

**FIRST 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**

**March 29, 1999 - March 28, 2000**

## REPORT SUMMARY

Kaiser Foundation Health Plan, Inc. has arbitrated disputes with its members since 1971. In 1997, the California Supreme Court criticized Kaiser's arbitration system in the *Engalla* decision, saying that Kaiser should not operate the mandatory system itself and that there was too much delay in the handling of members' claims. In response, Kaiser requested that the Law Offices of Sharon Lybeck Hartmann create the Office of the Independent Administrator ("OIA") to independently administer its arbitration system. This is the first annual report on the results of that independent administration.

The highlights of the new system's first operating year are as follows:

1. **Number of Demands Forwarded to the OIA.** Between March 29, 1999 and March 28, 2000, the OIA received 944 new demands for arbitration from the 6 million Kaiser members in California. Kaiser also forwarded 215 older cases to the OIA which arose before the OIA system went into effect.
2. **Number of Claims Administered by the OIA.** Kaiser employer contracts are now being altered to make use of the OIA mandatory for all Kaiser member arbitrations. Until all contracts are altered, which will not occur until the end of the year 2000, some members may choose whether to enter the OIA system or remain in the older Kaiser system. At the end of the OIA's first operating year, 680 claims had voluntarily opted in to the OIA system, and one claim was brought under a contract making use of this system mandatory. The remainder of claims, 478, were returned to Kaiser for its handling, were resolved before deciding to opt in, or are in the process of deciding whether to opt in.
3. **Days to Appointment of a Neutral Arbitrator.** Cases in the OIA system move speedily. For purposes of comparison, the Supreme Court in the *Engalla* opinion said that under the old Kaiser system, arbitrations averaged 674 days to the appointment of a neutral arbitrator. During the OIA's first year, claims averaged 43 days to appointment of a neutral arbitrator in all cases. The 43 day average includes those claims where claimants elected to postpone selection of the neutral arbitrator, and those where a neutral arbitrator had to be replaced because of disqualification, illness or death. The OIA average for routine initial placement of a neutral is 27.5 days. Eighty-one percent of cases administered by the OIA fall within this average.
4. **Days to Hearing.** The speediness of the OIA system is also reflected in the time cases take to reach a hearing. *Engalla* said that the old Kaiser average to the first day of hearing was 863 days. The OIA average to the last day of hearing is 213

days. The number of cases in the OIA system which have concluded their hearing is small, only 23. However, we think this early indicator augers well for the future.

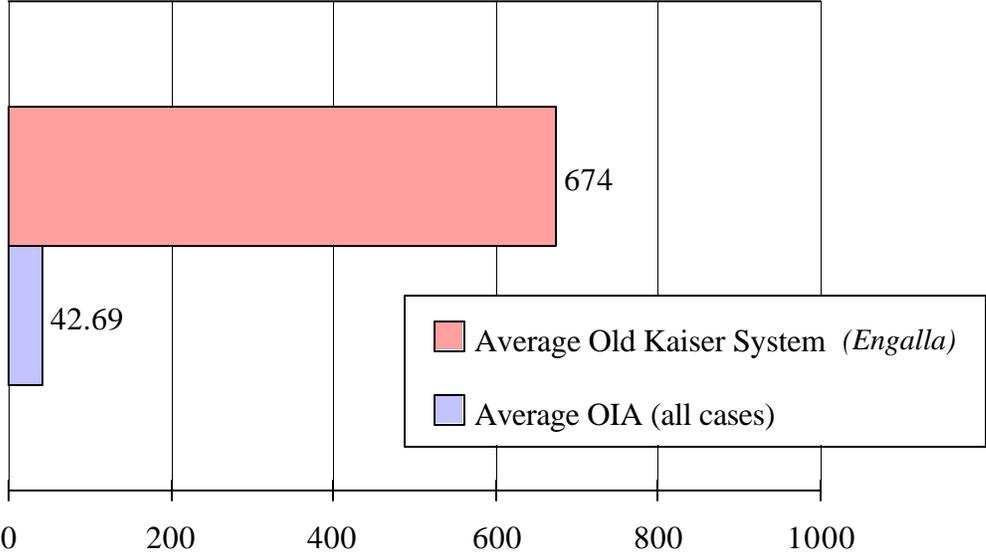
5. **Cases Completed.** The cases that went to hearing comprise a small part of the completed cases. Resolved cases number 168, or about 25% of the total number of cases. Of those, 73 have settled.
6. **Nature of Claims.** More than 94% of the cases administered by the OIA are medical malpractice claims. Less than one percent are benefits or coverage claims.
7. **Pro Pers.** Twenty-nine percent of the claimants in the OIA system represent themselves.
8. **Number of Arbitrators.** We are continuing to recruit and add members to the OIA panel of neutral arbitrators. There are currently 323 neutrals on the panel. Twenty-seven percent are retired judges. Of the total pool, 166 have been named as a neutral arbitrator in at least one case in the OIA's first 12 months of operation. This spread seems large enough to mitigate and perhaps eliminate the "repeat player" problem mentioned in *Engalla*.
9. **Joint Selection of Neutrals.** In 35% of cases administered by the OIA which have a neutral in place, the parties jointly selected their neutral rather than using the strike and rank procedure set forth in the rules. In two-thirds of these cases, the neutrals are also members of the OIA pool, although the selected neutral is not necessarily one whose name appeared on the list sent to the parties by the OIA.
10. **Blue Ribbon Panel Report.** After the *Engalla* decision, Kaiser convened a Blue Ribbon Panel to study its arbitration system and recommend improvements. The Blue Ribbon Panel Report was the blueprint for the OIA system. In its report, the Blue Ribbon Panel made 36 recommendations for change in Kaiser's method of arbitration. In the Appendix at the end of this report, we have set forth verbatim all 36 of those recommendations along with the status of each. Twenty-eight have been accomplished and another three are well under way. About some, the OIA has no knowledge since we were not involved in their implementation.

Copies of this report are available to Kaiser members, the public and the media. They can be obtained from Kaiser Permanente Member Service Customer Center, 1-800-464-4000, or from the Office of the Independent Administrator, 213-637-9847. The report can also be read or downloaded from the OIA website, [www.slhartmann.com/oia](http://www.slhartmann.com/oia).

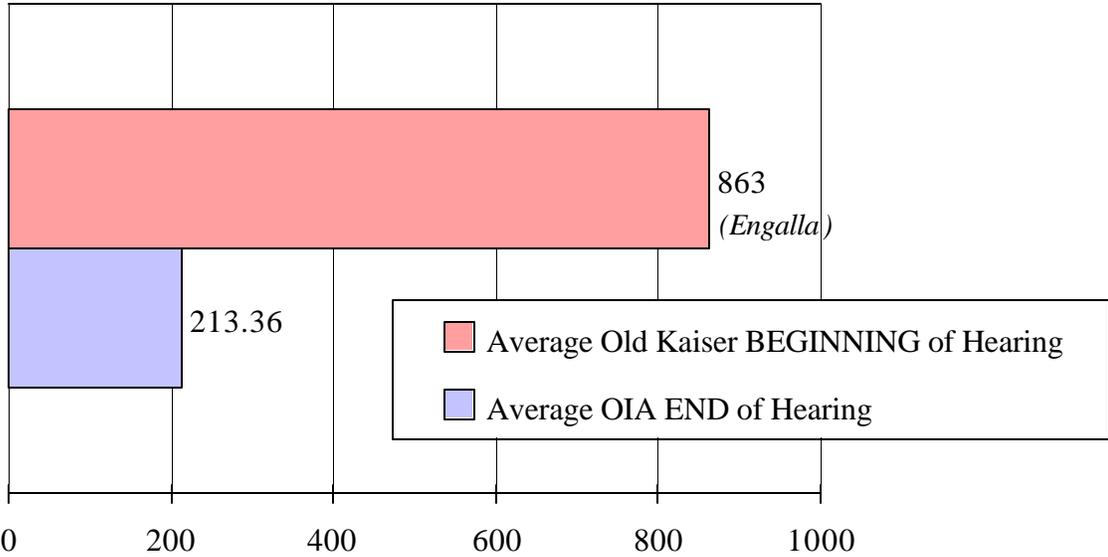
# Comparative Speed of Systems

(OIA vs. Old Kaiser System)

## Days Passed to Appointment of Neutral Arbitrator



## Days Passed to Hearing



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## I. Introduction

In October 1998, Kaiser Foundation Health Plan, Inc. and the Arbitration Advisory Committee selected the Law Offices of Sharon Lybeck Hartmann to act as Independent Administrator of Kaiser's mandatory member arbitration system in California.<sup>1</sup> Summarized broadly, the contract between the two entities required Hartmann's office to write rules of procedure for Kaiser arbitrations, to create a pool of qualified neutral arbitrators to hear Kaiser cases, and to independently administer arbitration cases brought by Kaiser members. The contract specifies that the Independent Administrator write an annual report describing the arbitration system it administers. The report must describe the goals of the system, actions being taken to achieve the system's goals, and the degree to which those goals are being met.<sup>2</sup> This is the first annual report issued by the Office of the Independent Administrator ("OIA"). This report is available from the OIA and from Kaiser. It may also be downloaded from the OIA's website at [www.slhartmann.com/oia](http://www.slhartmann.com/oia).<sup>3</sup>

### A. Background Information

In July 1997, the California Supreme Court issued its decision in *Engalla v. Permanente Medical Group*. This decision was critical of Kaiser's arbitration system, and strongly suggested that Kaiser appoint an independent administrator to manage its arbitration cases, ensure that neutral arbitrators were appointed quickly in all cases, and improve the speed with which its arbitration cases were resolved.

In response to this decision, Kaiser convened a Blue Ribbon Advisory Panel to evaluate its arbitration process and recommend improvements. The Blue Ribbon Panel's report, issued in January 1998, recommended that Kaiser appoint an independent administrator responsible for rapid appointment of neutral arbitrators and for fair, efficient management of Kaiser arbitration cases. The Blue Ribbon Panel recommended as well that Kaiser appoint a permanent Arbitration Advisory

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<sup>1</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. The Health Plan 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>2</sup>*Agreement Between Kaiser Foundation Health Plan, Inc. and the Law Offices of Sharon Lybeck Hartmann Creating the Office of 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 may be obtained from the OIA.

<sup>3</sup>The Office of the Independent Administrator is located within the Law Offices of Sharon Lybeck Hartmann, 213/637-9847 (telephone), 213/637-8658 (facsimile), [oia@slhartmann.com](mailto:oia@slhartmann.com) (e-mail). The OIA has a website where this report, the *Rules for Kaiser Permanente Member Arbitrations Overseen by the Office of the Independent Administrator*, and much other data can be downloaded. It is located at [www.slhartmann.com/oia](http://www.slhartmann.com/oia). A brief firm profile and a description of the Office of the Independent Administrator's staff are attached as Exhibit A.

Committee made up of knowledgeable representatives of affected parties to assist in designing and implementing an independently administered arbitration system.<sup>4</sup>

In April 1998, Kaiser announced the appointment of the Arbitration Advisory Committee (“AAC”), made up of the following eight representatives of stakeholder interests: Genethia Hayes, Health Plan Member and President, Board of Education, Los Angeles Unified School District, representing member interests; Elizabeth Jameson, Esq., Senior Legal and Health Policy Analyst, Institute of Health Policy Studies, University of California, San Francisco, School of Medicine, representing consumer interests; Dan Heslin, Director, California Employee Benefits, The Boeing Company, representing employer interests; Mary Wiss, Esq., medical malpractice attorney and Past President, San Francisco Trial Lawyers’ Association, representing plaintiffs’ attorneys’ interests; Ken Pivo, Esq., medical malpractice attorney, representing defense attorneys’ interests; Phil Madvig, M.D., Associate Executive Director of Quality, The Permanente Medical Group, representing the interests of the Permanente physicians who provide medical services to Kaiser members; Terry Bream, R.N., Manager, Clinical Services, Southern California Permanente Medical Group, representing the interests of Kaiser nurses; and Miguel Contreras, Executive Secretary/Treasurer, AFL-CIO, Southern California, representing the interests of Kaiser’s organized employees and of union members who are members of Kaiser Foundation Health Plan. The AAC participated in the selection of the Independent Administrator, worked closely with Kaiser and the OIA in creating the new system, and provides ongoing oversight of the independently administered system. It also reviews the annual report.<sup>5</sup>

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

Consistent with the recommendations of both the California Supreme Court and the Blue Ribbon Advisory Panel, the OIA intends 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*. The *Rules* are

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<sup>4</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 thorough description of Kaiser’s arbitration system through 1997, including historical information, 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 the Appendix to this Report. The Report itself is available from Barbara Nelson, Kaiser Foundation Health Plan, Legal Department, 1950 Franklin Street, 17<sup>th</sup> Floor, Oakland, CA 94612.

<sup>5</sup>On March 31, 2000, the OIA received a list of seven questions the AAC wished to have addressed in the Annual Report. Since the text of the report was well advanced at that point, and answers to a number of the questions were scattered throughout, the AAC’s questions and the OIA’s answers are attached as Exhibit B.

attached as Exhibit C. They are available from the OIA, from Kaiser, and from the OIA's website at [www.slhartmann.com/oia](http://www.slhartmann.com/oia).<sup>6</sup>

## II. Creation of the System

From November 1998 to March 1999, the OIA, the AAC, and Kaiser worked together to set qualifications and develop an application for neutral arbitrators, and drafted and negotiated the rules that would govern arbitrations overseen by the OIA.

### A. Building a Panel of Neutral Arbitrators

The OIA placed advertisements for neutral arbitrators in legal periodicals located throughout California. We engaged in outreach with various organizations that provide arbitrators, such as JAMS/Endispute, Alternative Resolution Centers, Action Dispute Resolution Services, Judicate West, and Resolution Remedies, and encouraged those organizations to have their members apply to the OIA panel. The OIA also did special mailings and outreach to recruit applicants from various women's and multi-cultural bar organizations located throughout the state. Interested parties must meet the published qualifications and complete a detailed application, described below. As the following data show, as of March 28, 2000, the response to these efforts has been strong:

<b>Total Number of Application Requests Received:</b>	<b>1837</b>
<b>Total Number of Completed Applications Received:</b>	<b>436</b>
<b>Total Number of Arbitrators in the OIA Panel:</b>	<b>323</b>
<b>Southern California Total:</b>	<b>195</b>
<b>Northern California Total:</b>	<b>128</b>

About 75% of all applicants have been admitted to the panel. Anyone rejected has failed to meet one of the published qualifications. The specific qualification is cited in the letter of rejection.

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<sup>6</sup>The *Rules* are available in English, Spanish and Chinese.

## **1. Qualifications**

The Blue Ribbon Panel recommended that the Independent Administrator develop the largest possible list of qualified neutral arbitrators.<sup>7</sup> The panel noted that a number of members' attorneys believe that Kaiser would only agree to a small number of neutral arbitrators, and that the small size of that group caused delay in getting neutral arbitrators in place on cases.<sup>8</sup> Qualifications for neutral arbitrators were set by the OIA in consultation with the AAC and Kaiser after they had reviewed qualifications used in a number of different arbitration systems. The list of specific qualifications is attached as Exhibit D, and is 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 attorney of record or as a party arbitrator 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; arbitrators must provide satisfactory evidence of their abilities to act as arbitrators based upon judicial, trial, or other legal experience or training.

## **2. Application**

The application for neutral arbitrators belonging to the pool maintained by the OIA is attached as Exhibit E. 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 in another leadership role. Applicants must set forth information about what they charge for their services as arbitrators. When the OIA provides parties with a list of 12 possible arbitrators, the parties each receive a complete copy of each arbitrator's application.

Applications are carefully reviewed by OIA staff.<sup>9</sup> An attorney always conducts the final review of a neutral arbitrator's application. Successful applicants receive a letter inviting them to become part of the OIA pool. Applicants with incomplete applications receive either a letter or a telephone call

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<sup>7</sup>Blue Ribbon Advisory Panel Report at 35. Appendix at 80.

<sup>8</sup>Blue Ribbon Advisory Panel Report at 36.

<sup>9</sup>Kaiser does not participate in the OIA's review of arbitrator applications.

asking them to supplement or correct their application. Applicants who do not meet a published qualification receive a letter explaining why they were not invited to become part of the pool. The specific qualifications not met are cited in the letter.

### **3. Neutral Arbitrators' Fees and Expenses**

Each neutral arbitrator applicant must fill out a document called "Schedule of Fees and Expenses," upon which he or she sets out information related to charges for services.<sup>10</sup> The OIA asks neutral arbitrators on the OIA list not to change the fee information on their Schedule of Fees and Expenses during an operating year. At the end of each operating year, the OIA contacts the arbitrators, and gives them an opportunity to update their applications, including their fees. However, if the neutral arbitrator has been assigned to a given case, the fees in the year of assignment remain constant throughout that particular case. Neutral arbitrators on the OIA panel are free to set their rates as they see fit. The range in rates is quite wide.

The Blue Ribbon Panel recommended that Kaiser's arbitration system should be made less costly for members.<sup>11</sup> Toward this end, the Panel suggested that Kaiser pay neutral arbitrators' fees and expenses in all cases proceeding with a single arbitrator.<sup>12</sup> Where the parties have the right to proceed with three arbitrators, the panel suggested that Kaiser encourage the use of a single arbitrator by paying the neutral arbitrators' fees and expenses in cases where claimants waived the right to proceed with party arbitrators.<sup>13</sup> These recommendations were adopted and are set out in Rules 14 and 15. These two rules are designed to make the system more cost effective for members and to encourage efficiency and speed by having fewer arbitrators involved.<sup>14</sup>

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<sup>10</sup>This document is included as part of Exhibit E.

<sup>11</sup>Blue Ribbon Advisory Panel Report at 41-42, Appendix at 86.

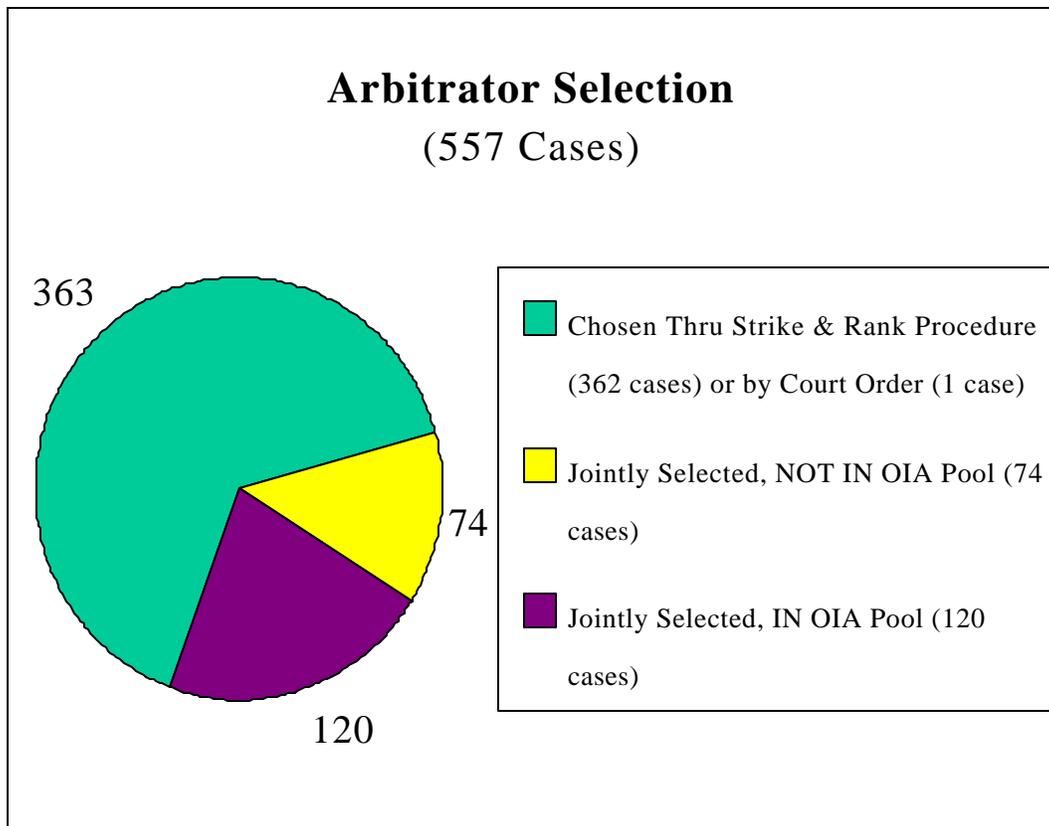
<sup>12</sup>Blue Ribbon Advisory Panel Report at 41-42, Appendix at 86.

<sup>13</sup>Blue Ribbon Advisory Panel Report at 41-42, Appendix at 86.

<sup>14</sup>Sections V(L), (M), and (N) of this report contain information about how many parties have elected to follow the procedures set out in Rules 14 and 15.

#### 4. The OIA's Panel of Neutral Arbitrators as of March 28, 2000

Under the *Rules*, the OIA provides each party with an identical list of 12 possible arbitrators. The parties have 20 days to strike and rank arbitrators on the list and serve their responses on the OIA. The OIA then puts a neutral arbitrator in place using the parties' selections. In the alternative, parties can jointly agree to any arbitrator of their choosing within the same 20 day period.<sup>15</sup> As the following chart shows, of the 557 cases administered by the OIA where neutral arbitrators have been selected, 194, or about 35%, have jointly selected a neutral arbitrator, while 362, or 65%, have used the list supplied by the OIA.<sup>16</sup>



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

<sup>15</sup>See Rules 16-18 for information about how parties select neutral arbitrators. See also Appendix at 82.

<sup>16</sup>The neutral arbitrator for one case was appointed by a court.

receive a list of possible arbitrators for the half of the state where they are located. There are currently 323 neutral arbitrators on the OIA panel, 128 in Northern California, and 195 in Southern California. There are 38 retired judges on the Northern California part of the panel, or 30%, and 51 retired judges on the Southern California part of the panel, or 26%.<sup>17</sup>

As the chart indicates, of the 194 arbitrators jointly selected by the parties, 120 of them, or about two thirds, belong to the OIA's pool, although they may not have appeared on the specific list generated for a particular case, while 74, or about one third, are not part of the OIA's pool. Rule 17(b) permits parties to jointly select a neutral arbitrator who is not on the OIA panel, as long as that person agrees to follow the *Rules*.

For Northern California, 124 out of 128 arbitrators have appeared on at least one list of possible arbitrators.<sup>18</sup> The range for Northern California arbitrators to appear on at least one list is from 0 to 23 times. For Southern California, 183 out of 195 arbitrators have appeared on at least one list of possible arbitrators.<sup>19</sup> The range for Southern California arbitrators to appear on at least one list is from 0 to 16 times. A total of 166 neutral arbitrators on the OIA's panel, or 51%, have been selected to serve as neutral arbitrators on Kaiser arbitrations. The range in number of assignments to cases on the OIA's panel is from 0 to 20. The arbitrator at the high end of this range has been jointly selected by parties 13 times.

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

The OIA, AAC and Kaiser completed negotiations on the rules for the independently administered system in March 1999. The *Rules for Kaiser Member Arbitrations Overseen by the Office of the Independent Administrator* consist of 53 rules in a 15 page booklet.<sup>20</sup> The booklet is available from the Office of the Independent Administrator, from the OIA website, [www.oia.org](http://www.oia.org).

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<sup>17</sup> Lists showing the complete panel of OIA arbitrators are attached as Exhibit F. They are also available from the OIA's website at [www.slhartmann.com/oia](http://www.slhartmann.com/oia). The lists posted on the website are updated as new arbitrators are added.

<sup>18</sup> Of the four Northern California neutral arbitrators whose names have not appeared on OIA lists, three were added to the pool on March 21, 2000, and one was added to the pool on March 28, 2000.

<sup>19</sup> Of the 12 Southern California neutral arbitrators whose names have not appeared on OIA lists, one was added to the pool on January 24, 2000, eight were added to the pool on March 21, 2000, and three were added to the pool on March 28, 2000.

<sup>20</sup> The *Rules* are bound into this report as Exhibit C.

slhartmann.com/oia, and from Kaiser Member Services. Some important features contained in the *Rules* include:

- Deadlines stating that most cases must be resolved within 18 months after the OIA receives a claimant's demand for arbitration and filing fee;<sup>21</sup>
- Deadlines stating 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>22</sup>
- Procedures under which claimants may elect to have Kaiser pay the fees and expenses of the neutral arbitrator;<sup>23</sup>
- Timing options for cases that require more or less time than 18 months for resolution.<sup>24</sup>

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

The OIA began administering arbitrations on March 29, 1999. Kaiser has submitted two types of demands for arbitration to the OIA for administration. The first may be described as "old" cases. These are cases where Kaiser first received a demand for arbitration **before** the OIA started accepting claims from Kaiser, or prior to March 29, 1999. The second may be described as "new" cases. These are cases where Kaiser first received a demand for arbitration on or **after** March 29, 1999, when the OIA began administering Kaiser cases.

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<sup>21</sup>See Rule 24.

<sup>22</sup>Weekends and holidays sometimes increase the number of days. See Rule 43 for information about how days are counted in the system. The 33 day deadline does not apply to cases where claimants elect a 90 day postponement to select a neutral arbitrator or to cases where the neutral arbitrator is disqualified by a party. See Rules 20 and 21.

<sup>23</sup>See Rules 14 and 15 for information about how claimants may shift the responsibility for paying all of a neutral arbitrator's fees and expenses to Kaiser. See also Appendix at 86.

<sup>24</sup>See Rules 24 and 33. See also Appendix at 80.

### **A. Old Cases**

Between March 29, 1999 and March 28, 2000, Kaiser submitted 215 cases to the OIA in which the demand for arbitration predated March 29, 1999. For 177 of these 215, Kaiser told the OIA that it went through its records, identified those demands where no neutral arbitrator had been selected, gave claimants the opportunity to have the OIA administer their cases, and forwarded those cases where claimants elected to proceed according to the *Rules* to the OIA. For 38 of the 215, Kaiser requested that the OIA contact the claimants. Of the 38 in the latter group of old cases, 17 opted in to the OIA system. A total of 194 old cases actually opted in to the OIA system. The average length of time old cases were with Kaiser before being forwarded to the OIA for handling is 446 days. The mode is 13 days, the median 336 days, and the range from 3 to 2409 days. The OIA has no information about the status of old cases that were not forwarded for inclusion in the new system.

### **B. New Cases**

Between March 29, 1999 and March 28, 2000, Kaiser submitted 944 new cases to the OIA for administration. These cases are about evenly divided throughout the state - 478 are from Northern California, and 466 are from Southern California. Under the *Rules*, Kaiser must submit a Demand for Arbitration to the OIA within 10 days of receiving it.<sup>25</sup> The average length of time that Kaiser has taken for submitting new Demands for Arbitration to the OIA is 8.93 days. The mode is zero, the median is four days, and the range is from zero to 302 days.

## **IV. Opt in Process for New Cases**

At the time the OIA began accepting claims from Kaiser, the employer contracts governing the roughly 6 million Kaiser members in California referenced the old, Kaiser-administered system.<sup>26</sup> As Kaiser forwarded new Demands for Arbitration to the OIA, the OIA contacted claimants and gave them the choice of entering the OIA's system, or remaining in the old system described in their contract with the health plan. Of the 944 new Demands received in the first operational year, 486 chose to join the new system and proceed under the OIA's *Rules*.<sup>27</sup> Only 22 claimants have affirmatively refused to

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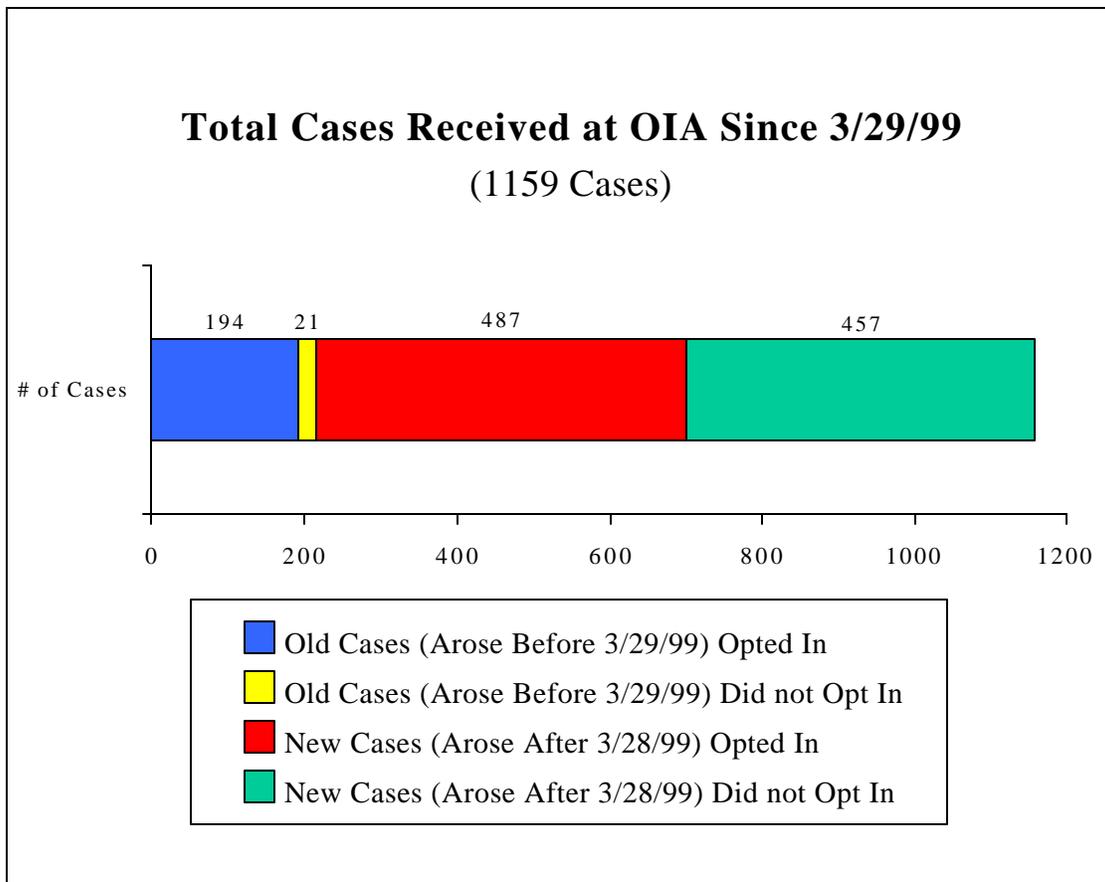
<sup>25</sup>See Rule 11. See also Appendix at 81.

<sup>26</sup>As of March 23, 2000, Kaiser had amended employer contracts governing more than 2.5 million members so that the employees covered were bound to mandatory arbitration under the OIA system. Kaiser has informed the OIA that additional contracts will be similarly amended as they come up for renewal and that all employer contracts will be so modified by January 2001.

<sup>27</sup>Of the 944 new cases, 943 were made under contracts that did not include language about the OIA. One

join the OIA system. Kaiser resolved three cases and three claimants withdrew their demands for arbitration before a neutral arbitrator was appointed. However, the OIA returned 329 claims to Kaiser for handling under the old process because the claimants never responded to a series of letters from the OIA asking whether or not they wished to enter the new system. The remaining 100 cases are in the process of deciding whether or not to opt in to the OIA system.

The following graph summarizes the cases Kaiser has forwarded to the OIA since March 29, 1999, based on whether they are old cases or new cases, and whether they have or have not opted in to the OIA system:

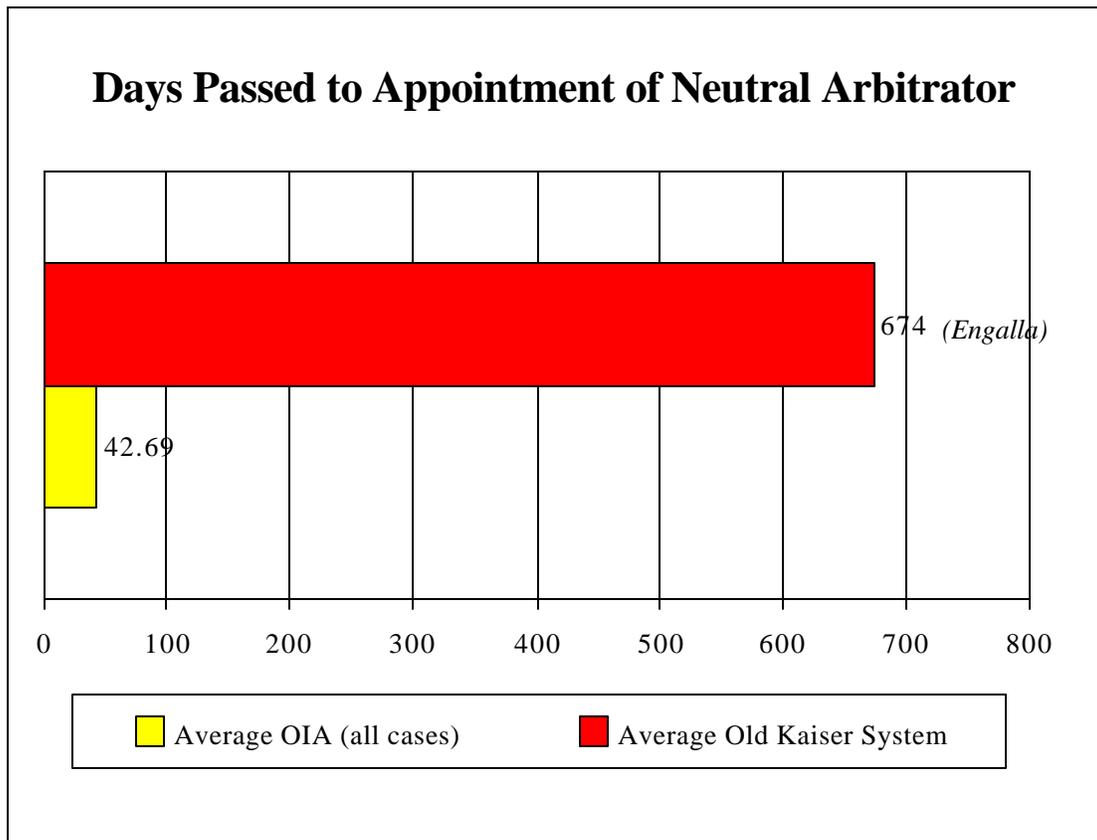


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claim was made under a contract making use of the OIA system mandatory.

## V. Description of Cases Administered by the OIA

This section provides a detailed description of the cases administered by the OIA. Of particular note is Section A, which describes the average length of time for neutral arbitrators to be appointed in the new system. Parties have selected neutral arbitrators in 557 out of 681 cases administered by the OIA. In a majority of cases, neutral arbitrators were placed in an average of 27.51 days after the date the OIA received the claim. This is 24 times faster than the average of 674 days to appointment of neutral arbitrators under the old Kaiser system as reported in the *Engalla* decision. For all cases administered by the OIA, neutral arbitrators were placed in an average of 42.69 days, or more than 15 times faster than the 674 days reported in the *Engalla* decision. The following graph summarizes this comparison:

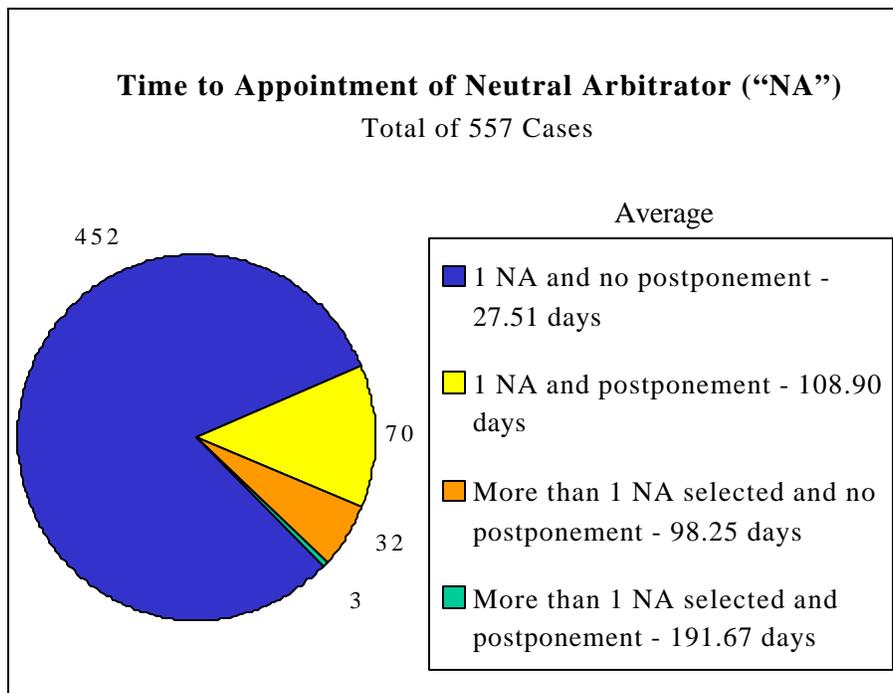


Other information included in this section provides the number and type of cases, the number of cases with and without attorneys representing claimants, and the number of cases where claimants have sought and obtained fee waivers. This section also provides the number of cases where the parties jointly 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. Finally, this section 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.

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

The *Rules* set a 33 day timetable by which neutral arbitrators must be appointed. Weekends and holidays may extend this timetable. Under the *Rules*, the 33 day time frame for selecting a neutral arbitrator increases if one of several events takes place. First, the *Rules* permit claimants to obtain a 90 day postponement to select a neutral arbitrator upon request. Second, in a small number of cases, parties have selected more than one neutral arbitrator. Parties do occasionally disqualify neutral arbitrators after receiving statutorily required disclosures, and neutral arbitrators have become unable to proceed with cases, because of personal reasons, illness, or death. When this occurs, the entire process of selecting a neutral arbitrator begins again, as does the statutory time period for disqualification. Third, in a small number of cases, more than one neutral arbitrator has been selected and one party has requested a postponement. The average number of days for neutral arbitrators to be appointed in all cases is 42.69 days. The following chart summarizes the time to appointment of neutral arbitrators in all cases:



The following subsections provide additional information about each average.

## **1. The Majority of Cases**

In 81% of the cases administered by the OIA where neutral arbitrators have been appointed, or 452 out of 557, the average time to the naming of a neutral arbitrator is 27.51 days. The mode is 22 days, the median is 25.5 days, and the range is from 1 to 101 days. These figures exclude cases where parties have obtained a postponement to select a neutral arbitrator, and cases where more than one neutral arbitrator has been selected.

## **2. Cases With Postponements**

Under Rule 21, claimants may obtain a postponement to select a neutral arbitrator by serving a request for it on the OIA and the respondent. Respondents may obtain the postponement only if the claimant agrees in writing. In the system's first year of operation, parties have obtained the 90 day postponement in 113 cases, or in 16.59 % of the total number of cases administered by the OIA. In 42 of these cases, parties have not yet selected a neutral arbitrator. A large majority of the postponements, 111, were obtained by claimants, while only two postponements were obtained by respondents.

In 70 cases with postponements, parties have selected one neutral arbitrator. For those cases, the average time to appointment of a neutral arbitrator is 108.90 days, or 19 days beyond the 90 day postponement itself. The mode is 115 days, the median is also 115 days, and the range is from 35 to 141 days. Cases with postponements where more than one neutral arbitrator has been selected are discussed below.

## **3. Cases In Which More Than One Neutral Arbitrator Has Been Selected**

### **a. Cases Without Postponements**

In 32 cases, parties have selected more than one neutral arbitrator and have not requested a postponement.<sup>28</sup> Each time a neutral arbitrator is disqualified or is unable to continue serving on a case, the entire process of selection begins again, including the statutory time period for disqualification. In 25 of these 32 cases, a proposed neutral arbitrator was disqualified by a party after the neutral arbitrator served his or her statutorily required disclosures. In three of the 25 cases, two neutral arbitrators were

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<sup>28</sup>See Rule 18(f) and (g) for the procedures followed when a proposed neutral arbitrator is disqualified or a neutral arbitrator cannot continue with a case.

disqualified by parties after the neutral arbitrator served his or her statutorily required disclosures.

In a very small number of cases, ten, the neutral arbitrator was not able to continue with an arbitration. As with disqualification, when a neutral arbitrator is unwilling or unable to proceed with an arbitration, the entire process of selecting a neutral arbitrator begins again, as does the statutory time period for disqualification.

For these 32 cases, the average number of days to appointment of the second or third neutral arbitrator is 98.25 days. The mode is 79 days, the median is 83.50 days, and the range is from 30 to 245 days.<sup>29</sup>

#### **b. Cases With Postponements**

In a very small number of cases, three, parties have both selected more than one neutral arbitrator and have requested postponements. In these three cases, one neutral arbitrator was disqualified, one withdrew, and one recused him or herself. For these three cases, the average number of days to appointment of the neutral arbitrator is 191.67 days. The median is 203 days, and the range is from 154 to 218 days.

#### **4. Average Time to Appointment of Neutral Arbitrator For All Cases Administered by the OIA**

Adding together cases with no postponements, cases with postponements, and cases where more than one neutral arbitrator has been appointed, the average time to appointment of the neutral arbitrator is 42.69 days. For purposes of comparison, the *Engalla* decision reported that the old Kaiser system was averaging 674 days to the appointment of a neutral arbitrator. Thus far, the OIA system overall is more than 15 times faster.

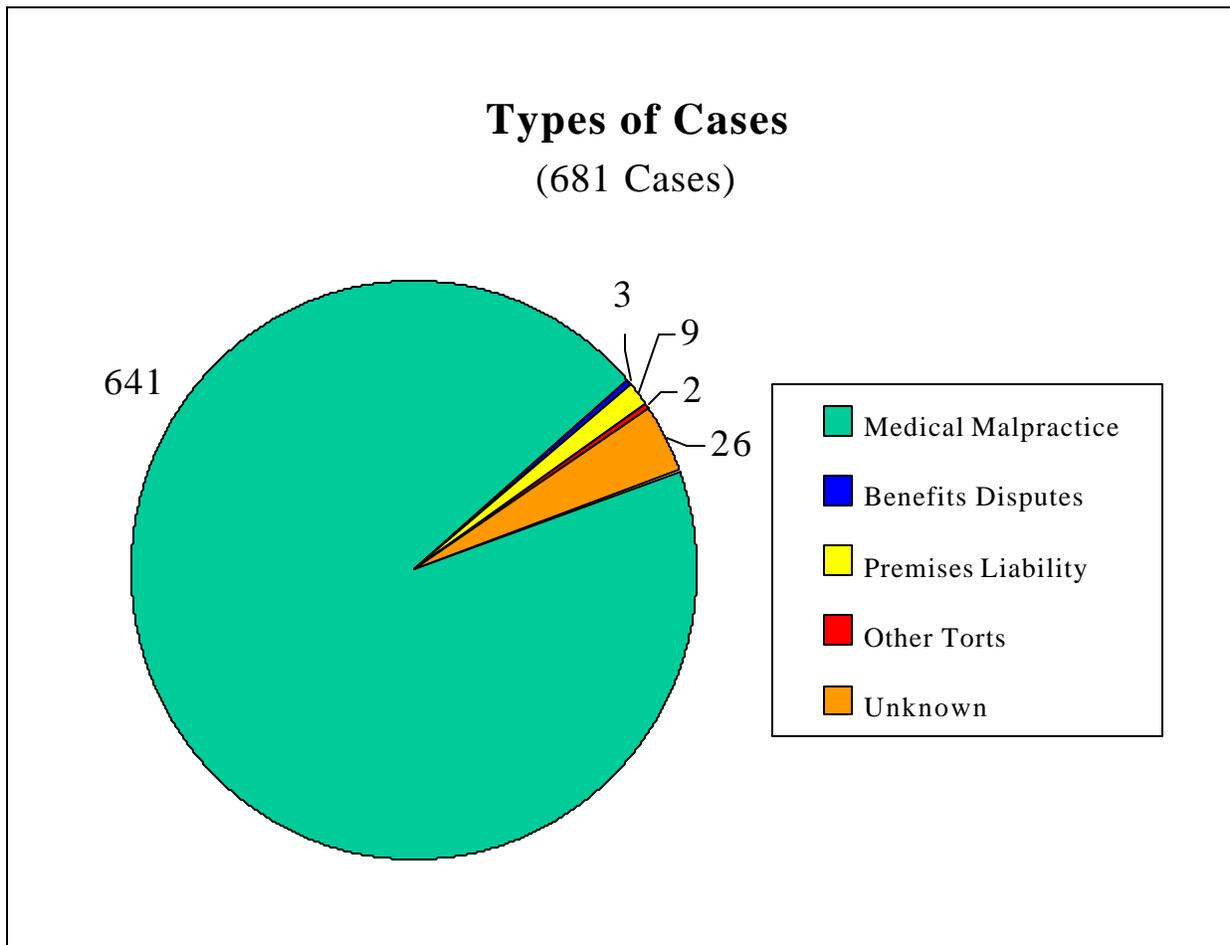
The OIA system is achieving the Supreme Court's primary recommendation in *Engalla* and one of the major goals set by the Blue Ribbon Panel by ensuring that neutral arbitrators are selected quickly in Kaiser arbitrations. The rationale of both the court and the Blue Ribbon Panel was that a case only really begins to move once the neutral arbitrator is in place. Therefore, the promise of speed in arbitration depends upon the swiftness of the neutral arbitrator's appointment.

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<sup>29</sup>In the case with the longest range until appointment of the second neutral arbitrator, 245 days, several unusual events caused delays. The OIA made a mistake and failed to issue the letter confirming the first neutral arbitrator's service. The OIA notified the parties of its error and corrected the mistake. The first neutral arbitrator subsequently passed away, requiring more time for the appointment of a second neutral arbitrator.

## B. Types of Cases

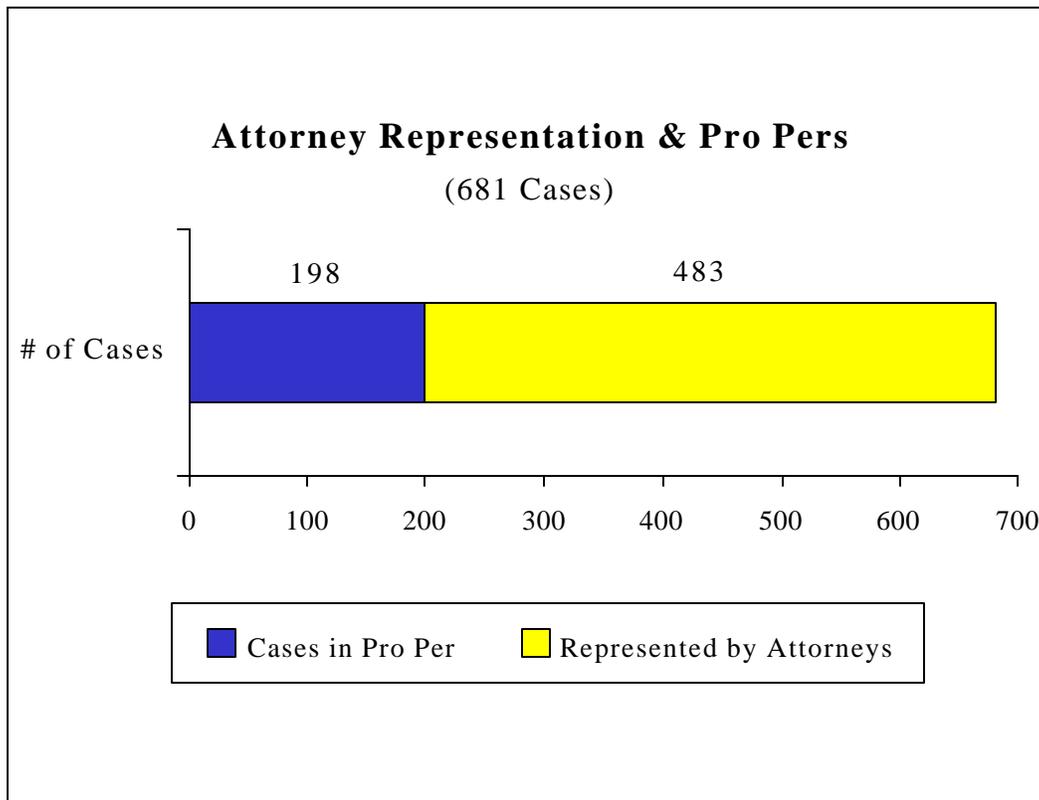
In its first operational year, the OIA administered a total of 681 Kaiser cases. Types of cases include medical malpractice, premises liability, other tort, benefits, and unknown because the demand for arbitration does not contain this information. The following chart shows the breakdown of cases by type:



As the chart illustrates, medical malpractice cases are the most common, making up 94% of the cases seen in the OIA system.

### C. Number of Represented and Pro Per Claimants

Looking at the 681 cases administered by the OIA, 483 claimants are represented by counsel, while 198 are not. Twenty-nine percent of the claimants in the system are acting in pro per. The following graph shows a breakdown of cases according to whether the claimant is represented by counsel or is proceeding in pro per:



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

With regard to fee waivers, 99 claimants have requested application papers from the OIA. Of those, 60 applications have been completed and returned. We have granted waivers in 56 cases and denied one.<sup>30</sup> The remaining three are still pending for various reasons.<sup>31</sup> A copy of the fee waiver information sheet and application are attached as Exhibit G.

<sup>30</sup>See Rule 13 for information about fee waiver applications.

<sup>31</sup>Of the 39 who asked for applications and did not return them, only three have left the system as cases

### **E. Number of Cases Where Parties Use the OIA List of Arbitrators or 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 362 out of 557 cases, or about 65% of the cases where parties have selected neutral arbitrators, the parties used the list provided by the OIA. In 194 cases, the parties jointly selected a neutral arbitrator instead of returning the list provided by the OIA. In the 194 cases where parties have jointly selected a neutral arbitrator, 120 of them have selected an arbitrator who is on the panel maintained by the OIA.

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

The OIA tracks whether the key events set out in the *Rules* — the arbitrator's disclosure statement, the arbitration management conference, the mandatory settlement meeting, and the hearing — take place by the deadlines set out in the *Rules*. The tracking of each key event is discussed in this section. The OIA created forms to track each of these events. The forms keep to a minimum the time that neutral arbitrators or parties need to spend communicating about completion of the events. This in turn reduces expense to the parties. All forms can be downloaded from the OIA website.

The OIA's approach for monitoring compliance with the deadlines established by the *Rules* is consistent for each key event that is controlled by the neutral arbitrator. If a neutral arbitrator fails to notify the OIA that a key event has taken place by its deadline, the OIA contacts the neutral arbitrator in writing and asks for confirmation that the event has occurred. In most instances, the neutral arbitrator responds by sending in confirmation. In a few cases, the OIA has sent a second letter asking for confirmation. The second letter warns the neutral arbitrator that if he or she does not provide confirmation that the event took place, the OIA will remove his or her name from its panel until the confirmation is received.

In a very few cases, a neutral arbitrator has not responded to a second letter. The director then contacted him or her by telephone and found out why the OIA had failed to receive confirmation that an event had taken place. If a neutral arbitrator is unwilling or unable to comply with the deadlines for key events set out in the *Rules*, and is unable to provide a reasonable explanation for a delay, the OIA removes the neutral arbitrator's name from its panel until he or she provides the required confirmation. The OIA temporarily removed three neutral arbitrators' names from its panel during the first operating year.

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abandoned for non-payment of the fee.

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

Once the neutral arbitrator has been selected, he or she must make disclosures within ten days.<sup>32</sup> Neutral arbitrators are required to provide a copy of their disclosure statements to the OIA. If the OIA does not receive a neutral arbitrator's disclosure statement, we send the neutral arbitrator a letter requesting it. If, after two letters, the neutral arbitrator does not respond, the director calls the arbitrator to determine why he or she has not sent the disclosure to the OIA.

## **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 appointment. When the OIA assigns a case to a neutral arbitrator, we provide the arbitrator with an AMC form. The OIA prints the deadlines for the AMC, settlement meeting and hearing on this form. The neutral arbitrator knows the deadlines for these events when he or she receives a case.

The neutral arbitrator returns the form to the OIA within five days after the conference. If the OIA fails to receive the form by the deadline, we write to the neutral arbitrator and request it. If, after two letters, the neutral arbitrator does not respond, the director calls the arbitrator to determine why the OIA has not received the form.

## **3. Mandatory Settlement Meeting**

The parties hold a mandatory settlement meeting ("MSM") within six months of the AMC. The OIA provides the parties with an MSM form to fill out and return, stating that the meeting took place and its result. If the OIA fails to receive the form by the deadline, we issue a letter to the parties requesting that they forward the form to our office as soon as possible.

## **4. Hearing**

The neutral arbitrator is responsible for ensuring that the hearing takes place no later than 18 months after the OIA received the demand for arbitration and filing fee. When the OIA assigns a matter to a neutral arbitrator, we provide him or her with the award form. The neutral arbitrator informs the OIA of the hearing dates when he or she returns the AMC form. The neutral arbitrator must return the

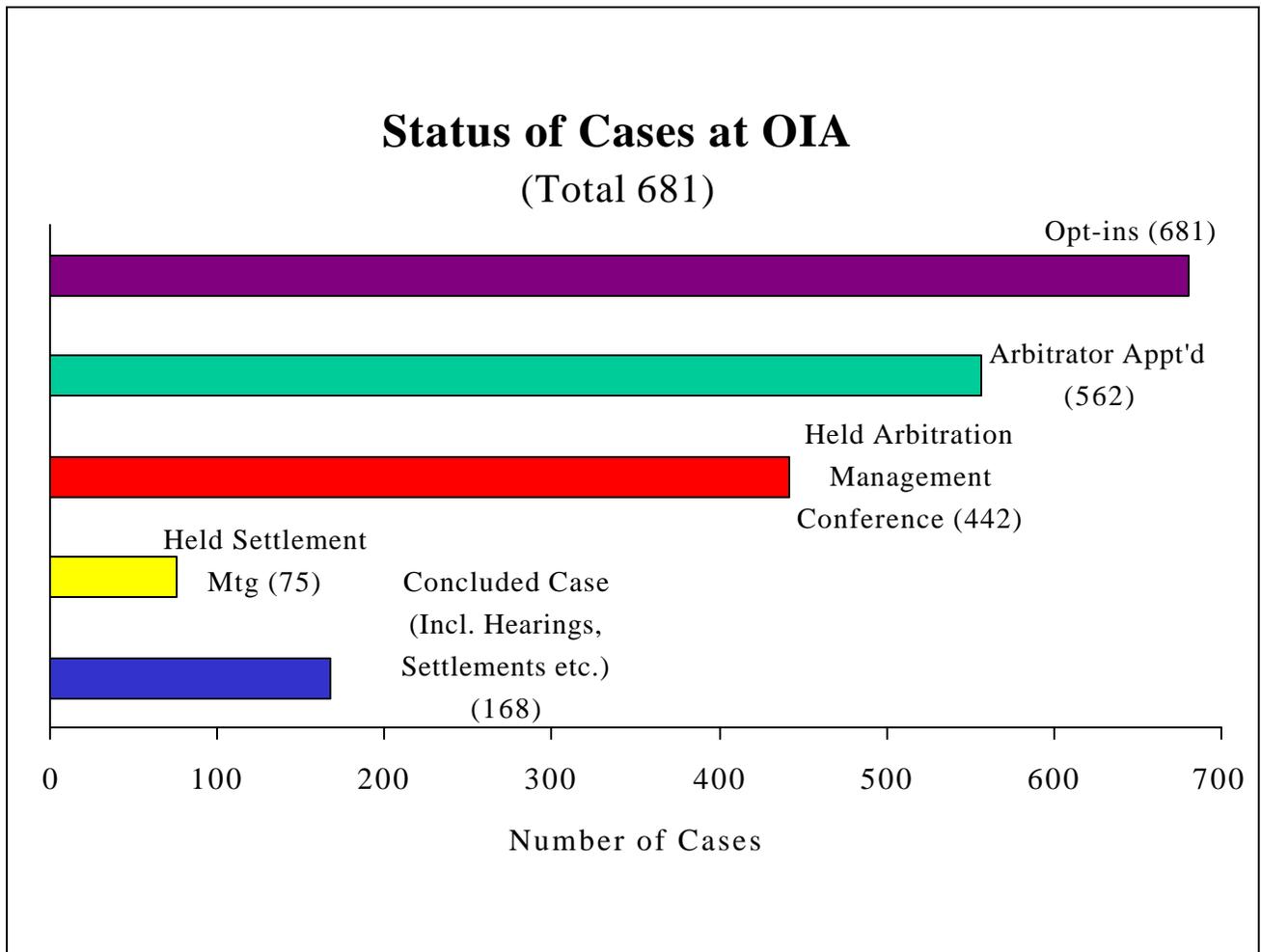
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<sup>32</sup>See California Code of Civil Procedure §1281.9 and Rule 20.

award form to the OIA ten days after the last day of the hearing. If the OIA fails to receive a completed award form by the deadline, we write to the neutral arbitrator and request it.

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

The OIA is currently administering 615 open cases. Because the OIA system is new, the distribution of cases within it is such that most cases are in their very early stages. In 214 open cases, the parties are in the process of selecting a neutral arbitrator. In 442 open cases, the parties and the neutral arbitrator have held the arbitration management conference. In 75 open cases, the parties have held the mandatory settlement meeting. The following graph illustrates the status of open cases:



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

Under the *Rules*, most cases must be completed within 18 months of the OIA receiving them.<sup>33</sup> The OIA has only been accepting claims for 12 months. However, 168 out of the 681 cases administered by the OIA, or about 25%, reached resolution in the first operational year. All of these were resolved before their deadlines for resolution. Thus far, 73 of 681 cases, or about 11%, have settled.<sup>34</sup> The OIA has received notice that 49 out of 681 claimants withdrew their claims.<sup>35</sup> Neutral arbitrators have dismissed four cases, and five have been deemed abandoned due to claimant's failure to pay the filing fee.<sup>36</sup> Kaiser resolved one case before a neutral arbitrator was appointed. Summary judgment in Kaiser's favor has been granted in 14 cases.<sup>37</sup> A total of 22 cases have proceeded through a full hearing to an award. Judgment was for Kaiser in 17 cases, or 77%, while claimants prevailed in 5 cases, or almost 23%.<sup>38</sup>

The 22 cases that have proceeded to a hearing thus far show an average of 213.36 days from the time the OIA began its process until the date the cases were resolved. The median is 223 days, and the range is from 104 to 319 days. For all closed cases, the average number of days to completion is 154.06 days. The mode is 69 days, the median is 153 days, and the range is from 4 to 319 days. The following graph compares the number of days until the end of a hearing in the OIA system to the number of days until the beginning of a hearing as reported in *Engalla*:

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<sup>33</sup>Expedited, complex, and extraordinary cases may be resolved in more or less than 18 months. Those cases are discussed at Section V(K)(1) through (3) of this report. See Rules 24 and 33.

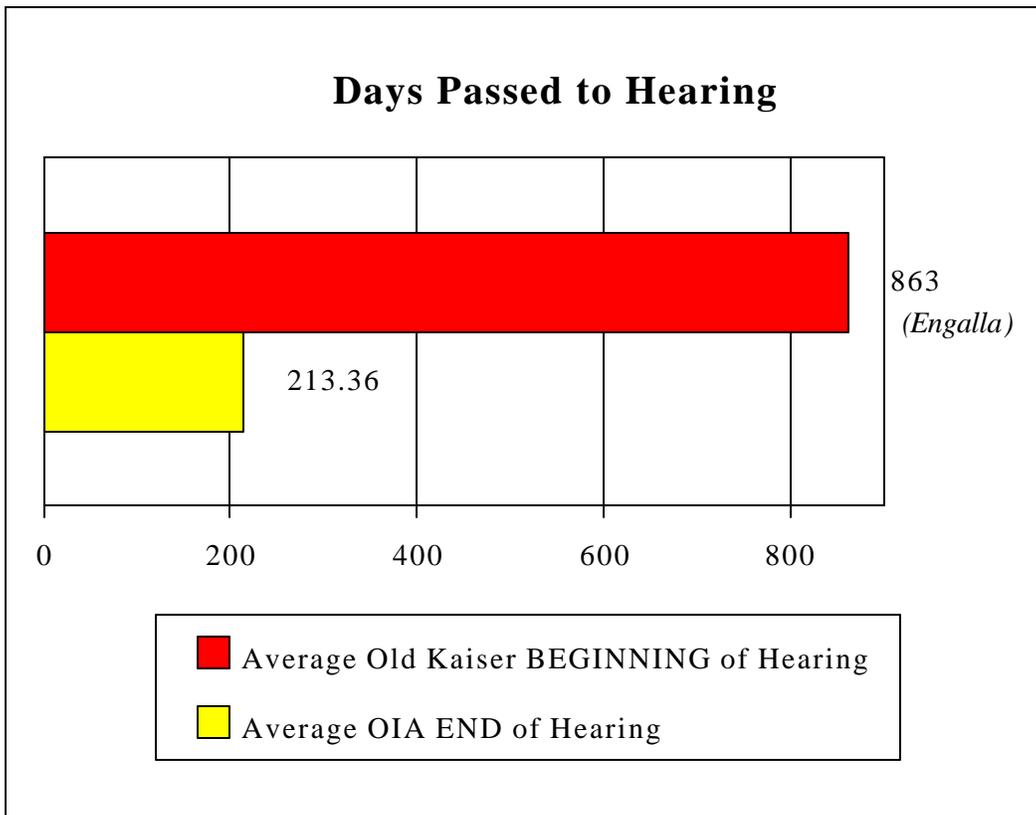
<sup>34</sup>Ten out of the 73 that settled had claimants proceeding in pro per.

<sup>35</sup>In 29 out of 52 withdrawn claims, claimants proceeded in pro per.

<sup>36</sup>Before any claimant is excluded from this system for not paying the filing fee, they are offered the opportunity to apply for a fee waiver. Those excluded have either refused to exercise it or have failed to qualify.

<sup>37</sup>In 12 of the 14 cases, claimants proceeded in pro per.

<sup>38</sup>Seven out of the 17 cases Kaiser won had claimants proceeding in pro per. Where claimants prevailed, one proceeded in pro per.



**I. Amounts of Awards**

The following chart shows the amounts of awards made to claimants thus far:

Case Number (not actual OIA case number)	Amounts of Awards
1	\$ 12,500
2	\$ 6,560
3	\$ 30,000
4	\$ 102,740
5	\$ 175,000

## **J. Comparative Information - Medical Malpractice Case Results in Court Cases**

The OIA is very interested in comparing the results of cases in this system with the results of cases that proceeded in court. As noted in Section V(B), above, 94% of the cases the OIA received this year were medical malpractice cases. For purposes of comparison, the OIA reviewed the California medical malpractice cases reported to the *Los Angeles Daily Journal's Verdicts and Settlements* in the last 12 months. Out of 168 court cases reported to that periodical, 75 resulted in defense verdicts, while 27 produced plaintiffs verdicts, and 66 cases settled. Out of the 102 cases where court verdicts were reached, 74% had defense verdicts, while 26% had plaintiff verdicts. The OIA has also looked at statistics compiled by the Bureau of Justice Statistics, reporting on 1996 trial results in the 75 largest counties in the United States. Out of 1,201 medical malpractice cases, 272, or 23%, resulted in verdicts for plaintiffs. These statistics are located at [www.ojp.usdof.gov/bjs/abstract/ctcvlc96.htm](http://www.ojp.usdof.gov/bjs/abstract/ctcvlc96.htm).

At this early date, the results of cases in the OIA system appear to be consistent with the results in court, at least as reported in the two sources above. The OIA will be closely monitoring verdicts in the cases it is administering, and will report on them and other comparative information in future reports.

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

The *Rules* include provisions for cases which need to be expedited or 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>39</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>40</sup> This section discusses those cases.

### **1. Expedited Procedures**

A total of nine claimants have filed requests to have their cases resolved in less than the 18 months permitted in the *Rules*. The OIA received seven of those requests from claimants before a

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<sup>39</sup>See Rules 33-36 for information about expedited cases. See also Appendix at 80.

<sup>40</sup>See Rule 24(b) for information about complex cases, and Rule 24(c) for information about extraordinary cases.

neutral arbitrator was appointed in the case. The OIA granted requests in five cases, and denied one without prejudice to the claimant's ability to raise the issue before the neutral arbitrator.<sup>41</sup> Of the seven requests made to the OIA, Kaiser objected to one request. The OIA did not grant that request. A neutral arbitrator has granted one request for expedited procedures.

## **2. Complex Procedures**

The OIA has received notice that two cases have been designated as complex by the neutral arbitrator and therefore will be resolved in 24 to 30 months. The parties and the neutral arbitrator must inform the OIA if a case has been designated complex.

## **3. Extraordinary Procedures**

The OIA has not received notice that any cases have been designated extraordinary and therefore will take more than 30 months for resolution. The parties and the neutral arbitrator must inform the OIA if a case has been designated extraordinary.

### **L. Number of Cases in Which Claimants Have Elected to Have Kaiser Pay the Fees and Expenses of the Neutral Arbitrator**

The Blue Ribbon Panel Report contained the recommendation that Kaiser should pay the neutral arbitrator's fees and expenses when a claim proceeds with a single neutral arbitrator.<sup>42</sup> The Panel 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>43</sup> The Panel suggested that the system create incentives for cases to proceed with one neutral arbitrator.<sup>44</sup>

In implementing the Blue Ribbon Panel's recommendation in this regard, the *Rules* include procedures for claimants to shift the responsibility for paying the neutral arbitrator's fees and expenses to Kaiser.<sup>45</sup> The procedures are voluntary and made entirely at the claimant's election. Claimants

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<sup>41</sup>One case settled before the OIA's deadline for deciding the request.

<sup>42</sup>Blue Ribbon Panel Report at 41-42, Appendix at 86.

<sup>43</sup>Blue Ribbon Panel Report at 42.

<sup>44</sup>Blue Ribbon Panel Report at 42.

<sup>45</sup>See Rules 14 and 15 for information about how claimants may shift responsibility for payment of the

making claims of \$200,000 or less must only waive objection to the respondent paying the neutral arbitrator's fees and expenses. The OIA has received forms waiving objection to payment of the fees in a total of 97 cases, 76 of them open, and 21 of them closed. This represents about 14% of the total number of cases administered by the OIA.

Claimants and respondents in cases where damages exceed \$200,000 have a statutory right to proceed with three arbitrators, one neutral arbitrator and two party arbitrators.<sup>46</sup> Kaiser will pay the fees and expenses of the neutral arbitrator if a claimant with a claim greater than \$200,000 waives his or her right to a party arbitrator, and waives objection to Kaiser's payment of the fees. Kaiser will pay the neutral arbitrator's fees and expenses even if it declines to waive its right to a party arbitrator. In this way, the *Rules* create a financial incentive for claimants who are entitled to proceed with a tripartite panel of arbitrators to agree to proceed with a single neutral arbitrator. The OIA has received these two waiver forms from claimants in a total of 139 cases, 101 of them open, 38 of them closed. This represents about 20% of the total number of cases administered by the OIA.

The total of all cases where claimants have executed either one or both waiver forms is 236; claimants have shifted the responsibility for paying the neutral arbitrator's fees and expenses to Kaiser in 236 cases out of a total of 681 cases, or in just under 35% of all cases administered by the OIA. These numbers are somewhat fluid. The *Rules* do not set a deadline by which claimants must waive objection to Kaiser paying a neutral arbitrator's fees and expenses, so it is possible that some claimants may file that form closer to the date of their hearings. The system's second operational year will give us a more definite idea of how often this option has been exercised, and we will report upon it in our second annual report.

**M. Number of Open Cases in Which Kaiser Has Agreed to Waive Its Party Arbitrator**

In a total of 65 cases, 48 of them open, and 17 of them closed, the OIA has received notice that Kaiser has agreed to proceed without a party arbitrator. As noted in the preceding section, claimants have notified the OIA that they are waiving party arbitrators in 139 cases, 101 open and 38 closed.

Several factors 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

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neutral arbitrator's fees and expenses to Kaiser.

<sup>46</sup>See California Health & Safety Code Section 1373.19.

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 claimants waive party arbitrators and respondent does not, the matter proceeds with a tripartite panel. However, respondent still pays the neutral arbitrator's fees and expenses. In some of these cases, Kaiser has elected to proceed with a tripartite panel even though claimants are willing to waive that right. At a minimum, this saves claimants half the cost of the neutral arbitrator. Since we understand that claimants' party arbitrators sometimes serve without charge, it could mean that the claimant still has no costs for the tribunal.

#### **N. Number of Cases Proceeding With Party Arbitrators**

Both claimants and respondents have notified the OIA of their choices for party arbitrators in only 44 cases. Of these, 30 cases are open and 14 cases are closed. Although the *Rules* encourage parties to select party arbitrators before the AMC takes place, there is no deadline by which parties must make these selections. The relatively small number of cases with identified party arbitrators may be due to parties intending to identify party arbitrators closer to their hearing dates. It is also 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, 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, or to receive identification of party arbitrators. The OIA will continue to monitor this number closely and report on it in the future.

#### **O. Future Reports**

The Law Offices of Sharon Lybeck Hartmann and Kaiser have modified their contract so that future OIA reports will follow the calendar year instead of the OIA's operating year. The OIA will issue its next report early in the year 2001. That report will cover nine months, or March 29, 2000 through December 31, 2000 and will thus cover a full 18 month cycle for our earliest cases. Subsequent reports will cover entire calendar years, from January 1 through December 31.

### **VI. 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 steps taken towards these goals and 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 large panel of 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. A total of 681 claimants have elected to have their cases 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. 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 42.69 days. This is over 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*. Although the OIA system is in its early stages, the data provided in this report shows that 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 Description**

#### **I. Firm Profile**

The Law Offices of Sharon Lybeck Hartmann is a boutique firm specializing in monitoring consent decrees and injunctions 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 two consent decrees settling complex litigation, one federal case involving the Department of Justice in the area of civil rights, the other a state matter involving the 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 and evaluate the city's compliance with the settlement entered in an employment discrimination case. Between 1994 and 1999, Ms. Hartmann was the Civil Rights Monitor for the consent decrees that settled the national 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 has extensive, specialized expertise creating and executing confidential testing programs measuring discrimination. In partnership with The Urban Institute, the firm was recently selected by the United States Department of Housing and Urban Development to supervise a large scale testing project studying the incidence of housing discrimination nationally. The firm's testing department has conducted neutral, confidential tests across the United States since 1995. Testing areas have included housing, public accommodations, homeowners insurance, mortgage lending, and franchise sales.

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 federal district court. It has conducted neutral, confidential investigations for racial discrimination in public accommodations across the United States. It has designed and conducted national and state-wide antidiscrimination 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 has a great deal of expertise formulating rules and processes where none existed, monitoring timely compliance with those rules, and ensuring compliance where problems occurred.

## 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 graduate of Boalt Hall Law School, 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, bankruptcy 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 her 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 of Los Angeles law schools. Ms. Hartmann supervised the creation of the OIA system and supervises the overall operation of the OIA.

**Barbara E. Dalton, Esq., Director.** Ms. Dalton is a graduate of UC Berkeley's English Department and of Loyola Law School. She received a teaching credential from UCLA, and her teaching career included three years teaching in and supervising an English language program in Osaka, Japan. Her legal experience is primarily in the areas of civil rights and alternative dispute resolution. Ms. Dalton has been an attorney with the Hartmann firm since 1995. She has served as a volunteer attorney at the Domestic Violence Prevention Clinic and at a family law clinic in Los Angeles. Ms. Dalton participated in the creation of the OIA system, supervises the day to day operation of the OIA, and served as the reporter for the first annual report.

**Marcella A. Bell, Esq., Assistant 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 has served as a volunteer attorney at the Domestic Violence Prevention Clinic since 1998. At the OIA, Ms. Bell reviews claims, arbitrator applications, and fee waiver applications, compiles and analyzes statistical data, and corresponds with claimants and attorneys. Ms. Bell is fluent in Spanish and Italian.

**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 Network Administrator and is responsible for all parts of the computer network. She designed, set up, and maintains the OIA's extensive computer databases.

**Vivian Arroyo, Administrative Staff.** Ms. Arroyo has worked as an administrator at the Law Offices of Sharon Lybeck Hartmann 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*, and for maintaining case files and arbitrator 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 generates Lists of Possible Arbitrators and reviews arbitrator applications against the published standards.

**Mary Destouet, Administrative Staff.** Ms. Destouet has worked as an administrator at the Law Offices of Sharon Lybeck Hartmann since 1996. Prior to joining the firm, she specialized in advanced technology marketing. Her marketing career included experiences working in the former Soviet Union and London. Ms. Destouet serves as the OIA's primary liaison with neutral arbitrators and organizations providing arbitrators. She also reviews arbitrator applications against the published standards.

**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. Her responsibilities at the OIA include creating case files and maintaining information in the OIA's computer database. Ms. Tutt is currently studying Spanish.

# **EXHIBIT B**

**OIA Response to Specific Questions  
From the Arbitration Advisory Committee**

## Exhibit B

### OIA Response to Specific Questions From the Arbitration Advisory Committee

On March 31, 2000, the Arbitration Advisory Committee (“AAC”), in the exercise of its OIA oversight function, asked the questions which are set out in boldface type below. While the answers to a number of the AAC’s questions appear in the body of the report, they are in different places. For the convenience of the Committee, all of their questions and our direct responses are gathered together in this exhibit.

#### Question One

**Comment on the number, source, and general subject matter of telephone calls or other inquiries received by the Independent Administrator from litigants.**

**The purpose of this area of inquiry is to identify for future consideration those inquiries which suggest a need for modification of the Rules of Arbitration, selection of arbitrators for the pool, the success in providing access to pro per litigants, and to uncover other areas of significant statistical data which should be reviewed.**

We estimate that the seven members of our staff have taken more than 8,500 phone calls in the first operating year of the new system. Attorneys, attorney assistants, case administrators, members and neutrals call us. Many of their questions are routine in nature asking, for example, how the fee check should be made out, how one applies for a fee waiver, how arbitrator lists are assembled, how one arranges that Kaiser pay for the neutral, and who the neutral arbitrators are. We have always faxed or mailed the full arbitrator list in response to this last inquiry. Now, it can also be downloaded from our web site, [www.slhartmann.com/oia](http://www.slhartmann.com/oia). We will also be posting a list of frequently asked questions on the web site soon, along with their answers.

One of our most frequently asked questions from both attorneys and members seeks a description of the “old Kaiser system.” This is only to be expected. We are asking individuals to opt-in to the new system, and they want to see the documentation that describes the old system so that they can compare the two. We refer them to the member services agreement which controlled at the time their claim arose since that is the only written description of the older system of which we are aware.

Plaintiffs’ counsel have asked for more than 20 days in which to make the selection of a neutral arbitrator. They say that in attempting to make a joint selection, it is very difficult to reach agreement, get the consent of the neutral arbitrator, and then fax the form to the OIA from the neutral arbitrator

within the 20 days which the *Rules for Kaiser Permanente Member Arbitrations Overseen by the Office of the Independent Administrator* allow. They have indicated that 30 days would better facilitate joint selections.

We are regularly asked to explain the meaning of Rules 14 and 15, which deal with the circumstances under which Kaiser will pay for the neutral arbitrator. Most people have read and understood these two rules correctly, but still want to orally confirm their understanding. When the *Rules* are revised, these two rules should be rewritten to make them clearer.

The OIA has received calls, letters, and personal visits protesting the fact that San Diego does not have its own pool of arbitrators. We are working on building the number of neutrals in that geographical area so that this subdivision in the Southern California pool can take place. We hope to do that soon; the advertising and recruitment which have led to this plan arose through this contact with our office from both plaintiffs' and defense counsel.

The most heated area of comment made to us involves the manner of payment made to neutrals when Kaiser is paying the bill. Plaintiffs' counsel have spoken to us repeatedly about the fact that when Kaiser pays for the neutral there is no mechanism under the rules for concealing that fact from the neutral. They believe that there may be bias in the tribunal arising from this circumstance, and some have declined the payment option on this basis. We have suggested that they work out a voluntary arrangement with defense counsel and some of them have. However, they have suggested that the rules should be changed so that payment appears to come from some neutral source.

When the system first started, we occasionally heard comments about lack of medical malpractice experience on the part of some of the neutral arbitrators. We have not been hearing those comments recently, and in fact, have heard the opposite from some of those attorneys who originally spoke to us about the issue. They have reported that the present neutrals are able to make the decisions satisfactorily and that lack of medical malpractice experience is not an issue. This number of calls was small in both respects.

As we noted above, there are 198 pro per litigants out of 681 cases in the system. Therefore, about 29% of the system is in pro per. That is a higher proportion than would be found in the courts. All members of our staff talk to them on the phone regularly depending upon what aspect of the case the pro per is currently asking questions about. They express gratitude for our response and confidence in the answers we give them because we are an independent entity. They like our rules and forms and comment favorably on them. In our first case to go through a hearing, a pro per litigant prevailed and got an award even though she had no expert. She lost her wrongful death claim, but she prevailed on her emotional distress claim. The system does appear to be giving pro pers access.

Anecdotally, however, we find that many pro pers do not understand the requirements of the arbitration system — that they will, for example, still have to obtain an expert to support their view of what happened to them in a malpractice claim. Because of this, many of them are not satisfied with the results they achieve. They do not understand the concept of summary judgment; how can a decision have been reached when there was no factual hearing held?

However, the result would not have been different for them in a court. We are thinking of developing a special handout for them explaining some of these foundational matters which would go with the first mailing that they received from our system. We will watch the evaluation questionnaires carefully as we go forward in this area and report the results to the committee.

## **Question Two**

**The status of questionnaire and evaluation forms referred to in Paragraphs 48 and 49 of the Rules for Kaiser Permanente Member Arbitrations.**

**It is the understanding of the Advisory Committee that these questionnaires and evaluations have not yet been utilized and have just recently been developed. If they have, in fact, been in use, we would like some inclusion in the Annual Report of the type of comments being received.**

We have not yet begun circulation of the questionnaire and evaluation forms to be completed when a case is resolved. They are in development now and will be sent to the AAC for comment before they go into use. We had originally jointly discussed using them only after a case had completed its hearing. However, based on our experience this past year, so many cases are being resolved well short of a hearing, that it appears that a form should be sent to the parties in any case which is closed after the appointment of a neutral arbitrator so as to gather as much information about the system as possible. We are also trying to keep the form short and anonymous to encourage maxim response. These responses will be reported and analyzed on an interim basis as soon as they are present in numbers large enough to make a general response reliable. We should have a significant body of response to include in the second annual report.

## **Question Three**

**As concerns Section B of the Rules for Arbitrations, concerning commencement of arbitration and selection of arbitrators, we would request comment concerning the experience and quality of the panel and any consideration being given to increasing the knowledge of individual arbitrators of the substantive law of medical malpractice, or, should the individual arbitrators have knowledge of the body of law that has developed specific to medical malpractice.**

All arbitrators in the pool meet each of the published qualifications upon which the AAC, the OIA, and Kaiser jointly agreed in 1998. The qualifications provide for experience in control of the arbitration process, but not for experience in medical malpractice hearings or law. There were extensive discussions on this point at the time that the qualifications were created.

The applications completed by pool members contain a great deal of information about our 323 arbitrators, including their education, experience, training, and professional qualifications. Each application has been individually reviewed, and anecdotally, we know a lot about the applicants. For example, 89 of them, 28%, are retired California judges. Thirty-one of them come from JAMS/Endispute. Twelve are with Judicate West; eleven are with Alternative Resolution Centers, and six are with Action Dispute Resolution Services. A number of them have been arbitrating for years. A large number of them have years of medical malpractice experience. Some teach arbitration in law schools. Some belong to professional associations for those who arbitrate health care disputes. However, our arbitrator data has not been computerized, and so it is not easily retrievable in order to answer this generalized question. That data was set up to tell individual parties about an individual neutral. To respond to this question satisfactorily, we will review the hard copy files and send out an interim report in the near future. We will also explore the possibility of a data base for this material for easier access in the future.

One piece of data now available at least suggests that the overall pool membership is a satisfactory one. Parties may jointly select an arbitrator of their own choosing rather than striking and ranking from the list which the OIA sends. However, only 194 out of 557 cases, or 34.83%, exercise that option. More suggestive is the fact that in 120 of the 194 cases, parties jointly selected a neutral arbitrator who is *also a member of the OIA pool*. In only 74 cases have the parties gone entirely outside the OIA pool for an arbitrator.

There have been occasional suggestions from pool members and applicants that the OIA should offer some form of training. Our neutrals often come to talks being given for practitioners around the state. We had thought about a focus on procedural issues within the system as the possible subject matter of this event should it occur. However, substantive training could also be offered if that was thought desirable.

#### **Question Four**

**With respect to Section C of the Rules for Arbitrations, Rules for Regular Procedures, what value is being obtained through mandatory settlement meetings?**

We have no information on this point. We have received no comment at all on this subject, either positive or negative. The mandatory settlement meeting (“MSM”) required by Rule 26 is calendared at the scheduling conference, and the meetings are being held as the Blue Ribbon Panel

recommended. There have been a number of settlements, but they occur across a broad spectrum of time in the pendency of a claim. We will watch the questionnaires and evaluations on this point.

Anecdotally, we do know that in some instances a mediator has been hired to meet with the parties at the MSM.

### **Question Five**

**With respect to Section D of the Rules for Arbitrations, Rules for Expedited Procedures, the number and percentage of cases that are requesting such a procedure and whether the Rules are accomplishing the goal of expedited hearings.**

There are only nine cases in the system (less than 1%) which have requested expedited procedures. A total of seven claimants have received them. Out of these seven, two of the cases are completed, one within 22 days. Those remaining open are within the time set for completion.

When writing the rules, all of us were very concerned about the speed at which benefits and coverage claims which might need to be heard. We had discussions about the need for treatment necessitating extremely fast results in some cases. However, only three benefits and coverage claims were filed in the first year, and none of the claimants requested expedited procedures.

### **Question Six**

**Comment on the neutral arbitrators' compliance with the Rules and the steps the Independent Administrator has taken to assure compliance.**

Throughout this report we have commented on the neutrals' compliance with the rules. It is high. All neutrals agreed in writing when they joined our pool to follow our rules, and they do so. They call us with questions about the rules, and they write letters and visit us with comments on the rules. They are usually asking so that they will apply them correctly. Occasionally, a neutral misses a deadline. We then write or call and the missing item usually arrives promptly. Where the neutral has a philosophical disagreement with some action the rules prescribe, either Barbara Dalton or Sharon Hartmann calls or writes to explain the rationale and that usually takes care of the matter. At the beginning of this process, one or two accepted applicants reviewed our rules and disagreed with some aspect of them. They wrote to tell us that, as a consequence, they would not join the pool. We accepted their decisions.

As the AAC is aware, we have one neutral who has disagreed with the OIA sharply on the way we read the state arbitration disqualification statute which is incorporated specifically into the rules. While he has hired an attorney to protest his disqualification in the matter to which he was originally

assigned, it is not clear what action he will take beyond telling us that he disagrees with our interpretation. There is no published authority on the statute, and we have applied it consistently in 33 cases of which his is only one. Thus far, no other arbitrator has protested his or her disqualification, and no other arbitrator has refused to follow the rules.

### **Question Seven**

#### **Any experience with cases not involving medical malpractice, as provided by the Blue Ribbon Advisory Panel, Item 33.**

Over 94% of our cases are straightforward medical malpractice claims. The other types presently here are premises liability (one percent) , other tort claims (less than one percent), benefits disputes (less than one percent), and nature of claim unknown because the demand for arbitration does not contain the information (four percent).

# **EXHIBIT C**

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

**RULES FOR KAISER PERMANENTE MEMBER  
ARBITRATIONS**

**OVERSEEN BY**

**THE OFFICE OF THE INDEPENDENT ADMINISTRATOR**

**March, 1999**

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## **A. GENERAL RULES**

### **1. Goal**

These Rules are intended to provide an arbitration process that is fair, timely, lower in cost than litigation, and that protects the privacy interests 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, 17th 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 services, 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

- e. 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 preferences 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 Lists 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 Arbitrator 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 through 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 copy of this 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 Arbitrations**

- 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

- b. **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.
- c. 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.
- d. 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.
- e. 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.
- f. 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.
- g. 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, within 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 OF 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**

### **Qualifications for Neutral Arbitrators**

**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.
3. Neutral arbitrators shall
  - (a) have been admitted to practice for at least ten years, with substantial litigation experience; AND
  - (b) 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
  - (c) have been a state or federal judge; OR
  - (d) 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 E**

## **Application for Neutral Arbitrators**

**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:

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

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

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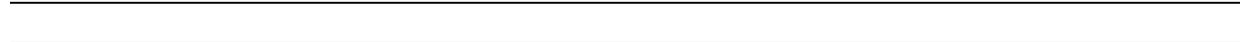
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Have your actions as an arbitrator figured in a published legal opinion? If so, please provide the citation. \_\_\_\_\_



**X. ARBITRATION TRAINING** Describe any arbitration training you have received. For each training, list the training provider's 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 HEARINGS** 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 \_\_\_\_\_

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

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

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**XVI. INSURANCE** Do you carry insurance that covers your activities as a neutral arbitrator? Yes \_\_\_\_\_ No \_\_\_\_\_ If no, do you intend to obtain such insurance before working on arbitrations administered by the Office of the Independent Administrator?

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

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**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 Souther 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.

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Signature

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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 program.

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 proceedings (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 a n arbitration administered by the Office of the Independent  
Administrator. Include a copy of any forms, 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 any misrepresentation, or any  
failure on my part to supply information requested by 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 administered 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 Kaiser arbitrations 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 rejection by one or more of the parties.

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

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

## **EXHIBIT F**

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

## **EXHIBIT F**

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

#### **Northern California**

Justice Nat Anthony Agliano  
Judge Demetrios P. Agretelis (Ret.)  
Judge Paul J. Aiello  
Mr. Roger F. Allen, Esq.  
Justice Carl West Anderson (Ret.)  
Ms. Karen G. Andres, Esq.  
Mr. William H. Bachrach, Esq.  
Ms. Eileen Barker, Esq.  
Judge Michael J. Berger  
Judge William L. Bettinelli  
Mr. Daniel V. Blackstock, Esq.  
Mr. Brenton A. Bleier, Esq.  
Judge Allan J. Bollhoffer  
Mr. Barri Kaplan Bonapart, Esq.  
Mr. Marc P. Bouret, Esq.  
Mr. Thomas J. Brewer, Esq.  
Mr. Robert J. Brockman, Esq.  
Mr. Bruce Bryson, Esq.  
Ms. Kay Burningham, Esq.  
Mr. Fred D. Butler, Esq.  
Judge Robert K. Byers  
Justice Walter P. Capaccioli  
Mr. Harve Eliot Citrin, Esq.  
Mr. Casey Clow, Esq.  
Judge Morton R. Colvin  
Judge John S. Cooper (Ret.)  
Mr. James S. Crawford, Esq.  
Mr. Lawrence E. Curfman III  
Judge Thomas Dandurand  
Judge James Duvaras  
Mr. Gregory F. Dyer, Esq.  
Judge Mark L. Eaton  
Mr. Joseph Elie, Esq.

Mr. Douglas L. Field, Esq.  
Mr. Michael W. Field, Esq.  
Mr. Lester Friedman, Esq.  
Mr. Kenneth D. Gack, Esq.  
Judge John J. Gallagher  
Mr. John R. Gallagher, Esq.  
Mr. James L. Gault, Esq.  
Mr. Delbert C. Gee, Esq.  
Mr. Perry D. Ginsberg, Esq.  
Ms. Shelley A. Gordon, Esq.  
Judge Sheldon H. Grossfeld  
Mr. Arnold B. Haims, Esq.  
Ms. Catherine C. Harris, Esq.  
Mr. Richard C. Henderson, Esq.  
Mr. Alan S. Hersh, Esq.  
Mr. Clifford Hirsch, Esq.  
Mr. David J. Holcomb, Esq.  
Mr. Douglas W. Holt, Esq.  
Mr. Garry J.D. Hubert, Esq.  
Ms. Nancy Hutt, Esq.  
Judge Ellen Sickles James  
Mr. Robert E. Jensen, Esq.  
Judge William E. Jensen  
Mr. Sterling Johnson, Esq.  
Mr. Thomas A. Johnson, Esq.  
Mr. Harold E. Kahn, Esq.  
Mr. Stephen Kasdin, Esq.  
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.  
Judge Thomas Kongsgaard  
Mr. Ernest B. Lageson, Esq.  
Mr. John B. LaRocco, Esq.  
Mr. Stewart I. Lenox, Esq.  
Mr. B. Scott Levine, Esq.  
Judge Darrel Lewis (Ret.)  
Justice Harry W. Low

Mr. Harry E. Macy, Esq.  
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. Bruce E. Methven, Esq.  
Mr. Carl Meyer, Esq.  
Mr. Jeffrey Scott Nelson, Esq.  
Mr. William J. O'Connor, Esq.  
Ms. Deirdre A. O'Reilly, Esq.  
Mr. Samuel C. Palmer III  
Judge George E. Paras  
Ms. Julia J. Parranto, Esq.  
Judge Irving J. Perluss  
Mr. David C. Peterson, Esq.  
Mr. John E. Peterson, Esq.  
Mr. William J. Petzel, Esq.  
Ms. Andrea M. Ponticello, Esq.  
Justice Robert K. Puglia  
Judge Gerald Ragan  
Judge Raul A. Ramirez  
Mr. Joe Ramsey, Esq.  
Mr. Thomas D. Reese, Esq.  
Mr. Robert J. Rosati, Esq.  
Mr. Alan R. Rothstein, Esq.  
Mr. Geoffrey E. Russell, Esq.  
Mr. Lucien Salem, Esq.  
Ms. Ann E. Sarli, Esq.  
Judge Beverly B. Savitt  
Ms. Patricia Shuler Schimbor, Esq.  
Judge Howard L. Schwartz  
Mr. Franklin Silver, Esq.  
Mr. Melvyn D. Silver, Esq.  
Mr. Douglas L. Smith, Esq.  
Judge Peter A. Smith  
Mr. M. Todd Spangler, Esq.  
Judge Norman Spellberg

Mr. Frederick R. Stevens, Esq.  
Judge Charles V. Stone  
Mr. Charles L. Thoeming, Esq.  
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  
Mr. Daniel E. Whitlock, Esq.  
Mr. Barry S. Willdorf, Esq.  
Judge Raymond D. Williamson Jr.  
Ms. Catherine A. Yanni, Esq.

### **Southern California**

Mr. Marc D. Adelman, Esq.  
Mr. Leon J. Alexander, Esq.  
Judge James J. Alfano  
Justice Richard Amerian (Ret.)  
Mr. Clifford R. Anderson, Esq.  
Mr. Richard N. Appleton, Esq.  
Justice John A. Arguelles (Ret.)  
Mr. Maurice J. Attie, Esq.  
Judge Arthur Baldonado (Ret.)  
Mr. Alan G. Barry, Esq.  
Mr. Gregory L. Bartone, Esq.  
Mr. Hadley Batchelder, Esq.  
Ms. Ornah Becker, Esq.  
Mr. Stuart Berkley, Esq.  
Mr. Stephen M. Biersmith, Esq.  
Mr. Philip C. Blanton, Esq.  
Mr. Thomas W. Borden, Esq.  
Ms. Marianne P. Borselle, Esq.  
Ms. Randi R. Bradstreet, Esq.  
Mr. Robert W. Briggs, Esq.  
Mr. Frank R. Brown, Esq.  
Mr. Michael D. Brown, Esq.

Judge William E. Burby  
Ms. Adriana M. Burger, Esq.  
Mr. Robert Burns, Esq.  
Judge Raymond Cardenas (Ret.)  
Mr. Richard A. Carrington, Esq.  
Mr. J.W. Carver, Esq.  
Mr. Richard R. Castillo, Esq.  
Judge Eli Chernow (Ret.)  
Mr. Richard B. Chess, Esq.  
Mr. Walter K. Childers, Esq.  
Judge Sam Cianchetti  
Mr. John B. Cobb, Esq.  
Mr. Gerald W. Connor, Esq.  
Mr. Edward J. Costello, Esq.  
Mr. James A. Crary, Esq.  
Mr. John P. Daniels, Esq.  
Ms. Paula Daniels, Esq.  
Ms. Norma A. Dawson, Esq.  
Mr. Edward J. Deason, Esq.  
Mr. John P. DeGomez, Esq.  
Judge George M. Dell  
Mr. Michael V. Denticio, Esq.  
Mr. Richard A. DeSantis, Esq.  
Mr. Dan H. Deuprey, Esq.  
Justice Robert R. Devich (Ret.)  
Judge Bruce Wm. Dodds  
Mr. Charles I. Dolginer, Esq.  
Ms. Wendy L. Doo, Esq.  
Judge James E. Dunger  
Justice David N. Eagleson  
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. James T. Fox, Esq.  
Mr. Thomas I. Friedman, Esq.  
Mr. Virginia H. Gaburo, Esq.  
Ms. Dolly M. Gee, Esq.  
Ms. Greta Glavis, Esq.

Mr. Thomas E. Gniatkowski, Esq.  
Judge Leonard Goldstein  
Judge Norman W. Gordon  
Mr. James Gorman, Esq.  
Mr. Ernest S. Gould, Esq.  
Mr. Bruce A. Greenberg, Esq.  
Ms. Irene M. Guimera, Esq.  
Mr. John H. Hachmeister, Esq.  
Mr. Jon Anders Hammerbeck, Esq.  
Mr. Robert T. Hanger, Esq.  
Mr. Robert S. Harrison, Esq.  
Ms. Roseann Herman, Esq.  
Mr. Joe W. Hilberman, Esq.  
Mr. Hassel Hill, Esq.  
Judge Herbert B. Hoffman  
Judge Maurice R. Hogan (Ret.)  
Mr. Jerry W. Howard, Esq.  
Mr. William B. Irvin, Esq.  
Mr. Godfrey Isaac, Esq.  
Mr. B. Elliott Johnson, Esq.  
Judge Ronald L. Johnson  
Judge Arthur W. Jones (Ret.)  
Judge Anthony C. Joseph (Ret.)  
Mr. Kevin M. Kallberg, Esq.  
Mr. John G. Kerr, Esq.  
Mr. Robert J. Kilpatrick, Esq.  
Ms. Jill Klein, Esq.  
Mr. James D. Knotter, Esq.  
Mr. Martin David Koczanowicz, Esq.  
Ms. Wendy L. Kohn, Esq.  
Judge James G. Kolts  
Ms. Eileen Kramer, Esq.  
Mr. Martin Krawiec, Esq.  
Judge Peter Krichman  
Mr. Jeffrey Krivis, Esq.  
Mr. Theo Lacy, Esq.  
Mr. Dennis O. LaRochelle, Esq.  
Ms. June Lehrman, Esq.  
Mr. Boyd Lemon, Esq.  
Judge J. Morgan Lester (Ret.)

Mr. Philip R. LeVine, Esq.  
Judge Gerald J. Lewis  
Mr. Stuart Libicki, Esq.  
Judge Alfred Lord  
Judge Richard Luesebrink  
Mr. Daniel B. MacLeod, Esq.  
Mr. Thomas L. Marshall, Esq.  
Mr. Allan J. Mayer, Esq.  
Judge John D. McCabe  
Mr. Donald McGrath, Esq.  
Mr. Michael J. McHale, Esq.  
Mr. James J. McKee, Esq.  
Judge Byron K. McMillan  
Judge Kevin W. Midlam  
Ms. Barbara E. Miller, Esq.  
Mr. Jerry Miller, Esq.  
Mr. John E. Millers, Esq.  
Mr. Jeffrey Cabot Myers, Esq.  
Mr. Robert W. Northup, Esq.  
Mr. Robert J. O'Connor, Esq.  
Mr. Herbert J. O'Meara, 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. Carl B. Pearlston, Esq.  
Mr. David C. Peterson, Esq.  
Mr. David Pettit, Esq.  
Mr. Brian A. Rawers, Esq.  
Mr. Robert A. Rees, Esq.  
Mr. Charles D. Richmond, Esq.  
Judge Robert E. Rickles  
Mr. Roy G. Rifkin, 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.

Mr. Amil Roth, Esq.  
Mr. David M. Rothman, Esq.  
Judge Philip M. Saeta  
Mr. Myer J. Sankary, Esq.  
Mr. Alan H. Sarkisian, Esq.  
Mr. Michael F. Saydah, Esq.  
Ms. Cathy R. Schiff, Esq.  
Mr. Steven A. Schneider, Esq.  
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. Malek H. Shraibati, Esq.  
Judge Peter S. Smith  
Judge Sherman W. Smith Jr.  
Judge William E. Sommer (Ret.)  
Mr. Douglas L. Stenzel, Esq.  
Ms. Jan Stiglitz, Esq.  
Mr. Michael M. Stolzberg, Esq.  
Justice Steven J. Stone  
Mr. John A. Sullivan, Esq.  
Mr. Mitchell R. Sussman, Esq.  
Mr. Frank J. Terreri, Esq.  
Judge Howard J. Thelin  
Judge Robert W. Thomas (Ret.)  
Mr. Jeffrey A. Tidus, Esq.  
Justice William L. Todd  
Mr. Peter C. Tornay, Esq.  
Mr. Anthony A. Trendacosta, Esq.  
Mr. William J. Tucker, Esq.  
Judge Don A. Turner  
Ms. Sherry Van Sickle, Esq.  
Mr. Richard L. Waldron, Esq.  
Mr. Stephen P. Webb, Esq.  
Judge Robert Weil  
Judge Robert A. Wenke

Mr. Garry W. Williams, Esq.  
Ms. Elta M. Wilson, Esq.  
Mr. Joseph Winter, Esq.  
Mr. Alan E. Wisotsky, Esq.  
Ms. Deborah Z. Wissley, Esq.  
Mr. William R. Wolanow, Esq.  
Judge Leonard S. Wolf  
Judge Delbert E. Wong  
Judge Charles H. Woodmansee  
Mr. Lloyd Yost, Esq.  
Judge Eric E. Younger  
Mr. John Zanghi, Esq.  
Judge Kenneth G. Ziebarth (Ret.)

# **EXHIBIT G**

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

## 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
1	\$ 838.54	4	\$1,713.54	7	\$ 2,588.54
2	\$1,130.21	5	\$2,005.21	8	\$2,880.21
3	\$1,421.88	6	\$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 court fees and costs.

***Instructions on other side***

**Instructions:** To apply, fill out the Request Form for Waiver of Filing Fees and Fees and Expenses of Neutral Arbitrator. This Form is available from the Independent Administrator or from Kaiser Permanente Member Service Customer Center at 1-800-464-4000.

(1) All of the Claimant(s) must fill out a Form, include copies of the necessary documents, sign the Form, and return it to the Independent Administrator at

Law Offices of Sharon Lybeck Hartmann  
Independent Administrator  
P.O. Box 76587  
Los Angeles, California 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, and 6-7 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 this arbitration, you will need to fill out items 1-2, and 5-10 on the Fee Waiver Form.

(3) At the same time you return the copy to the Independent Administrator, serve a copy on Respondent(s) at the same address you used to serve your Demand for Arbitration. The Independent Administrator, Respondent(s), and counsel shall keep the information in the Fee Waiver Form confidential.

(4) Health Plan is entitled to file a response to your request for a Fee Waiver Form. The Independent Administrator will make its decision about your request within fifteen days of the date you return your Fee Waiver Form and notify you and Health Plan.

**Note:** If your request 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. Even if your request is granted, however, 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 services office, or lawyer referral service in your county (listed in the yellow pages under "Attorneys" ).

**Request Form for Waiver of Filing Fee and Fees and Expenses of Neutral Arbitrator  
Respondents, Counsel and the Independent Administrator Must Keep Information Contained  
in this Form Confidential**

Arbitration Name \_\_\_\_\_ Arbitration number \_\_\_\_\_ Date \_\_\_\_\_

---

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

1. a. My current street or mailing address is (if applicable, include city or town, apartment no., if any, and zip code) \_\_\_\_\_

b. My attorney is (name, address and telephone number) \_\_\_\_\_

2. a. My occupation, employer, and employer's address are (specify) \_\_\_\_\_

b. My spouse's occupation, employer, and employer's address are (specify) \_\_\_\_\_

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 Needy Families (formerly AFDC)  
\_\_\_ **Food Stamps:** The Food Stamps Program  
\_\_\_ **County Relief, General Relief (G.R.) or General Assistance (G.A.)**

**If you checked box 3 above, attach copies of documents to verify receipt of the benefits you checked and sign at the bottom of this side. The Information Sheet on Waiver of Filing Fee and Fees and Expenses of Neutral Arbitrator explains the acceptable documents.**

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

**If you checked box 4 above, skip item 5, complete items 6 and 7 on the back of this form, and sign at the bottom of this side.**

5. \_\_\_ My family income is not enough to pay for the common necessities of life for me and the people in my family and also pay the filing fee and the fees and expenses of the Neutral Arbitrator. **If you checked this box, complete the back of this form and sign this side .**

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

\_\_\_\_\_  
**TYPE OR PRINT NAME**

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**Date**

**The Information Contained in this Form must Be Kept Confidential**

6.  **My pay changes considerably from month to month.** (If you check this box, each of the amounts reported in item 10 should be your average for the past 12 months.)

**7. My Monthly Income**

- a. My gross monthly pay is \$ \_\_\_\_\_
- b. My payroll deductions are (specify purpose and amount):
  - (1) \_\_\_\_\_ \$ \_\_\_\_\_
  - (2) \_\_\_\_\_ \$ \_\_\_\_\_
  - (3) \_\_\_\_\_ \$ \_\_\_\_\_
  - (4) \_\_\_\_\_ \$ \_\_\_\_\_

- c. My Total payroll deductions amount is (a. minus b) \$ \_\_\_\_\_
- d. Other money I get each month is (specify source and amount)
  - (1) \_\_\_\_\_ \$ \_\_\_\_\_
  - (2) \_\_\_\_\_ \$ \_\_\_\_\_
  - (3) \_\_\_\_\_ \$ \_\_\_\_\_
  - (4) \_\_\_\_\_ \$ \_\_\_\_\_

- e. **My Total Monthly Income is** (c. plus d) \$ \_\_\_\_\_
- f. Number of persons living in my home: \_\_\_\_\_  
List all of the persons living in your home, who depend on you for support, or on whom you depend on for support:

Name	Age	Relationship	Gross Monthly Income
(1) _____	_____	_____	_____
(2) _____	_____	_____	_____
(3) _____	_____	_____	_____
(4) _____	_____	_____	_____
(5) _____	_____	_____	_____

The Total amount of other money is \$ \_\_\_\_\_

g. **My Total Gross Monthly Household Income is** (a. plus d. plus f.) \$ \_\_\_\_\_

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

- a. Cash \$ \_\_\_\_\_
- b. Checking, savings and credit union accounts (List banks):
  - (1) \_\_\_\_\_ \$ \_\_\_\_\_
  - (2) \_\_\_\_\_ \$ \_\_\_\_\_
  - (3) \_\_\_\_\_ \$ \_\_\_\_\_

- c. Cars, other vehicles, and boats (list make, year, fair market value (FMV) and loan balance of each):
 

Property	FMV	Loan Balance
(1) _____	\$ _____	\$ _____
(2) _____	\$ _____	\$ _____

d. Real estate (list address, FMV, and loan balance):

Property	FMV	Loan Balance
(1) _____	\$ _____	\$ _____
(2) _____	\$ _____	\$ _____
(3) _____	\$ _____	\$ _____

e. Other personal property — jewelry, furniture, furs, stocks, bonds, etc. (List separately):

Property	FMV	Loan Balance
(1) _____	\$ _____	\$ _____
(2) _____	\$ _____	\$ _____
(3) _____	\$ _____	\$ _____

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

- a. Rent or house payment & 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, repair) \$ \_\_\_\_\_
- k. Installment payments (specify purpose and amount)
  - (1) \_\_\_\_\_ \$ \_\_\_\_\_
  - (2) \_\_\_\_\_ \$ \_\_\_\_\_
  - (3) \_\_\_\_\_ \$ \_\_\_\_\_

The Total amount of monthly installment payments is: \$ \_\_\_\_\_

- l. Amounts deducted due to wage assignments and earnings withholding orders: \$ \_\_\_\_\_
- m. Other expenses (specify):
  - (1) \_\_\_\_\_ \$ \_\_\_\_\_
  - (2) \_\_\_\_\_ \$ \_\_\_\_\_
  - (3) \_\_\_\_\_ \$ \_\_\_\_\_

The Total amount of other monthly expenses is \$ \_\_\_\_\_

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

**10. Other facts which support this application are** (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, attach page labeled Attachment 10. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# **APPENDIX**

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

## APPENDIX

### 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 March 28, 2000.

#### A. Independent Administration

- 1. An 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. At the present time, Kaiser members may voluntarily elect whether or not to have their claims proceed according to the *Rules for Kaiser Permanente Member Arbitrations Overseen by the Office of the Independent Administrator*. The OIA began accepting claims from Kaiser on March 29, 1999. As of that date, almost all arbitration claims were brought under member service agreements that predated the creation of the OIA. Those member service agreements therefore did not contain language about the OIA or the *Rules*. As Kaiser Member Service Agreements renew, they contain language making the OIA *Rules* and administration mandatory. About 2.5 million members of the entire Kaiser population of 6 million currently have Member Service Agreements making the OIA *Rules* mandatory for any claims they bring. During the first operational year, the OIA received one claim made under a contract with language making the OIA *Rules* mandatory. Kaiser contacted claimants with claims predating March 29, 1999 but without neutral arbitrators and gave them the option to have the OIA administer their cases. The OIA has no firsthand information about how many claimants were actually contacted by Kaiser, but we received 215 old claims from Kaiser, of which 194 opted in to the OIA system. Kaiser has forwarded all claims it received on or after March 29, 1999, to the OIA as they were submitted by its members. The OIA has contacted all claimants with claims made on or after March 29, 1999 and asked whether they wish to join the new system. Kaiser has forwarded 944 new Demands for Arbitration to the OIA, and 486 of them have opted in. 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* 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 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"), made up of the following eight members: Genethia Hayes, Health Plan Member and President, Board of Education, Los Angeles Unified School District, representing member interests;

Elizabeth Jameson, Esq., Senior Legal and Health Policy Analyst, Institute of Health Policy Studies, University of California, San Francisco, School of Medicine, representing consumer interests; Dan Heslin, Director, California Employee Benefits, The Boeing Company, representing employer interests; Mary Wiss, Esq., medical malpractice attorney and Past President, San Francisco Trial Lawyers' Association, representing plaintiffs' attorneys' interests; Ken Pivo, Esq., medical malpractice attorney, representing defense attorneys' interests; Phil Madvig, M.D., Associate Executive Director of Quality, The Permanente Medical Group, representing the interests of the Permanente physicians who provide medical services to Kaiser members; Terry Bream, R.N., Manager, Clinical Services, Southern California Permanente Medical Group, representing the interests of Kaiser nurses; and Miguel Contreras, Executive Secretary/Treasurer, AFL-CIO, Southern California, representing labor interests of Kaiser's organized employees and union members who are members of Kaiser Foundation Health Plan. The AAC participated in the selection of the Independent Administrator, worked closely with Kaiser and the OIA in creating the new system, and provides ongoing oversight of the independently administered system. It also reviews the annual report.

### 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 for Kaiser Permanente Member Arbitrations Overseen by the Office of the Independent Administrator*, 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 en route 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**

7. **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:** Completed. As described in Section V(F) 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 25(c)(ii) requires that arbitration hearings be scheduled for consecutive days if more than one day is necessary. Of the 22 cases that had hearings this year, 18 had continuous hearings. The four that were interrupted concluded within two weeks. One was completed by a teleconference a week after the last day of hearing.

8. **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. There are currently 6 cases in the system proceeding on an expedited basis.

#### **Documentation and availability of procedures**

9. **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). 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.

Kaiser members may also obtain them from the Kaiser Permanente Member Service Customer Center.

## Establishing a list of qualified arbitrators

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

**Status:** Completed. The OIA's panel of neutral arbitrators currently has 323 members, made up of 128 in Northern California, and 195 in Southern California. The OIA continues to recruit arbitrators through advertising and targeted mailing and to accept applications from interested parties. There are currently 89 retired judges, or 27% of the total pool, serving as arbitrators on the panel.

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 discussions with the Advisory Committee and Kaiser Permanente.**

**Status:** Completed. As described in Section II(A) of the Annual Report, the OIA solicited applications from provider organizations, from the members of various bar organizations, and from interested members of the legal community throughout the state of California. The OIA has communicated extensively with JAMS/Endispute, Alternative Resolution Centers, Action Dispute Resolution Services, Judicate West, and Resolution Remedies. 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.

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

**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. The OIA originally drafted Rule 11 so that Kaiser had a deadline of 5 days to forward demands to the OIA. During the rules negotiations, Kaiser insisted that it could not dependably forward demands for arbitration to the OIA within 5 business days. The AAC supported Kaiser's insistence on extending this deadline to 10 business days. As stated in Section III(B) of the annual report, Kaiser has most frequently forwarded new demands to the OIA on the same day that it has received them. The average number of days Kaiser has taken to forward demands to the OIA has been 8.93 days. The mode is zero, the median is four days, and the range is from zero to 302 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 V(A) of the annual report, in the majority of cases administered by the OIA, the average time to the naming of a neutral arbitrator is 27.51 days. This figure excludes cases where parties have obtained postponements to select a neutral arbitrator, and cases where more than one neutral arbitrator has been put into place. 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.

- 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 II(A)(4) of the annual report, of the 557 cases administered by the

OIA where neutral arbitrators have been selected, 194, or 34.83% have jointly selected a neutral arbitrator.

- 15. If no arbitrator is selected within that period, 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.

- 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 data base. The OIA uses a lottery program to make random selections. As reported in Section II(A)(4) of the annual report, in Northern California, 124 out of 128 arbitrators have appeared at least once on lists of possible arbitrators. The range is from zero to 23 times. For Southern California, 183 out of 195 arbitrators have appeared on at least one list of possible arbitrators. The range is from zero to 16 times. A total of 166 neutral arbitrators on the OIA's panel have been selected to serve as neutral arbitrators on Kaiser arbitrations. The range of number of assignments to arbitrators on the OIA's panel is from zero to 20. The arbitrator with 20 assignments has been jointly selected by parties 13 times.

- 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 which created the *Rules*, the Arbitration Advisory Committee 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. The OIA has granted one additional continuance during the system's first year.

#### 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 V(F) 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*. There are currently 442 open cases where the parties and neutral arbitrators have held the arbitration management conference.

#### 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, redacted decisions that

the OIA has received under Rule 39(c), 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. The OIA contacts its panelists once per year and asks them 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 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 is 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 complied with Rule 38 in all cases where an award was rendered during the first year of operation.

- 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 decisions are part of the information that is provided to parties and 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. The redacted decisions are the same ones which Kaiser is required by statute to prepare for California's Department of Corporations.

### **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. We understand that the services of a mediator are sometimes being used in this circumstance.

- 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 at this time. Kaiser and the OIA have had several discussions about this recommendation, however.

### 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 about 35% of the cases the OIA is administering, claimants have elected to shift the responsibility for paying the neutral arbitrator's fees and expenses to Kaiser. See sections V(L) and (M) 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 first annual report. Hard copies of the annual report are available 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).

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 because the OIA has only been in existence for one year. However, the contract between Kaiser and the Law Offices of Sharon Lybeck Hartmann provides that the Law Offices make the OIA available for independent audits not to exceed one per calendar year. The OIA has not yet received a request for an audit.

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. We are aware, however, that Kaiser has agreed to participate in a study of arbitration proposed by Rand Corporation to be completed over the next three years. The OIA system will also be part of that study.

#### **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 about it because it is not involved. With regard to the OIA, the attempt is to standardize the system across the state. Standardization increases as Kaiser Member Service Agreements renew and reference the OIA. 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.

#### **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. In this first operational year, benefits and coverage cases constitute only one percent of the entire case load. As the system develops, Kaiser, the Advisory Committee and the OIA are watching to see whether benefits and coverage cases and types of cases other than medical malpractice

need different arbitration procedures. Kaiser has forwarded claims of the following type to the OIA: medical malpractice, premises liability, other tort, benefits, and unknown because the demand did not contain this information. So far, all types of cases are proceeding under the *Rules*.

**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, 28 out of 36 recommendations have been completed, with another three well on the way to completion. Two recommendations, mediation and the audit of the OIA, have not yet been done, and we have no information on recommendations 30 and 36 since they do not involve us.