								4.7	4.9	4.6	4.8	4.7	4.6	4.6	4.7	4.8	4.7	4.5	4.7	
Respondent Median								5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	
Respondent Mode								5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	
Total Count	635	236	399	72	58	29	77	575	572	571	567	568	563	554	556	528	527	548		
Total Average								4.6	4.8	4.7	4.7	4.6	4.5	4.5	4.6	4.8	4.6	4.4	4.6	
Total Median								5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	
Total Mode								5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	

**ANALYSIS OF EVALUATIONS  
THE OIA RECEIVED IN 2000**



# OIA - Party Evaluation / 2000 Counts

Report Date Range: 1/1/00 through 12/31/00

## General Counts

	<u>Sent</u>	<u>Received</u> (including 83 blanks)
Cnt Evaluations	1,110	439
Cnt of Pro Pers	170	26
Cnt of Claimant Counsel	385	118
Cnt of Respondents	555	278
Cnt Anonymous		17

## Counts of Received

### Blanks

Cnt Blank	83
Cnt Blank and Settled or Withdrawn Early	49

### By Disposition

Cnt Disp Withdrawn	75	Cnt Disp Hearing Claimant	41
Cnt Disp Settled	183	Cnt Disp Hearing Respondent	56
Cnt Disp Dismissed by NA	9	Cnt Disp Hearing	1
Cnt Disp MSJ	44	Cnt Disp Other	0

### Comments

Cnt NoComments	207
Cnt Any Comments	149
Cnt All POS	44
Cnt All NEG	47
Cnt All BOTH	21
Cnt All N/A	37

### By Method Arbitrator Chosen

Cnt JOINT	136
Cnt STRIKE	215



# **EXHIBIT M**

## **Neutral Arbitrator Evaluation of OIA Procedures and Rules -- Forms and Analyses**

**EXHIBIT M**

**Questionnaire for Neutral Arbitrators**

Instructions: In accordance with Rule 48 of the *Rules for Kaiser Permanente Member Arbitrations Overseen by the Office of Independent Administrator*, we ask that you complete the enclosed questionnaire about the arbitration named below. Your answers will be used to evaluate and make changes in the OIA system. We ask for comments and are glad to receive any that you have to offer. Please feel free to add sheets if you need additional space. A stamped, self-addressed envelope is enclosed for your convenience. Please send the returned form to the address below in the enclosed self-addressed, stamped envelope. Thanks for your help.

Office of Independent Administrator  
P.O. Box 76587  
Los Angeles, California 90076-0587

**Arbitration Name:**

**Arbitration Number:**

This claim was:

- Withdrawn
- Settled
- Dismissed by the Neutral Arbitrator
- Decided After a Motion for Summary Judgment
- Decided After a Hearing

On the scale below, please rank your experiences in this matter. Please circle the number that applies. If the statement does not apply to your case, please circle the ANA® which appears at the right-hand side. We ask for your comments where you have time and inclination.

1. In this case, I thought the procedures set out in the *Rules for Kaiser Permanente Members Arbitrations Overseen by the Office of Independent Administrator* worked well.

5	4	3	2	1	NA
Agree				Disagree	

Please comment: \_\_\_\_\_  
\_\_\_\_\_

2. Based on my experience in this case, I would participate in another arbitration in the system administered by the Office of Independent Administrator.

5	4	3	2	1	NA
Agree				Disagree	

Please comment: \_\_\_\_\_  
\_\_\_\_\_

3. In this case, the Office of Independent Administrator accommodated my questions and concerns.

5	4	3	2	1	NA
Agree				Disagree	

Please comment: \_\_\_\_\_  
\_\_\_\_\_

4. Based on my experience in this case, I found the that the following characteristics of the system **worked well**.  
(Check all that apply):

- |   |   |
|---|---|
| <input type="checkbox"/> manner of neutral arbitrator-s appointment | <input type="checkbox"/> the system-s rules overall                       |
| <input type="checkbox"/> early management conference                | <input type="checkbox"/> hearing within 18 months                         |
| <input type="checkbox"/> availability of expedited procedures       | <input type="checkbox"/> availability of complex/extraordinary procedures |
| <input type="checkbox"/> award within 10 days of hearing            | <input type="checkbox"/> other (please describe):                         |
| <input type="checkbox"/> claimant-s ability to have respondent      |   |
| <input type="checkbox"/> pay cost of neutral arbitrator             |   |

Please comment: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Based on my experience in this case, I found that the following characteristics of the system **need change or improvement**. (Check all that apply):

- |   |   |
|---|---|
| <input type="checkbox"/> manner of neutral arbitrator-s appointment | <input type="checkbox"/> the system-s rules overall                       |
| <input type="checkbox"/> early management conference                | <input type="checkbox"/> hearing within 18 months                         |
| <input type="checkbox"/> availability of expedited procedures       | <input type="checkbox"/> availability of complex/extraordinary procedures |
| <input type="checkbox"/> award within 10 days of hearing            | <input type="checkbox"/> other (please describe):                         |
| <input type="checkbox"/> claimant-s ability to have respondent      |   |
| <input type="checkbox"/> pay cost of neutral arbitrator             |   |

Please comment: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Have you had experience with a similar case in Superior Court?  Yes  No

If yes, what was your role? \_\_\_\_\_

If yes, was your experience in this system with this case:

better  worse  about the same?

Please comment: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Please give us any suggestions you may have for improving the communications with our office.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. Please set forth any suggestions for improving the system administered by this office.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. Please set forth any suggestions for improvement or change in the rules.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ANALYSIS OF ALL EVALUATIONS  
THE OIA HAS RECEIVED**

## NA Questionnaire / Count by Disposition - Total Responses

<b>Disposition</b>	<b>Count</b>
Decided After Hearing	203
Decided After MSJ	146
Dismissed by NA	31
Settled	410
Withdrawn	161
Unidentified	13
No Questions Answered	84
<b>Total Returned</b>	<b>1048</b>
<b>Total Mailed</b>	<b>1177</b>

Neutral Arbitrator Questionnaire - Responses to Questions 1 thru 3 - Total Responses

Disp. Count	Disposition	Q1	Comments			Q2	Comments			Q3	Comments		
			Q1 POS	Q1 NEG	Q1 BOTH		Q2 POS	Q2 NEG	Q2 BOTH		Q3 POS	Q3 NEG	Q3 BOTH
203	Decided After Hearing Count	201	11	4	4	202	9	3	1	195	8	0	0
	Decided After Hearing Average	4.7				4.9				4.9			
	Decided After Hearing Median	5.0				5.0				5.0			
	Decided After Hearing Mode	5.0				5.0				5.0			
	Decided After Hearing Min	1.0				1.0				3.0			
	Decided After Hearing Max	5.0				5.0				5.0			
146	Decided After MSJ Count	142	1	9	0	143	1	1	0	138	3	1	0
	Decided After MSJ Average	4.7				4.9				4.9			
	Decided After MSJ Median	5.0				5.0				5.0			
	Decided After MSJ Mode	5.0				5.0				5.0			
	Decided After MSJ Min	1.0				2.0				1.0			
	Decided After MSJ Max	5.0				5.0				5.0			
31	Dismissed by NA Count	30	1	0	0	29	0	1	0	30	2	0	0
	Dismissed by NA Average	4.7				4.8				5.0			
	Dismissed by NA Median	5.0				5.0				5.0			
	Dismissed by NA Mode	5.0				5.0				5.0			
	Dismissed by NA Min	3.0				1.0				4.0			
	Dismissed by NA Max	5.0				5.0				5.0			
410	Settled Count	397	13	6	1	394	7	3	0	384	8	4	0
	Settled Average	4.7				4.9				4.9			
	Settled Median	5.0				5.0				5.0			
	Settled Mode	5.0				5.0				5.0			
	Settled Min	1.0				1.0				1.0			
	Settled Max	5.0				5.0				5.0			
161	Withdrawn Count	150	3	5	1	151	2	2	0	145	4	0	0
	Withdrawn Average	4.8				4.9				4.9			
	Withdrawn Median	5.0				5.0				5.0			
	Withdrawn Mode	5.0				5.0				5.0			
	Withdrawn Min	2.0				2.0				3.0			
	Withdrawn Max	5.0				5.0				5.0			
13	BLANK Count	11	0	0	0	11	0	0	0	11	0	0	0
	BLANK Average	4.5				4.9				4.9			
	BLANK Median	5.0				5.0				5.0			
	BLANK Mode	5.0				5.0				5.0			
	BLANK Min	3.0				4.0				4.0			
	BLANK Max	5.0				5.0				5.0			
964	Total Count	931	29	24	6	930	19	10	1	903	25	5	0
	Total Average	4.7				4.9				4.9			
	Total Median	5.0				5.0				5.0			
	Total Mode	5.0				5.0				5.0			
	Total Min	1.0				1.0				1.0			
	Total Max	5.0				5.0				5.0			



## NA Questionnaire / Count of Questions 4-5

4. I found that the following characteristics of the system **worked well**. (Check all that apply):

5. I found that the following characteristics of the system **need change or improvement**. (Check all that apply):

Report Date Range: 1/1/2000 through 12/31/2001

		<b>4. Worked Well</b>	<b>5. Needs Change/Improvement</b>
a.)	manner of neutral arbitrator's appointment	693	17
b.)	early management conference	734	21
c.)	availability of expedited procedures	257	5
d.)	award within 10 days of hearing	193	62
e.)	claimant's ability to have respondent pay cost of neutral arbitrator	349	22
f.)	the system's rules overall	574	20
g.)	hearing within 18 months	321	23
h.)	availability of complex/extraordinary procedures	53	8
<b>Other)</b>		8	26
<b>COMMENTS:</b>	<b>Positive</b>	52	35
	<b>Negative</b>	23	80
	<b>Both</b>	2	4

## NA Questionnaire / Results of Question 6

6. Have you had experience with a similar case in Superior Court?

If yes, what was your role?

If yes, was your experience in this system with this case Better, Worse, or About the Same?

Report Date Range:  
1/1/2000 through 12/31/2001

<u>Role</u>	<u>CntO6a is Yes</u>	<u>Cnt Better</u>	<u>Cnt Worse</u>	<u>Cnt Same</u>	<u>Cnt BLANK</u>
	21	9	1	6	5
<i>6b BLANK</i>	31	14	1	13	3
<i>Attorney</i>	129	64	6	48	11
<i>Judge</i>	390	125	4	218	43
<i>Mediator</i>	15	5	0	9	1
<i>Neutral Arbitrator</i>	67	30	0	34	3
<i>Party Arbitrator</i>	1	0	0	1	0
<i>Referee</i>	1	0	0	1	0

## NA Questionnaire / Results of Question 6

6. Have you had experience with a similar case in Superior Court?

If yes, what was your role?

If yes, was your experience in this system with this case Better, Worse, or About the Same?

Report Date Range:  
1/1/2000 through 12/31/2001

<u>Role</u>	<u>CntQ6a is Yes</u>	<u>Cnt Better</u>	<u>Cnt Worse</u>	<u>Cnt Same</u>	<u>Cnt BLANK</u>
<b>TOTALS</b>	<b>655</b>	<b>247</b>	<b>12</b>	<b>330</b>	<b>66</b>

# NA Questionnaire / Post Analysis (Out of Total - 1048)

Report Date Range: 1/1/2000 through 12/31/2001

1. Anything positive		214
2. Time for final decision must be greater than 10 days		68
3. System encourages settlement/early settlement		30
4. System needs help for pro pers		40
5. Any negative remarks		172
6. Asked for e-mail		13
7. Approved/Disapproved faxing	Approved:	4
	Disapproved:	0
8. NO comments at all		497
9. Problems collecting money owed to them by	Claimant:	3
	Kaiser:	8
	Both:	3
10. Have OIA include claimant's demand		14
11. Want way beyond voicemail to contact OIA		21
12. Improve notification of settlement		4

**ANALYSIS OF EVALUATIONS  
THE OIA RECEIVED IN 2001**

## NA Questionnaire / Count by Disposition - 2001 Responses

<b>Disposition</b>	<b>Count</b>
Decided After Hearing	103
Decided After MSJ	82
Dismissed by NA	18
Settled	203
Withdrawn	79
Unidentified	6
No Questions Answered	60
<b>Total Returned</b>	<b>551</b>
<b>Total Mailed</b>	<b>622</b>

## Neutral Arbitrator Questionnaire - Responses to Questions 1 thru 3 - Total Responses

Disp. Count	Disposition	Q1	Comments			Q2	Comments			Q3	Comments		
			Q1 POS	Q1 NEG	Q1 BOTH		Q2 POS	Q2 NEG	Q2 BOTH		Q3 POS	Q3 NEG	Q3 BOTH
203	Decided After Hearing Count	201	11	4	4	202	9	3	1	195	8	0	0
	Decided After Hearing Average	4.7				4.9				4.9			
	Decided After Hearing Median	5.0				5.0				5.0			
	Decided After Hearing Mode	5.0				5.0				5.0			
	Decided After Hearing Min	1.0				1.0				3.0			
	Decided After Hearing Max	5.0				5.0				5.0			
146	Decided After MSJ Count	142	1	9	0	143	1	1	0	138	3	1	0
	Decided After MSJ Average	4.7				4.9				4.9			
	Decided After MSJ Median	5.0				5.0				5.0			
	Decided After MSJ Mode	5.0				5.0				5.0			
	Decided After MSJ Min	1.0				2.0				1.0			
	Decided After MSJ Max	5.0				5.0				5.0			
31	Dismissed by NA Count	30	1	0	0	29	0	1	0	30	2	0	0
	Dismissed by NA Average	4.7				4.8				5.0			
	Dismissed by NA Median	5.0				5.0				5.0			
	Dismissed by NA Mode	5.0				5.0				5.0			
	Dismissed by NA Min	3.0				1.0				4.0			
	Dismissed by NA Max	5.0				5.0				5.0			
410	Settled Count	397	13	6	1	394	7	3	0	384	8	4	0
	Settled Average	4.7				4.9				4.9			
	Settled Median	5.0				5.0				5.0			
	Settled Mode	5.0				5.0				5.0			
	Settled Min	1.0				1.0				1.0			
	Settled Max	5.0				5.0				5.0			
161	Withdrawn Count	150	3	5	1	151	2	2	0	145	4	0	0
	Withdrawn Average	4.8				4.9				4.9			
	Withdrawn Median	5.0				5.0				5.0			
	Withdrawn Mode	5.0				5.0				5.0			
	Withdrawn Min	2.0				2.0				3.0			
	Withdrawn Max	5.0				5.0				5.0			
13	BLANK Count	11	0	0	0	11	0	0	0	11	0	0	0
	BLANK Average	4.5				4.9				4.9			
	BLANK Median	5.0				5.0				5.0			
	BLANK Mode	5.0				5.0				5.0			
	BLANK Min	3.0				4.0				4.0			
	BLANK Max	5.0				5.0				5.0			
964	Total Count	931	29	24	6	930	19	10	1	903	25	5	0
	Total Average	4.7				4.9				4.9			
	Total Median	5.0				5.0				5.0			
	Total Mode	5.0				5.0				5.0			
	Total Min	1.0				1.0				1.0			
	Total Max	5.0				5.0				5.0			

## NA Questionnaire / Count of Questions 4-5

4. I found that the following characteristics of the system **worked well**. (Check all that apply):

5. I found that the following characteristics of the system **need change or improvement**. (Check all that apply):

Report Date Range: 1/1/2001 through 12/31/2001

		<b>4. Worked Well</b>	<b>5. Needs Change/ Improvement</b>
a.)	manner of neutral arbitrator's appointment	361	10
b.)	early management conference	396	13
c.)	availability of expedited procedures	140	5
d.)	award within 10 days of hearing	101	34
e.)	claimant's ability to have respondent pay cost of neutral arbitrator	181	12
f.)	the system's rules overall	318	11
g.)	hearing within 18 months	160	13
h.)	availability of complex/extraordinary procedures	36	7
<b>Other)</b>		4	12
<b>COMMENTS:</b>	<b>Positive</b>	16	9
	<b>Negative</b>	13	29
	<b>Both</b>	1	3



## NA Questionnaire / Results of Question 6

6. Have you had experience with a similar case in Superior Court?

If yes, what was your role?

If yes, was your experience in this system with this case Better, Worse, or About the Same?

Report Date Range:  
1/1/2001 through 12/31/2001

<u>Role</u>	<u>CntO6a is Yes</u>	<u>Cnt Better</u>	<u>Cnt Worse</u>	<u>Cnt Same</u>	<u>Cnt BLANK</u>
	21	9	1	6	5
<i>6b BLANK</i>	3	1	0	2	0
<i>Attorney</i>	71	36	3	29	3
<i>Judge</i>	205	70	2	108	25
<i>Mediator</i>	7	1	0	5	1
<i>Neutral Arbitrator</i>	29	14	0	14	1
<i>Party Arbitrator</i>	1	0	0	1	0
<b>TOTALS</b>	<b>337</b>	<b>131</b>	<b>6</b>	<b>165</b>	<b>35</b>

# NA Questionnaire / Post Analysis (Out of Total - 551)

Report Date Range: 1/1/2001 through 12/31/2001

1. Anything positive		88
2. Time for final decision must be greater than 10 days		35
3. System encourages settlement/early settlement		2
4. System needs help for pro pers		17
5. Any negative remarks		71
6. Asked for e-mail		7
7. Approved/Disapproved faxing	Approved:	1
	Disapproved:	0
8. NO comments at all		278
9. Problems collecting money owed to them by	Claimant:	0
	Kaiser:	4
	Both:	1
10. Have OIA include claimant's demand		8
11. Want way beyond voicemail to contact OIA		9
12. Improve notification of settlement		1

**ANALYSIS OF EVALUATIONS  
THE OIA RECEIVED IN 2000**

## NA Questionnaire / Count by Disposition - 2000 Responses

<b>Disposition</b>	<b>Count</b>
Decided After Hearing	100
Decided After MSJ	64
Dismissed by NA	13
Settled	207
Withdrawn	82
Unidentified	7
No Questions Answered	24
<b>Total Returned</b>	497
<b>Total Mailed</b>	555

# NA Questionnaire / Post Analysis (Out of Total - 497)

Report Date Range: 1/1/2000 through 12/31/2000

1. Anything positive		126
2. Time for final decision must be greater than 10 days		33
3. System encourages settlement/early settlement		28
4. System needs help for pro pers		23
5. Any negative remarks		101
6. Asked for e-mail		6
7. Approved/Disapproved faxing	Approved:	3
	Disapproved:	0
8. NO comments at all		219
9. Problems collecting money owed to them by	Claimant:	3
	Kaiser:	4
	Both:	2
10. Have OIA include claimant's demand		6
11. Want way beyond voicemail to contact OIA		12
12. Improve notification of settlement		3

**Neutral Arbitrator Questionnaire - Responses to Questions 1 thru 3 - Total Responses**

Disp. Count	Disposition	Q1	Comments			Q2	Comments			Q3	Comments		
			Q1 POS	Q1 NEG	Q1 BOTH		Q2 POS	Q2 NEG	Q2 BOTH		Q3 POS	Q3 NEG	Q3 BOTH
203	Decided After Hearing Count	201	11	4	4	202	9	3	1	195	8	0	0
	Decided After Hearing Average	4.7				4.9				4.9			
	Decided After Hearing Median	5.0				5.0				5.0			
	Decided After Hearing Mode	5.0				5.0				5.0			
	Decided After Hearing Min	1.0				1.0				3.0			
	Decided After Hearing Max	5.0				5.0				5.0			
146	Decided After MSJ Count	142	1	9	0	143	1	1	0	138	3	1	0
	Decided After MSJ Average	4.7				4.9				4.9			
	Decided After MSJ Median	5.0				5.0				5.0			
	Decided After MSJ Mode	5.0				5.0				5.0			
	Decided After MSJ Min	1.0				2.0				1.0			
	Decided After MSJ Max	5.0				5.0				5.0			
31	Dismissed by NA Count	30	1	0	0	29	0	1	0	30	2	0	0
	Dismissed by NA Average	4.7				4.8				5.0			
	Dismissed by NA Median	5.0				5.0				5.0			
	Dismissed by NA Mode	5.0				5.0				5.0			
	Dismissed by NA Min	3.0				1.0				4.0			
	Dismissed by NA Max	5.0				5.0				5.0			
410	Settled Count	397	13	6	1	394	7	3	0	384	8	4	0
	Settled Average	4.7				4.9				4.9			
	Settled Median	5.0				5.0				5.0			
	Settled Mode	5.0				5.0				5.0			
	Settled Min	1.0				1.0				1.0			
	Settled Max	5.0				5.0				5.0			
161	Withdrawn Count	150	3	5	1	151	2	2	0	145	4	0	0
	Withdrawn Average	4.8				4.9				4.9			
	Withdrawn Median	5.0				5.0				5.0			
	Withdrawn Mode	5.0				5.0				5.0			
	Withdrawn Min	2.0				2.0				3.0			
	Withdrawn Max	5.0				5.0				5.0			
13	BLANK Count	11	0	0	0	11	0	0	0	11	0	0	0
	BLANK Average	4.5				4.9				4.9			
	BLANK Median	5.0				5.0				5.0			
	BLANK Mode	5.0				5.0				5.0			
	BLANK Min	3.0				4.0				4.0			
	BLANK Max	5.0				5.0				5.0			
964	Total Count	931	29	24	6	930	19	10	1	903	25	5	0
	Total Average	4.7				4.9				4.9			
	Total Median	5.0				5.0				5.0			
	Total Mode	5.0				5.0				5.0			
	Total Min	1.0				1.0				1.0			
	Total Max	5.0				5.0				5.0			

## NA Questionnaire / Count of Questions 4-5

4. I found that the following characteristics of the system **worked well**. (Check all that apply):

5. I found that the following characteristics of the system **need change or improvement**. (Check all that apply):

Report Date Range: 1/1/2000 through 12/31/2000

		<b>4. Worked Well</b>	<b>5. Needs Change/ Improvement</b>
a.)	manner of neutral arbitrator's appointment	332	7
b.)	early management conference	338	8
c.)	availability of expedited procedures	117	0
d.)	award within 10 days of hearing	92	28
e.)	claimant's ability to have respondent pay cost of neutral arbitrator	168	10
f.)	the system's rules overall	256	9
g.)	hearing within 18 months	161	10
h.)	availability of complex/extraordinary procedures	17	1
<b>Other)</b>		4	14
<b>COMMENTS:</b>	<b>Positive</b>	36	26
	<b>Negative</b>	10	51
	<b>Both</b>	1	1

## NA Questionnaire / Results of Question 6

6. Have you had experience with a similar case in Superior Court?

If yes, what was your role?

If yes, was your experience in this system with this case Better, Worse, or About the Same?

Report Date Range:  
1/1/2000 through 12/31/2000

<u>Role</u>	<u>CntO6a is Yes</u>	<u>Cnt Better</u>	<u>Cnt Worse</u>	<u>Cnt Same</u>	<u>Cnt BLANK</u>
	0	0	0	0	0
<i>6b BLANK</i>	28	13	1	11	3
<i>Attorney</i>	58	28	3	19	8
<i>Judge</i>	185	55	2	110	18
<i>Mediator</i>	8	4	0	4	0
<i>Neutral Arbitrator</i>	38	16	0	20	2
<i>Referee</i>	1	0	0	1	0
<b>TOTALS</b>	<b>318</b>	<b>116</b>	<b>6</b>	<b>165</b>	<b>31</b>



# NA Questionnaire / Post Analysis (Out of Total - 497)

Report Date Range: 1/1/2000 through 12/31/2000

1. Anything positive		126
2. Time for final decision must be greater than 10 days		33
3. System encourages settlement/early settlement		28
4. System needs help for pro pers		23
5. Any negative remarks		101
6. Asked for e-mail		6
7. Approved/Disapproved faxing	Approved:	3
	Disapproved:	0
8. NO comments at all		219
9. Problems collecting money owed to them by	Claimant:	3
	Kaiser:	4
	Both:	2
10. Have OIA include claimant's demand		6
11. Want way beyond voicemail to contact OIA		12
12. Improve notification of settlement		3

**EXHIBIT N**

**Kaiser Arbitration Oversight Board**

March 31, 2002

Ms. Sharon Lybeck Hartmann  
Independent Administrator  
P.O. Box 76587  
Los Angeles, California 90076-0587

Dear Ms. Hartmann:

The members of the Arbitration Oversight Board received for review a draft copy of the third annual report of the Office of the Independent Administrator (OIA) in early March. The report was discussed at the Board meeting of March 12<sup>th</sup>.

The Board commends the OIA for its thorough and detailed report on administration of the Kaiser arbitration system. The report provides excellent data on current operation of the arbitration system, compliance with its existing rules, and comparisons with the previous year and nine months of operation. The data presented in the annual report are consistent with those provided by you and your staff at the Board's quarterly meetings.

The Board notes that the principal goals for the Kaiser arbitration system, articulated in the Blue Ribbon Panel report of 1998, are being met. The system is being administered independently. Time lines are being met for expeditious selection of neutral arbitrators and completion of hearings. The system now mainly utilizes single neutral arbitrators, with resulting benefit to the speed and cost of arbitrations. The system for appointing the neutrals utilizes a large pool of qualified arbitrators, effective disclosure requirements and random selection methods. Evaluation of neutral arbitrators and OIA procedures have been conducted and indicate overall satisfaction.

Review of the data provided in the report finds some changes in the past year compared to previous years. In particular, there has been a moderate rise in the number of postponements and disqualifications. This may be due, it was speculated, to a changing mix of cases coming to the OIA. As the arbitration system undergoes transition from the older system to the new, more complex cases that might previously have "opted out" are now administered by the OIA. If true, subsequent years should show stabilization in these trend, as the transition to the OIA system is completed.

Ms. Sharon Lybeck Hartmann  
Independent Administrator  
March 31, 2002  
Page 2

The body of information provided by the OIA report provides stimulus for future Board deliberations: What are the best bench marks for following trends in the arbitration system? What further evaluations of the system are necessary? Would surveys of health plan users be useful? Can the system be improved in terms of language accessibility? Can “pre-arbitration” procedures be enhanced? Would modifications in procedures or approaches to arbitration be useful for pro per cases? These and other pertinent questions arising in the course of discussion of the OIA report will be matters for future Board consideration.

The Board is aware that a new code of ethics for neutral arbitrators will be issued by the Judicial Council of California in coming weeks and will become effective July 1, 2002. The Board will work closely with the OIA to assure that the Kaiser arbitration rules are in conformity with the new code. The body of data provided in OIA reports over the past three years will serve as an important baseline for determining the effect of any change in rules on the administration of the arbitration system.

The Arbitration Oversight Board concludes that the report of the OIA, providing detailed information on its operations, reflects the significant progress that has been made in implementing the Blue Ribbon Panel recommendations for the Kaiser arbitration system. The OIA system is administered independently, and with public Board oversight. The new system, conducted in a spirit of continuous improvement, is following the Panel’s recommendations for timely, fair and cost-efficient arbitration for Kaiser members.

David Werdegarr, M.D., Chair