

**ANNUAL REPORT**

**of the**

**OFFICE OF THE INDEPENDENT ADMINISTRATOR**

**of the**

**KAISER FOUNDATION HEALTH PLAN, INC.  
MANDATORY ARBITRATION SYSTEM**

**for**

**DISPUTES WITH HEALTH PLAN MEMBERS**

**January 1, 2020 - December 31, 2020**

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## REPORT SUMMARY

This is the annual report for the Office of the Independent Administrator (OIA) for 2020. The OIA administers the arbitration system between Kaiser Foundation Health Plan, Inc., or its affiliates (Kaiser) and its members.<sup>1</sup> From the data and analyses in this report, readers may gauge how well the OIA system meets its goals of providing arbitration that is fair, timely, lower in cost than litigation, and protects the privacy of the parties.

### Status of Arbitration Demands

The total number of demands for arbitration decreased. Most of the claims were for medical malpractice. The percentage of claimants proceeding without attorneys, in *pro per*, increased.

- 1. Number of Demands for Arbitration.** The OIA received 490 demands, 120 less than last year. No lien cases were received. See pages 11, 36, and 46 – 47.
- 2. Types of Claims.** Ninety-five percent (95%) of the cases involved allegations of medical malpractice. Less than one percent (<1%) presented benefit and coverage allegations. The remaining cases were based on allegations of premises liability and other torts. See page 12. No new lien cases were received, but two lien cases closed. Because lien cases differ from cases brought by members, they are reported separately on page 36.
- 3. Thirty-three Percent (33%) of Claimants Did Not Have Attorneys.** Claimants in 161 cases, or 33%, were not represented by counsel, an increase from last year. See pages 13 – 14 and 49.

### How Cases Closed

In the majority of cases, the parties resolved their claims. In cases that went to hearing, all were decided by a single neutral arbitrator. No case proceeded with party arbitrators.

- 4. More Than Three-Quarters (77%) of Cases Closed by the Parties' Action.** The parties settled 45% of cases. Thirty-seven cases settled at the Mandatory Settlement Meeting (MSM). Of the cases that settled at the MSM, one claimant was in *pro per*. Claimants withdrew 27% of cases and abandoned 5% by failing to pay the filing fee or get the fee waived. See pages 28 – 29, and 51 – 52.
- 5. Nearly One-Quarter (23%) Closed by Decision of the Neutral Arbitrator.** Four percent (4%) of cases closed after an arbitration hearing, 14% were closed

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<sup>1</sup>Kaiser has arbitrated disputes with its California members since 1971. In the 1997 *Engalla* case, the California courts criticized Kaiser's arbitration system, saying that it fostered too much delay in the handling of members' demands and should not be self-administered. The OIA has administered the system since 1999.

through summary judgment, and 5% were dismissed by neutral arbitrators. See pages 29 – 30, and 51 – 52.

6. **Almost Half (46%) of Claimants Received Some Compensation.** Claimants receive compensation either when their cases settle (45%) or when they are successful after a hearing (1%). See pages 28, 30 and 51 – 52.
7. **Four Percent (4%) of Cases Went to Hearing.** Claimants prevailed in 26% of these cases. The average award was \$491,076, and the range was from \$40,000 to \$1,677,649. See pages 30, 48, and Exhibit H.
8. **All Cases Were Heard by a Single Neutral Arbitrator.** All of the hearings involved a single neutral arbitrator. See page 22.

### Meeting Deadlines

The *Rules* allow the parties to delay the neutral arbitrator selection process and extend the arbitration completion date. Even with such delays, the process is expeditious.

9. **Nearly Half (46%) of Neutral Arbitrator Selections Proceeded Without any Delay.** The *Rules* give parties the option to postpone the deadline to select a neutral arbitrator, but nearly half (46%) of the neutrals were selected without the parties exercising this option. This year, the claimants made all but four of the requests for 90 day postponement. California law gives parties the opportunity to timely disqualify neutral arbitrators. In two percent (2%) of the cases, parties disqualified the neutral arbitrator. In four percent (4%) of the cases, parties exercised both the postponement and disqualification options. Claimants disqualified 41 neutral arbitrators and Kaiser disqualified 8. See pages 18 and 20 – 21.
10. **Average Length of Time to Select a Neutral Arbitrator is 72 Days.** The time to select a neutral arbitrator in cases with no delay was 23 days. The time to select a neutral with a 90 day postponement was 108 days. In cases with only a disqualification, it was 67 days. In cases with both a postponement and disqualification it was 210 days. The overall average length of time to select a neutral arbitrator for all cases was 72 days, 10 days more than last year.<sup>2</sup> See pages 20 – 21, and 50 – 51.
11. **On Average, Cases Closed in Twelve Months.** Cases closed, on average, in 356 days, 10 days less than last year. No case closed beyond the deadline required by

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<sup>2</sup>See Section II.C. which discusses temporary rules enacted to address concerns regarding the COVID-19 pandemic. Many of these rules extended parties' deadlines to respond, which in turn may have contributed to the increase.

the *Rules*. Eighty-five percent (85%) of the cases closed within 18 months (the deadline for “regular” cases) and 61% closed in a year or less. See pages 26 – 27 and 51 – 52.

12. **On Average, Cases With Hearings Were Completed in Less than Two Years.** Cases that were decided by a neutral arbitrator making an award after a hearing closed on average in 660 days (22 months). This average includes cases that were designated complex, extraordinary, or that received a Rule 28 extension because they needed extra time. “Regular cases” closed in 484 days (a little over 16 months). See pages 27, 30 and 52 – 53.

### **Panel of Neutral Arbitrators**

More than half (60%) of the OIA panel spend all of their time acting as neutral arbitrators. More than half (57%) of the neutral arbitrators served on a case. The two methods of selecting a neutral arbitrator – strike and rank or joint selection – allow parties to select anyone they collectively want. The majority of neutral arbitrators the parties jointly selected were from the OIA panel.

13. **The Neutral Arbitrator Panel.** The OIA has 182 neutral arbitrators on its panel, 11 fewer than last year. Forty-three percent (43%) of them, or 79, are retired judges. See page 7.
14. **Neutral Arbitrator Backgrounds.** The applications completed by the members of the OIA panel show that 109 arbitrators, or 60%, spend all of their time acting as neutral arbitrators. The remaining members divide their time by representing plaintiffs and defendants, though not necessarily in medical malpractice litigation. Ninety-three percent (93%) of the neutral arbitrators report having medical malpractice experience. See pages 8 – 9.
15. **More Than Half (57%) of Arbitrators Served on a Case.** Fifty-seven percent (57%) of the neutral arbitrators on the OIA panel served on a case. Arbitrators averaged two assignments each. Twenty-two neutrals, including arbitrators not on the OIA panel, decided the 24 awards made. Twenty arbitrators (91%) wrote a single award. See pages 10 and 47.
16. **Majority of Neutral Arbitrators Selected by the Parties were Members of the OIA Panel (93%).** Seventy-three percent (73%) of neutral arbitrators were selected through the strike and rank process. Twenty percent (20%) of the arbitrators jointly selected were members of the OIA panel. The other 7% of the jointly arbitrators were not members of the OIA panel. See page 16.

## Neutral Arbitrator Fees

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

17. **Kaiser Paid the Neutral Arbitrators' Fees in 94% of Closed Cases that had Fees.** Claimants can choose to have Kaiser pay the entire cost of the neutral arbitrator. Kaiser paid the neutral arbitrators' fees in 94% of closed cases that had fees. See page 36.
18. **Cost of Arbitrators.** Hourly rates charged by neutral arbitrators range from \$200/hour to \$1,200/hour, with an average of \$555/hour. For the 443 cases that closed, and for which the OIA has information, the average fee charged by neutral arbitrators was \$7,495. In some cases, neutral arbitrators reported that they charged no fees. Excluding cases where no fees were charged, the average was \$7,867. The average fee in cases decided after a hearing was \$49,625. See page 36.

## Evaluations

When cases conclude, the OIA sends questionnaires to the parties or their attorneys asking them about the OIA system, and if the cases closed by neutral arbitrator actions, an evaluation of the neutral arbitrators. Of those responding, the parties gave their neutral arbitrators and the OIA system positive evaluations. When cases close by neutral arbitrator actions, the OIA also sends the neutral arbitrators a questionnaire about the OIA system. Neutral arbitrators gave positive evaluations of the OIA system.

19. **Positive Evaluations of Neutral Arbitrators by Parties.** Most parties who responded to the OIA evaluation expressed satisfaction with the neutral arbitrators and would recommend them to others, with an average of 4.1 on a 5 point scale. *Pro pers* view neutral arbitrators less favorably. See pages 37 – 38.
20. **Positive Evaluations of the OIA by Neutral Arbitrators.** Ninety-nine percent (99%) of the neutral arbitrators reported that the OIA experience was the same as or better than the court system and 1% said it was worse. See pages 39 – 40.
21. **Positive Evaluations of the OIA by Parties.** Ninety percent (90%) of the responding parties and attorneys reported that the OIA system was the same as or better than the court system and 10% said it was worse. See pages 41 – 43.

## Development and Changes in the System

The OIA and the Arbitration Oversight Board (AOB) continuously strive to improve the arbitration system.

22. **Changes in Membership of the AOB.** One member resigned: Beong-Soo Kim. Two new members joined: Dr. Roxana Heidi Yoonessi-Martin and Tony Rodriguez. One member, Annette Carnegie, served for seven months as an interim member while a replacement was found. See pages 4 and 43 – 44, and Exhibit C.
23. **Audit of the OIA.** Kenneth Sipiora, CPCU, Records Auditor, conducted a review of the OIA records and files. The auditor randomly selected 40 open and closed case files, and examined 70 different elements. The audit concluded that no material exceptions were found. See page 4 and Exhibit D.
24. **AOB Approves Temporary Rules in Response to COVID-19.** The OIA received authority from the AOB to enact temporary rules in response to the COVID-19 pandemic. Many of the rules extended deadlines, for example to pay the filing fee so cases would not be deemed abandoned; or to return the List of Possible Arbitrators (LPA) so a neutral arbitrator would not be selected in a case where parties had not yet submitted their LPA; or for Kaiser to submit a claimant’s demand for arbitration to the OIA. See pages 4 – 6 for all 11 temporary rules.
25. **Demographic Data Posted.** Pursuant to state law, the OIA posts the demographic data relative to ethnicity, race, disability, veteran status, gender, gender identity, and sexual orientation of all arbitrators as self-reported by the arbitrators in the aggregate on the OIA website.<sup>3</sup> See page 6 and Exhibit F.
26. **Neutral Arbitrator Information Packets Online.** The OIA began providing parties with online access to the neutral arbitrator information packets in response to the COVID-19 “safer at home” public health orders. The parties are provided with password-protected access to use during the neutral arbitrator selection process. See pages 6 – 7.
27. **AOB Requested Collection of Demographic Data from Non-OIA Jointly Selected Neutral Arbitrators.** At the request of the AOB, the OIA collected the demographic data from jointly selected neutral arbitrators not on the OIA panel. The data has been combined, and is included in the aggregate on the OIA website. See page 7 and Exhibit E.
28. **OIA Contract Renewed for Three More Years.** The AOB renewed its contract with the OIA for three more years, through March 28, 2024. See page 7.

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<sup>3</sup>See California Code of Civil Procedure §1281.96(a)(12).

- 29. AOB and OIA Commitment to Diversity Discussions Continue.** The AOB and the OIA continue to explore opportunities to improve the diversity of the OIA panel of neutral arbitrators. The AOB has suggested action items to help accomplish this goal, including the collection of diversity data and outreach. See pages 7 and 45.

## **Conclusion**

The goal of the OIA is to provide an arbitration system that is fair, timely, lower in cost than litigation, and protects the privacy of the parties. To summarize:

- Neutral arbitrators are selected expeditiously, and the cases close faster than in court.
- Parties can, and do, disqualify neutral arbitrators they do not like.
- The filing fee is lower than in court, and parties can, and do, shift the costs of the neutral arbitrators to Kaiser.
- OIA arbitrations are confidential, and the OIA does not publish the names of individual claimants or respondents involved in them.
- Neutral arbitrators on the OIA panel have plaintiff, defendant, and judicial backgrounds. The cases are distributed among them.
- Neutral arbitrators and the OIA system receive positive evaluations.
- The OIA publishes annual reports, information about its cases in compliance with California law, and neutral arbitrator redacted decisions. This information is available on the website for the parties and the public.

## I. INTRODUCTION & OVERVIEW

The Office of the Independent Administrator (OIA) issues this report for 2020.<sup>1</sup> It describes the arbitration system that handles claims brought by Kaiser members against Kaiser Foundation Health Plan, Inc. or its affiliates (Kaiser).<sup>2</sup> Marcella A. Bell, an attorney, is the Independent Administrator. Under her contract with the Arbitration Oversight Board, the OIA maintains a panel of neutral arbitrators to hear Kaiser cases and independently administers the arbitration system between Kaiser and its members. The contract also requires that Ms. Bell write an annual report. This report describes the goals of the system, the actions being taken to achieve them, and the degree to which they are being met. While this report mainly focuses on what happened in the arbitration system during 2020, the final section compares this year with earlier years.

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

The arbitrations are administered pursuant to the *Rules for Kaiser Permanente Member Arbitrations Administered by the Office of the Independent Administrator Amended as of January 1, 2020 (Rules)*. The *Rules* consist of 54 rules in a 21 page booklet and are available in English, Spanish, and Chinese.<sup>3</sup> Some important features include:

Procedures for selecting a neutral arbitrator;<sup>4</sup>

Deadlines requiring that most cases be resolved within 18 months;<sup>5</sup>

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<sup>1</sup>This report, along with the prior annual reports, the *Rules*, various forms, and other information, including OIA disclosures, are available on the OIA website, [www.oia-kaiserarb.com](http://www.oia-kaiserarb.com). The OIA can be reached by calling 213-637-9847, faxing 213-637-8658, or e-mailing [oia@oia-kaiserarb.com](mailto:oia@oia-kaiserarb.com). A description of the OIA's staff is attached as Exhibit A.

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

<sup>3</sup>The *Rules* are attached as Exhibit B.

<sup>4</sup>Exhibit B, Rules 16 and 18.

<sup>5</sup>Exhibit B, Rule 24.

Procedures to adjust these deadlines when required;<sup>6</sup> and

Procedures under which claimants may choose to have Kaiser pay all the fees and expenses of the neutral arbitrator.<sup>7</sup>

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

### **A. Goals of the Arbitration System Between Members and Kaiser**

The system administered by the OIA is expected to provide a fair, timely, and low cost arbitration process that respects the privacy of the parties. These goals are set out in Rule 1. The data in this report are collected and published to allow the AOB and the public to determine how well the arbitration system meets these goals.<sup>8</sup>

### **B. Format of This Report**

Section II discusses developments and changes in the system. Sections III and IV look at the OIA's panel of neutral arbitrators, and the number and types of cases the OIA received. The parties' selection of neutral arbitrators is discussed in Section V. Section VI summarizes the methods for monitoring compliance of open cases, and Section VII analyzes how cases are closed and the length of time to close. Section VIII discusses the cost of arbitration. Sections IV.B. through VIII exclude lien cases.<sup>9</sup> Section IX presents the analyses for lien cases.<sup>10</sup> The parties' evaluations of neutral arbitrators and the parties' and neutral arbitrators' evaluations of the OIA system are summarized in Section X.<sup>11</sup> Section XI describes the AOB's membership and activities. Finally, Section XII compares the operation of the system over time.

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<sup>6</sup>Exhibit B, Rules 24, 28 and 33.

<sup>7</sup>Exhibit B, Rules 14 and 15.

<sup>8</sup>The OIA was created in response to the recommendation of a Blue Ribbon Panel (BRP) and began operating March 28, 1999. Ms. Bell has served as the Independent Administrator since March 29, 2015. The OIA met all of the recommendations that pertain to it since its first operating year. A full copy of the BRP report and the current status of each recommendation is available on the OIA website.

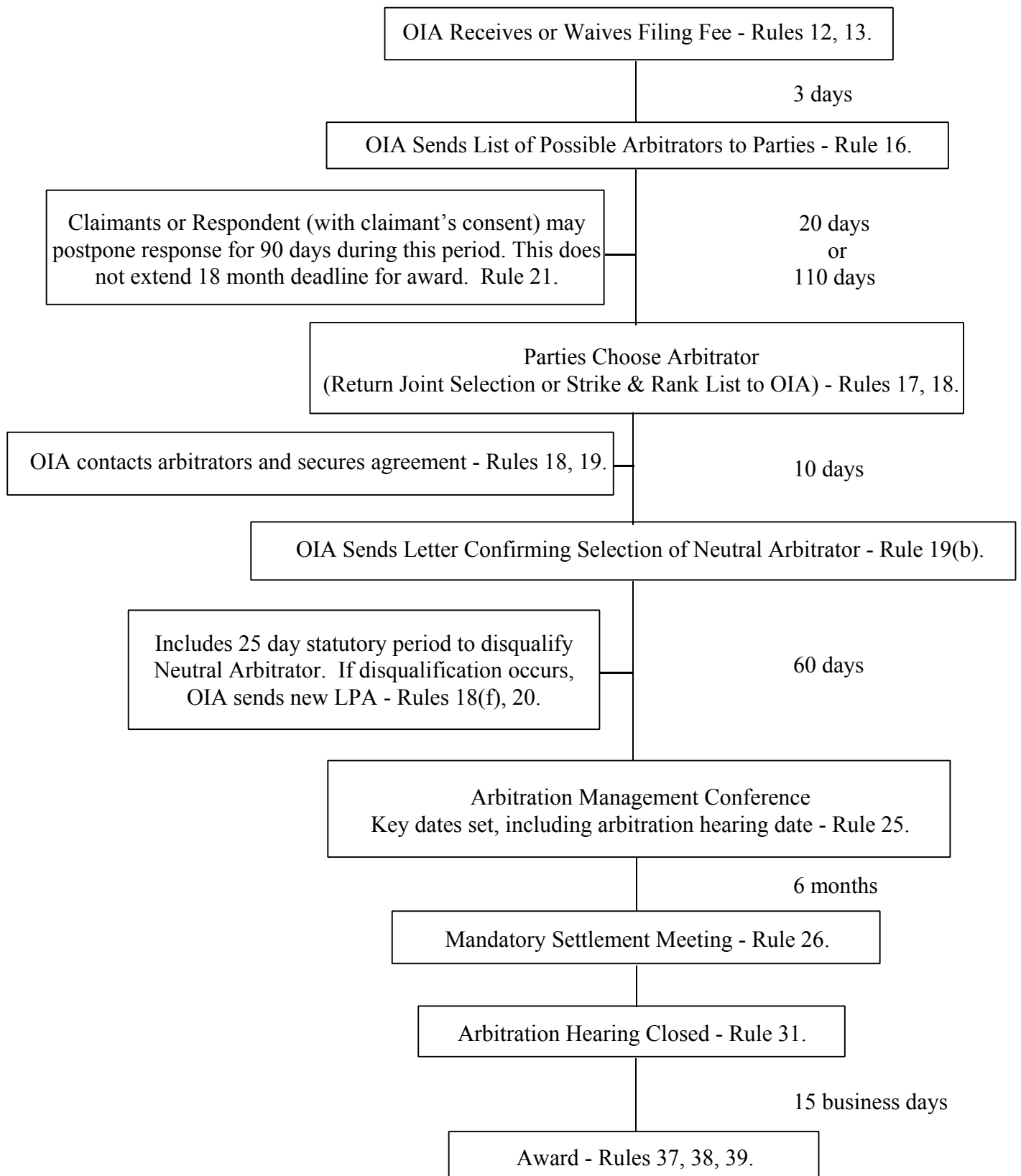
<sup>9</sup>Lien cases are brought by Kaiser against its members to recover costs of medical care provided to a member who received a third party recovery.

<sup>10</sup>No lien cases were received this year, but two lien cases closed. This section discusses these cases.

<sup>11</sup>Because these are anonymous, all of the evaluations are considered together.



# Timeline for Arbitrations Using Regular Procedures



MAXIMUM OF 18 MONTHS\*

\*Unless Rule 24(b), 24(c), or 28 applies.

## **II. DEVELOPMENT AND CHANGES IN THE SYSTEM**

### **A. Change in Membership of the AOB<sup>12</sup>**

Beong-Soo Kim, Vice President and Assistant General Counsel, Kaiser Foundation Health Plan, Inc., resigned in June. He had been a member of the AOB since 2015.

Dr. Roxana Heidi Yoonessi-Martin, Compliance Officer and Lead Counsel, Southern California Permanente Medical Group, joined in March. Annette Carnegie, Lead Division Counsel, Kaiser Foundation Health Plan, Inc., also joined in March as an interim member until Tony Rodriguez, Vice President and Assistant General Counsel, Kaiser Foundation Hospitals / Health Plan, joined in October.

### **B. Audit of the OIA**

The BRP Report, which was, in large part, instrumental in creating the OIA, recommended that the OIA be audited at least every five years. In 2019, the AOB selected Kenneth Sipiora,<sup>13</sup> CPCU, Records Auditor, to conduct a review of the OIA records and files. The auditor randomly selected 40 open and closed case files, and examined 70 different elements. The auditor found a few immaterial exceptions, but noted that the OIA diligently followed up on these instances, and that the attributes were subsequently satisfied without exception.<sup>14</sup> The audit was completed in March, and concluded that no material exceptions were found.<sup>15</sup>

### **C. AOB Approves Temporary Rules in Response to COVID-19<sup>16</sup>**

On March 19, 2020, Los Angeles County health officials implemented “safer at home” measures in response to the COVID-19 pandemic.<sup>17</sup> These county measures required people to stay at home and non-essential businesses to close. On March 20, 2020, Ms. Bell contacted the AOB Chair, Richard Spinello, to request authority to enact temporary rules to address COVID-

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<sup>12</sup>See Exhibit C for the resumes of the new AOB members in alphabetical order.

<sup>13</sup>Kenneth Sipiora also performed the 2014 audit of the OIA.

<sup>14</sup>The auditor noted instances where Arbitration Management Conferences occurred after the deadline by mutual agreement of the parties but no documented extension in the file.

<sup>15</sup>A copy of the audit is attached as Exhibit D. A separate and confidential audit examined the OIA’s security and IT procedures.

<sup>16</sup>COVID-19 is the abbreviation for coronavirus disease 2019, a highly contagious respiratory disease responsible for a global pandemic.

<sup>17</sup>The OIA is located in Los Angeles but the “safer at home” measures were implemented statewide at different intervals.

19 concerns. The OIA made the request and received its authority under Rule 50c which states, “[i]n the event of an urgent condition that in the judgment of the Independent Administrator threatens the orderly administration of the arbitration system, with the concurrence of the Chair or Vice-Chair of the AOB, the Independent Administrator shall adopt such temporary rules as it deems necessary to preserve the orderly administration of the arbitration system.”

The OIA enacted 11 temporary rules. The temporary rules were communicated by email to all parties and neutral arbitrators with open cases.<sup>18</sup> The OIA also added the temporary rules to its website’s home page. All but two of the temporary rules have been lifted. Temporary Rules 4 and 9 remain in place.

Temporary Rule 1 extended the deadline for claimants to pay the \$150 filing fee or to submit filing fee waivers for at least 30 days. (Rule 12.)

Temporary Rule 2 extended the deadline for parties to return their Lists of Possible Arbitrators (LPA) for at least 30 days for matters where both parties had not returned their LPAs. (Rule 16.)

Temporary Rule 3 stayed the selection of neutral arbitrators in cases where the neutral arbitrator was unable to act in accordance with the statutory deadlines. The stay extended the selection for two weeks. (Rules 17 or 18.)

Temporary Rule 4 provided neutral arbitrators with the authority to serve decisions and/or orders electronically rather than by mail. (Rule 39.)

Temporary Rule 5 extended the deadline for Kaiser to submit a claimant’s demand for arbitration to the OIA for at least 30 days. (Rule 11.)

Temporary Rule 6 acknowledged that the OIA will continue to timely process requests for expedited procedures. (Rule 34.)

Temporary Rule 7 declared March 23, 2020 through April 3, 2020 as holidays for purposes of counting days. (Rule 43.)

Temporary Rule 8 ordered all neutral arbitrators with open cases to suspend and continue all in-person hearings for 60 days. (Rules 6 and 28.)

Temporary Rule 9 provided claimants with the ability to electronically send their demands for arbitration to the OIA. The OIA forwarded the demands for arbitration it received on behalf of claimants to Kaiser. (Rule 8.)

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<sup>18</sup>If the OIA did not have an email address for a party, the OIA contacted them by phone and requested one. For those who did not have an email address, the OIA sent the communication by U.S. mail.

Temporary Rule 10 ordered all neutral arbitrators with open cases to suspend and continue all dispositive telephonic hearings for 60 days. (Rules 6 and 28.)

Temporary Rule 11 ordered all neutral arbitrators with open cases to stay all discovery for 60 days. (Rule 27.)

#### **D. OIA Posts Demographic Data**

Pursuant to state law, provider organizations like the OIA are now required to collect demographic data relative to ethnicity, race, disability, veteran status, gender, gender identity, and sexual orientation of all arbitrators as self-reported by the arbitrators.<sup>19</sup> The statute further requires that provider organizations post the data in the aggregate on their website quarterly.

In order for the OIA to comply with the statute, the OIA contacted all its neutral arbitrators and required that they complete and return the OIA Demographic Form. All but three returned the form. Those who did not return the form were removed from the OIA panel of neutral arbitrators.

The OIA Demographic Form is now also part of the neutral arbitrator application, and neutral arbitrators cannot be admitted unless they complete the form.

The OIA began posting the demographic data on March 31, 2020 and updates it quarterly.<sup>20</sup>

#### **E. Neutral Arbitrator Information Packets**

Beginning April 2020, information packets for OIA neutral arbitrators are available on the OIA website for parties to use during the neutral arbitrator selection process.<sup>21</sup> The OIA began providing online access to the parties in response to the COVID-19 “safer at home” public health orders. Parties are provided with password-protected access to the information packets. The packets include the neutral arbitrator’s application, fee schedule, and any application updates. If a neutral arbitrator has served in prior OIA cases, any evaluations previously submitted by parties are included. Additionally, if a neutral arbitrator has issued an award or decision in the last five years, the redacted award or decision is also included. Although online

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<sup>19</sup>See California Code of Civil Procedure §1281.96(a)(12).

<sup>20</sup>See Exhibit E for a copy of the OIA Demographic Form and the quarterly report of the demographic data.

<sup>21</sup>The information packets are for informational use only and are provided to assist the parties in the neutral arbitrator selection process. They are not neutral arbitrators’ statutory disclosures. Neutral arbitrators are required to provide the parties with their statutory disclosures within ten days of their selection. See California Code of Civil Procedure §1281.9. See also Section V. for a description of the neutral arbitrator selection process.

access has been well received by the parties, the OIA accommodates parties who request to receive the information by U.S. mail.

**F. AOB Requested Collection of Demographic Data from Jointly Selected Neutral Arbitrators not on the OIA Panel<sup>22</sup>**

The AOB requested that the OIA require jointly selected neutral arbitrators not on the OIA panel of neutral arbitrators, to complete and return the OIA Demographic Form. The OIA contacted 16 neutral arbitrators with pending cases and all returned the form. The demographic data received from these arbitrators has been added to the data collected from the neutral arbitrators on the OIA panel. The data has been combined, and is included in the aggregate on the OIA website.

**G. OIA Contract Renewed for Three More Years**

The AOB renewed its contract with Ms. Bell to act as the Independent Administrator for three more years, through March 28, 2024.

**H. AOB and OIA Continue to Research Ways to Improve Diversity of the OIA Panel of Neutral Arbitrators**

The AOB and the OIA continue to explore opportunities for the OIA to improve the diversity of its panel of neutral arbitrators. At the request of the AOB, the OIA is researching how it can provide information on race, ethnicity, and language of neutral arbitrators on the OIA website, as well as, a statement encouraging parties to consider jointly selecting a diverse neutral arbitrator. The AOB also suggested that the OIA identify neutral arbitrators who may be able to provide guidance on how to encourage attorneys and retired judges from diverse backgrounds to apply to the OIA panel. The OIA has participated in a number of virtual events focused on diversity, access, and inclusion in an effort to develop additional actionable ideas. The OIA has also reached out to minority bar associations, and provided information about the OIA, in an effort to recruit new members to the panel. The AOB and the OIA recognize that this is a continuous process, and are committed to continuing efforts to improve diversity in the system.

**III. PANEL OF NEUTRAL ARBITRATORS**

**A. Turnover and Size of the Panel**

At the end of the year, there were 182 people on the OIA's panel of neutral arbitrators. Of those, 79 were former judges, or 43%.

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<sup>22</sup>See Section V. for parties ability to jointly select neutral arbitrators not on the OIA panel.

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

**Table 1 - Number of Neutral Arbitrators by Region**

<b>Total Number of Arbitrators on the OIA Panel:</b>	<b>182</b>
<b>Northern California Total:</b>	<b>91</b>
<b>Southern California Total:</b>	<b>99</b>
<b>San Diego Total:</b>	<b>52</b>
<b>The three regions total 242 because 43 arbitrators are on more than one panel; 17 on all three panels, 3 on No. Cal &amp; So. Cal, and 23 on So. Cal &amp; San Diego.</b>	

During the year, 12 arbitrators voluntarily left the panel<sup>23</sup> and 7 additional arbitrators were removed. Two were removed because they no longer met the qualifications required for neutral arbitrators,<sup>24</sup> three for failing to return the OIA Demographic Form,<sup>25</sup> and two for failing to comply with the mandated Ethics Standards for Neutral Arbitrators in Contractual Arbitration. Nine neutral arbitrators joined the panel,<sup>26</sup> and one applicant was rejected.<sup>27</sup>

## **B. Practice Background of Neutral Arbitrators**

The neutral arbitrator application requires applicants to estimate the percentage of their practice spent in various professional endeavors. On average, OIA neutral arbitrators spend their time as follows: 72% of the time acting as a neutral arbitrator, 6% as a claimant (or plaintiff) attorney, 7% as a respondent (or defense) attorney, 11% in other forms of employment (including non-litigation legal work, teaching, mediating, etc.) and 1% acting as a respondent's party arbitrator, a claimant's party arbitrator, or an expert.

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<sup>23</sup>For the neutrals who provided reasons, the most common reason given for resigning was retiring practice.

<sup>24</sup>The qualifications for neutral arbitrators are attached as Exhibit G.

<sup>25</sup>See Section II.D. and Exhibit E.

<sup>26</sup>Neutral arbitrator applications are available on the OIA website.

<sup>27</sup>If the OIA rejects an application, we inform the applicant of the qualification(s) he or she failed to meet.

More than half (60%) of the panel, 109 members, report that they spend 100% of their practice acting as neutral arbitrators. The full distribution is shown in Table 2.

**Table 2 - Percentage of Practice Spent as a Neutral Arbitrator**

<b>Percent of Time</b>	<b>0%</b>	<b>1 – 25%</b>	<b>26 – 50%</b>	<b>51 – 75%</b>	<b>76 – 99%</b>	<b>100%</b>
<b>Number of NAs</b>	7	38	14	6	8	109

The members of the OIA panel who are not full time arbitrators on average spend 9% of their time as litigators. See Table 3 for the full distribution.

**Table 3 - Percentage of Practice Spent as an Advocate**

<b>Percent of Practice</b>	<b>Number of NAs Reporting Claimant Counsel Practice</b>	<b>Number of NAs Reporting Respondent Counsel Practice</b>
0%	150	152
1 – 25%	14	11
26 – 50%	11	12
51 – 75%	3	2
76 – 100%	4	5

Finally, while the qualifications do not require that members of the OIA panel have medical malpractice experience, 93% of them do. At the time they filled out or updated their applications, 169 reported that they had medical malpractice experience, while 13 did not. Of the 13 who reported no medical malpractice experience, 11 of them have since served as a neutral arbitrator in an OIA case and may now have acquired medical malpractice experience.

### **C. Participation of All Neutral Arbitrators<sup>28</sup>**

The first four parts of this section consider the number of neutral arbitrators named on the List of Possible Arbitrators; the number who served; the number who wrote awards; and the number who have served after making a large award. The final section compares cases closed by neutral arbitrators selected ten or more times with cases closed by other neutral arbitrators.

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<sup>28</sup>This section includes statistics for all neutral arbitrators selected, including those neutrals who are not members of the OIA panel. The procedure for selecting neutral arbitrators for individual cases is described in Section V.A.

## **1. The Number Named on a List of Possible Arbitrators**

All but one of the neutral arbitrators on the OIA panel were named on at least one List of Possible Arbitrators (LPA) sent to the parties by the OIA.<sup>29</sup> The average number of times Northern California arbitrators appeared on a LPA was 31. The range of appearances was 8 – 54 times. In Southern California, the average number of appearances was 27. The range was 1 – 40. In San Diego, the average number of appearances was 7. The range was 0 – 15.<sup>30</sup>

## **2. The Number Who Served**

This year, 116 different neutral arbitrators were selected to serve in 462 cases. The majority (104) were members of the OIA panel. Thus, 57% of the OIA panel were selected to serve in a case. The number of times a neutral on the OIA panel was selected ranges from 0 – 24. Two neutral arbitrators at the highest end were jointly selected 13 times each. The average number of appointments for members of the panel was two.

## **3. The Number Who Wrote Awards**

Twenty-two neutral arbitrators wrote 24 awards. Twenty arbitrators (91%) wrote a single award, while two wrote two each.

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

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

This year, two neutral arbitrators made awards for more than \$500,000. One neutral arbitrator made an award of \$600,000 and has not been selected to serve again as of this time. The other neutral made an award of \$1,677,649 and has been selected five times, including a joint selection. This neutral has also previously made one other large award.

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<sup>29</sup>In addition to chance, the number of times a neutral arbitrator is listed is affected by how long in a given year the arbitrator has been on the panel, the number of members on each panel, and the number of demands for arbitration submitted in the geographical area for that panel. The number of times an arbitrator is selected also depends on whether the individual will hear cases when the claimant has no attorney (*pro per* cases). Twenty-seven percent (27%) of the panel will not hear *pro per* cases.

<sup>30</sup>The neutral arbitrator who was not listed on a San Diego LPA was admitted to the San Diego panel in October.



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

Each year, the OIA compares how cases closed by neutral arbitrators selected ten or more times with cases closed by other neutral arbitrators. There were nine neutral arbitrators who were selected ten or more times this year. Table 4 shows the comparison of cases closed with these nine neutral arbitrators versus cases closed with other neutral arbitrators.

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

Cases Closed 2019 – 2020	Cases with Neutral Arbitrators Selected 10 or More Times in 2020		Cases with Other Neutral Arbitrators	
Settled	132	59%	337	46.6%
Withdrawn	45	20%	171	23.7%
Summary Judgment	31	14%	105	14.5%
Awarded to Respondent	8	4%	42	5.8%
Awarded to Claimant	1	<1%	19	2.6%
Dismissed	7	3%	49	6.8%
Total	224		723	

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

Kaiser submitted 490 demands for arbitration. Geographically, 248 demands for arbitration came from Northern California, 217 came from Southern California, and 25 came from San Diego.<sup>31</sup>

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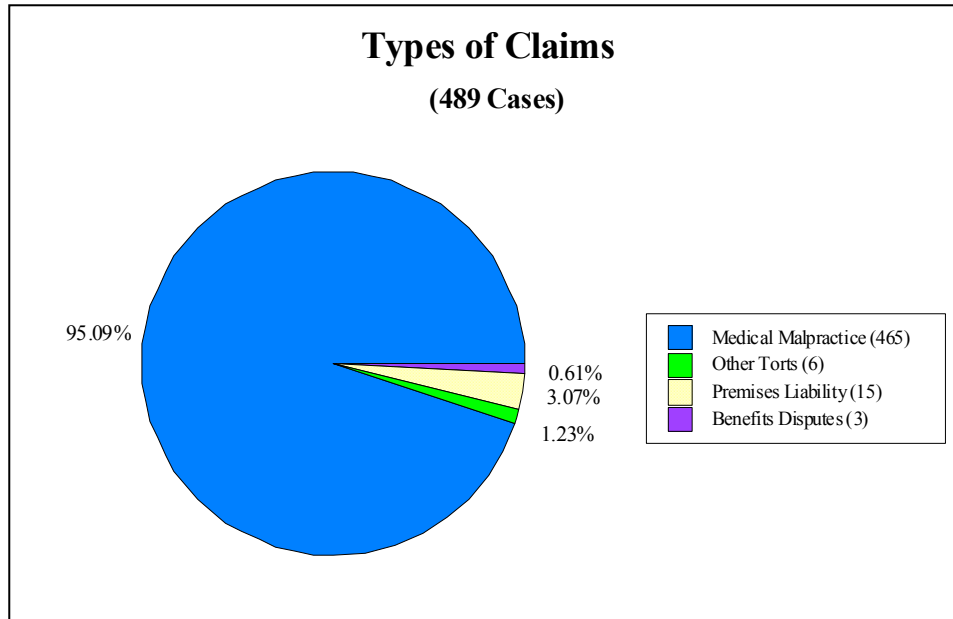
<sup>31</sup>The allocation between Northern and Southern California is based upon Kaiser's corporate division. Roughly, demands based upon care given in Fresno or north are in Northern California, while demands based upon care given in Bakersfield or south are in Southern California or San Diego. Rule 8 specifies where to serve demands for Northern and Southern California, including San Diego.

## A. Types of Claims

The OIA administered 489 new cases.<sup>32</sup> The OIA categorizes cases by the subject of their claim: medical malpractice, premises liability, other tort, lien, or benefits and coverage. Medical malpractice cases make up 95%, or 465 cases. Benefits and coverage cases represent less than one percent or three cases.

Chart 1 shows the types of new claims the OIA administered during the year.

**Chart 1**



As discussed in Section I.B., the rest of this report, with the exception of Sections IX – XII, excludes lien cases from its analysis. Although no lien cases were received this year, Section IX discusses the two lien cases that closed.

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<sup>32</sup>A few of these demands submitted by Kaiser are “opt in” cases – based on a contract that required arbitration but not the use of the OIA. There were three “opt in” cases. Two claimants chose to have the OIA administer their claims, and one was pending at the end of the year.

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

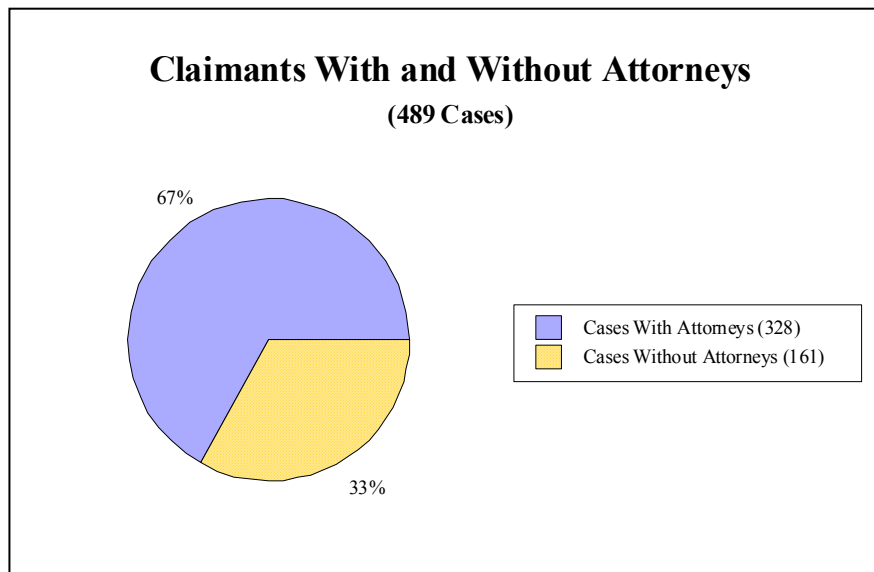
The *Rules* require Kaiser to submit demands for arbitration to the OIA within ten days of receiving them.<sup>33</sup> The average length of time that Kaiser took to submit demands to the OIA was six days. The range was 0 – 338 days.<sup>34</sup>

There were 44 cases in which Kaiser took more than 10 days to submit the demand. The average in these cases was 29 days, and the range was 11 – 338 days. The OIA received 21 of these cases during the enactment of the COVID-19 temporary rules. Temporary Rule 5 provided Kaiser with a 30 day extension to submit demands to the OIA.<sup>35</sup> Under Temporary Rule 5, only one of the 21 cases was considered late.<sup>36</sup>

## C. Claimants With and Without Attorneys

Claimants were represented by counsel in 67% of new cases (328 of 489). In 33% of cases, the claimants represented themselves (or acted in *pro per*).

Chart 2



<sup>33</sup>Exhibit B, Rule 11.

<sup>34</sup>In the case that took 338 days, the claimant attorney filed a demand for arbitration but retracted it, wanting it to be treated as a notice of intent to file. Claimant attorney later notified Kaiser that they no longer represented claimant, but never filed a substitution. Because the original document sent to Kaiser was titled "Demand for Arbitration," Kaiser resubmitted the case to the OIA as required by Rule 11.

<sup>35</sup>See Section II.C. for more information regarding the enactment of temporary rules to address COVID-19 concerns.

<sup>36</sup>The late case took Kaiser 61 days to send to the OIA.

## V. SELECTION OF THE NEUTRAL ARBITRATORS

One of the most important steps of the arbitration process occurs at the beginning: the selection of the neutral arbitrator. Sub-section A describes the selection process in general. The next four sub-sections discuss different aspects of the selection process in detail: whether the parties selected the neutral arbitrator by joint selection or by striking and ranking the names on their List of Possible Arbitrators (LPA); the cases in which the parties decided to postpone the selection of the neutral; the cases in which the parties disqualified a neutral arbitrator; and the amount of time it took the parties to select the neutral arbitrator. Finally, the report examines cases in which parties have selected party arbitrators.

### A. How Neutral Arbitrators are Selected

The process for selecting the neutral arbitrator begins after the OIA receives a claimant's demand for arbitration and the \$150 arbitration filing fee or a waiver of that fee. The OIA sends both parties an LPA. The LPA contains 12 randomly computer-generated names of neutral arbitrators from the appropriate geographical panel.

Along with the LPA, the OIA provides the parties with password-protected access to information about the neutrals named on the LPA.<sup>37</sup> The information includes each neutral arbitrator's application and fee schedule, and subsequent updates to the application, if any.<sup>38</sup>

The information also includes copies of any evaluations previous parties have submitted about the arbitrator, and any redacted awards or decisions the neutral arbitrator has written within the last five years.

The parties have 20 days to respond to the LPA.<sup>39</sup> Parties can respond in one of two ways. First, both sides can jointly select a neutral arbitrator. This person does not have to be named on the LPA, be on the OIA panel, or meet the OIA qualifications.<sup>40</sup> Provided the person agrees to follow the *Rules* and completes the OIA Demographic Form, the parties may jointly select anyone they want to serve as neutral arbitrator. See Exhibit E.

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<sup>37</sup>The OIA accommodates parties who request to receive the information by U.S. mail.

<sup>38</sup>Neutral arbitrators are required to update their applications every two years. If an arbitrator has not served on the panel for at least two years, he/she may not have any update.

<sup>39</sup>A member of the OIA staff contacts the parties before their responses to the LPA are due to remind them of the deadline.

<sup>40</sup>Neutral arbitrators who do not meet the OIA qualifications may serve as jointly selected neutral arbitrators so long as they agree to follow the *Rules*. There is, however, one exception: If, pursuant to California's Ethics Standards, a neutral arbitrator has promised not to take another case with the parties while the first remains open and the OIA knows the case is still open, the OIA would not allow the person to serve as a neutral arbitrator in a subsequent case.

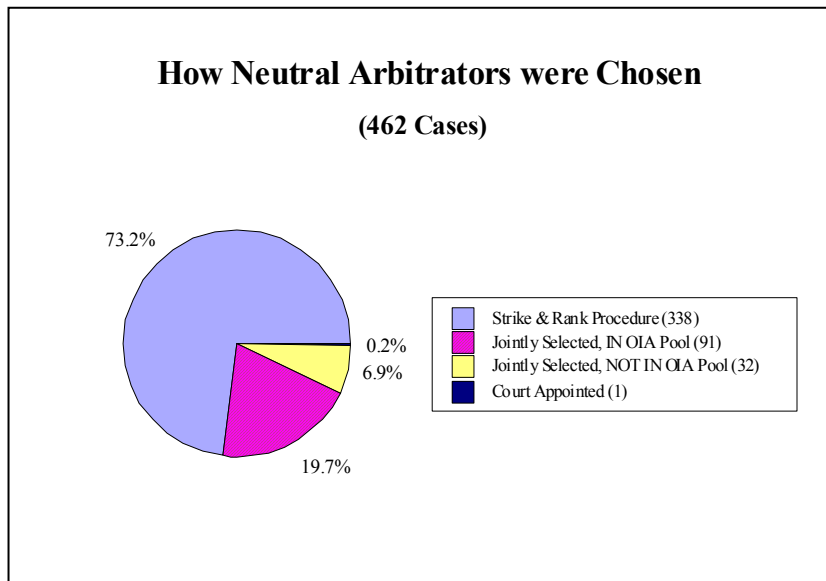
Second, if the parties do not jointly select a neutral arbitrator, each side returns the LPA, striking up to four names and ranking the remaining eight names in order of preference, with “1” as the top choice. When the OIA receives the LPAs, the OIA eliminates any names that have been stricken by either side and then totals the scores of the names that remain. The person with the best score<sup>41</sup> is asked to serve. This is called the “strike and rank” process.

Before a neutral has been selected, claimant can request a postponement of up to 90 days of the LPA deadline under Rule 21. In addition, after the neutral arbitrator is selected, but before he or she begins to serve, California law allows either party to disqualify the neutral arbitrator. A number of cases close before a neutral arbitrator is selected. Fifty-seven cases either settled (19) or were withdrawn (38) without a neutral arbitrator in place.<sup>42</sup>

### B. Joint Selections vs. Strike and Rank Selections

Of the 462 neutral arbitrators selected, 123, or 27%, were jointly selected by the parties and 338, or 73%, were selected by the strike and rank procedure. One neutral arbitrator was selected by court order. Of the neutral arbitrators jointly selected by the parties, 91, or 20%, were members of the OIA panel, though not necessarily on the LPA sent to the parties. In 32 cases, or 7%, the parties selected a neutral arbitrator who was not a member of the panel. See Chart 3. One neutral arbitrator who is not part of the OIA panel accounts for 15 of the joint selections.

**Chart 3**



<sup>41</sup>For example, a person who was ranked “1” by both sides – for a combined score of “2” – would have the best score.

<sup>42</sup>This includes cases with attorneys and cases where the claimant was in *pro per*. For *pro per* cases, four settled and 20 were withdrawn. For represented cases, 15 settled and 18 were withdrawn.

### **C. Status of Cases with Postponements of Time to Select Neutral Arbitrators**

Under Rule 21, a claimant has a unilateral right to a 90 day postponement of the deadline to respond to the LPA. If a claimant has not requested one, the respondent may do so, but only if the claimant agrees in writing. The parties can request only one postponement of up to 90 days. They cannot, for example, get a 40 day postponement at one point and a 50 day postponement later. There are times when parties request a postponement of less than 90 days.

Rule 28 allows the OIA, in cases where the neutral arbitrator has not been selected, to extend deadlines for good cause. The OIA has used this authority occasionally to extend the deadline to respond to the LPA.<sup>43</sup> A Rule 28 extension is generally short – two weeks if the case is settled or withdrawn<sup>44</sup> – though it may be longer if, for example, it is based on the claimant’s medical condition, or a party has gone to court for some reason.

Temporary Rule 2 extended the deadline to respond to the LPA in cases where parties had not returned their LPA.<sup>45</sup> This rule was enacted amid concerns from parties unable to timely respond due to the COVID-19 pandemic. There were 22 cases that received this extension.

There were 260 cases where the parties obtained either a Rule 21 postponement, a Rule 28 extension of the time to return their LPAs, or both. In 217 of these cases, the parties obtained a Rule 21 postponement. The claimants made all but four of these requests. There were 43 cases that may have received a Rule 21 postponement in prior years but received a Rule 28 extension this year.

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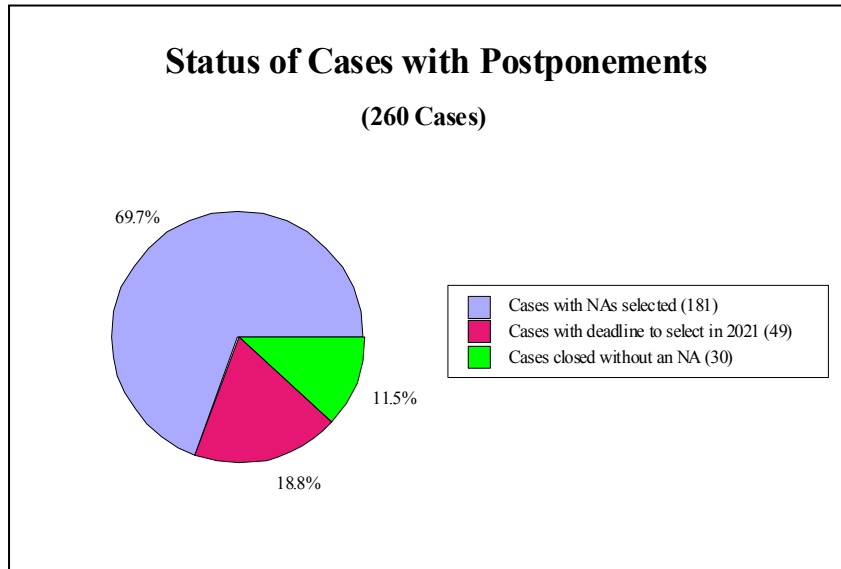
<sup>43</sup>Generally, parties must use a 90 day postponement under Rule 21 before the OIA will extend the deadline under Rule 28.

<sup>44</sup>The extension allows the claimant to send written notice of settlement or withdrawal without a neutral arbitrator being selected, which generally reduces expenses.

<sup>45</sup>The deadline was extended for at least 30 days. See Section II.C. for more information regarding the enactment of temporary rules.

Chart 4 shows what happened in those 260 cases where the parties obtained any postponement of the deadline to return their LPA. Seventy percent (70%), 181 cases, have a neutral arbitrator in place. Thirty cases closed before a neutral arbitrator was selected but after a request for postponement was made. For the remaining 49 cases, the deadline to select a neutral arbitrator was after December 31, 2020.

**Chart 4**



**D. Status of Cases with Disqualifications**

California law gives the parties in arbitration the opportunity to disqualify neutral arbitrators.<sup>46</sup> Neutral arbitrators are required to make various disclosures within ten days of their selection.<sup>47</sup> After they make these disclosures, the parties have 15 days to disqualify the neutral arbitrator. Additionally, if the neutral arbitrator fails to serve the disclosures, the parties have 15 days after the deadline to serve disclosures to disqualify the neutral arbitrator. Absent court action, there is no limit as to the number of times a party can timely disqualify neutral arbitrators in a given case. However, under Rule 18(f), after two disqualifications, the OIA randomly selects subsequent neutral arbitrators who have not been named on prior LPAs.

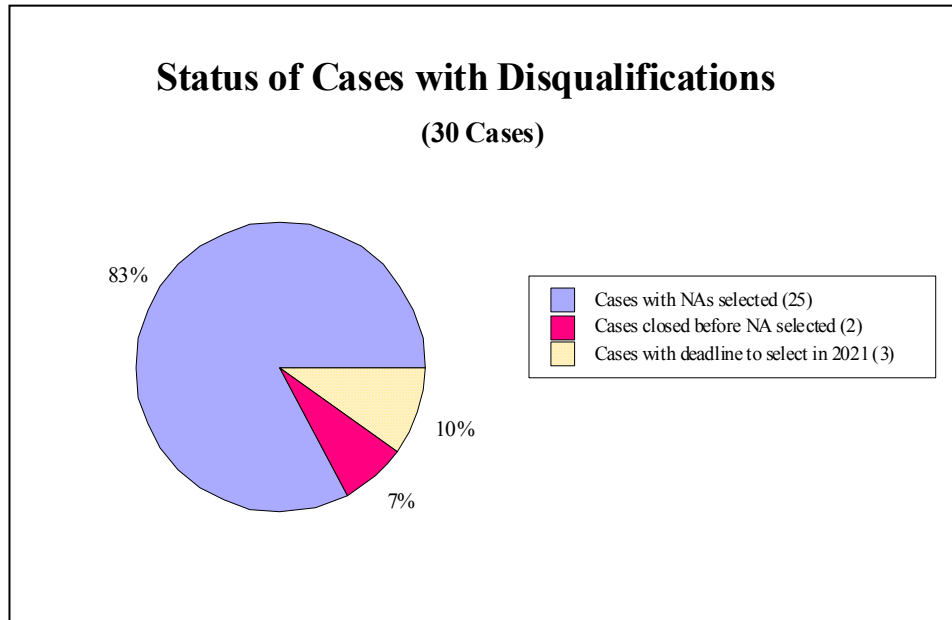
Neutral arbitrators were disqualified in 30 cases. Claimants disqualified 41 neutral arbitrators and Kaiser disqualified 8. Twenty-six cases had a single disqualification. Two cases had three disqualifications, one case had five disqualifications, and one case had 12

<sup>46</sup>California Code of Civil Procedure §1281.91; see also Exhibit B, Rule 20.

<sup>47</sup>See California Code of Civil Procedure §1281.9, especially §1281.9(b). In the OIA system, the ten days are counted from the date of the letter confirming service which the OIA sends to the neutral arbitrator, with copies to the parties, after the neutral arbitrator agrees to serve.

disqualifications.<sup>48</sup> In 25 of the cases with a disqualification, a neutral arbitrator had been selected. Two cases closed before the new neutral arbitrator was selected. In three of the cases, the deadline to select another neutral arbitrator was after December 31, 2020. See Chart 5.

**Chart 5**



#### **E. Length of Time to Select a Neutral Arbitrator**

This section considers 447 cases in which a neutral arbitrator was selected<sup>49</sup> and divides the selections into four categories when discussing the length of time to select a neutral arbitrator. The first category is those cases in which there was no delay in selecting the neutral arbitrator. The second category is those cases in which the deadline for responding to the LPA was postponed. The third category is those cases in which a neutral arbitrator was disqualified by a party and another neutral arbitrator was selected. The fourth category is those cases in which there was both a postponement of the LPA deadline and a disqualification of a neutral arbitrator. The last three categories include cases where the request for postponement and/or the

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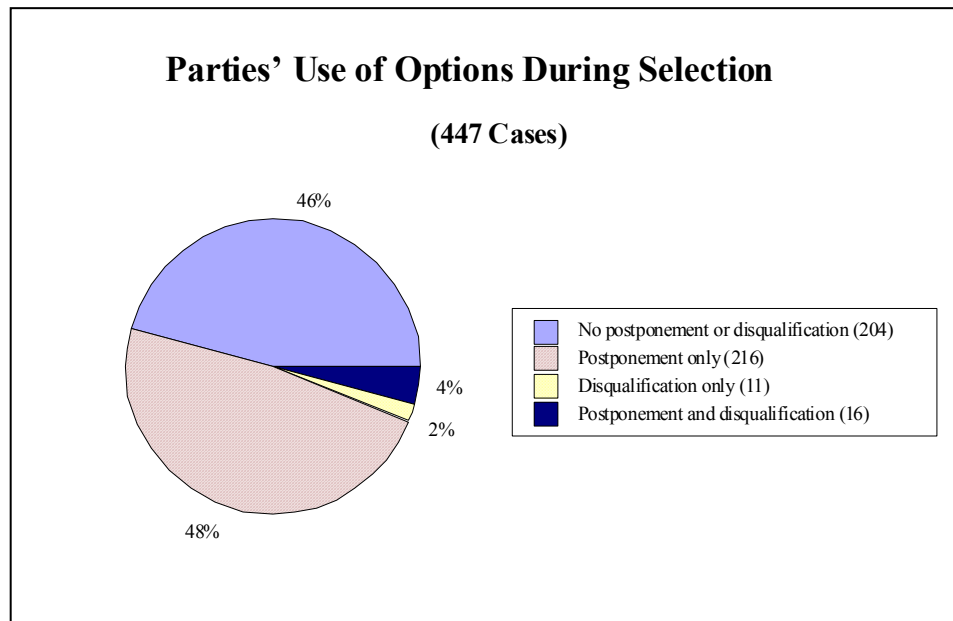
<sup>48</sup>In cases with multiple disqualifications, one of the parties may petition the Superior Court to select a neutral arbitrator. If the court grants the petition, a party is only permitted to disqualify one neutral arbitrator without cause; subsequent disqualifications must be based on cause. See California Code of Civil Procedure §1281.91(2). Kaiser petitioned the Superior Court to select a neutral arbitrator in a case where the pro per claimant disqualified six neutral arbitrators. See also footnote 54 for a description of the case that had 12 disqualifications.

<sup>49</sup>Fifteen cases in which a neutral arbitrator was selected are not included in this section. In these cases, a neutral arbitrator had previously been appointed, had begun acting as the neutral arbitrator, and later recused themselves. Because we count time from the first day that the case was administered, these cases are not included in these computations of length of time to select a neutral arbitrator.



disqualification was made in prior years, but the neutral arbitrator was selected this year. Finally, we give the overall average length of time to select a neutral arbitrator for all four categories. Chart 6 displays the categories.

**Chart 6**



### **1. Cases with No Delays**

There were 204 cases where a neutral arbitrator was selected in which there was no delay. Under the *Rules*, the maximum number of days to select a neutral arbitrator when there is no delay is 33 days. The average number of days to select a neutral arbitrator in these cases was 23 days, and the range was 3 – 50 days.<sup>50</sup> This category represents 46% of all neutral arbitrators selected.

### **2. Cases with Postponements**

There were 216 cases where a neutral arbitrator was selected and the only delay was a 90 day postponement and/or an OIA extension of the deadline under Rule 28 or Temporary Rule 2.<sup>51</sup> Under the *Rules*, the maximum number of days to select a neutral arbitrator when there is a 90 day postponement is 123 days. The average number of days to select a neutral arbitrator in these

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<sup>50</sup>In the case that took 50 days to select a neutral arbitrator, the OIA mistakenly sent the case to a neutral arbitrator not listed on the LPA. It took the OIA 28 days to correct the error.

<sup>51</sup>See Section VII. B. 5. for explanation of these cases.

cases was 108 days, and the range was 18 – 241 days.<sup>52</sup> This category represents 48% of all cases which selected a neutral arbitrator.

### **3. Cases with Disqualifications**

There were 11 cases where a neutral arbitrator was selected and the only delay was one or more disqualification(s) of a neutral arbitrator. Under the *Rules*, the maximum number of days to select a neutral arbitrator if there is only one disqualification is 96.<sup>53</sup> The average number of days to select a neutral arbitrator was 67 days, and the range was 32 – 148 days.<sup>54</sup> Disqualification only cases represent 2% of all cases which selected a neutral arbitrator.

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

There were 16 cases where a neutral arbitrator was selected after a postponement and a disqualification of a neutral arbitrator. Under the *Rules*, the maximum number of days to select a neutral arbitrator if there is both a 90 day postponement and a single disqualification is 186 days. The average number of days to select a neutral arbitrator in these cases was 210, and the range was 105 – 799 days.<sup>55</sup> These cases represent 4% of all cases which selected a neutral arbitrator.

### **5. Average Time for All Cases**

The average number of days to select a neutral arbitrator in all of these cases was 72 days. For purposes of comparison, the California Supreme Court stated in *Engalla vs. Permanente Medical Group*<sup>56</sup> that the old Kaiser system averaged 674 days to select a neutral arbitrator.

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<sup>52</sup>In the case that took 241 days to select a neutral arbitrator with just a postponement, the claimant's attorney first obtained a 90 day postponement. The case then settled and closed shortly before the selection of a neutral arbitrator. Three-and-a-half months later, the OIA was notified that the settlement fell through, and that the parties were stipulating to re-open the matter.

<sup>53</sup>The 96 days is comprised of the 33 days to select the first neutral arbitrator under the *Rules*; the 30 days for the statutory periods for disclosure, disqualification, and service under the California Code of Civil Procedure; and then 33 days to select the second neutral arbitrator. The amount of time increases if there is more than one disqualification.

<sup>54</sup>In the case that took 148 days to select a neutral arbitrator, the attorneys disqualified 12 neutral arbitrators (9 by claimant's attorney and 3 by Kaiser's attorney) before jointly agreeing to a neutral arbitrator.

<sup>55</sup>In the case that took 799 days to select a neutral arbitrator, the neutral arbitrator was disqualified by Kaiser. Claimant attorney then filed a declaratory relief action in court to determine the enforceability of the disqualification. Before the hearing, the parties stipulated to continue with that arbitrator, and the court then ordered the re-appointment.

<sup>56</sup>15 Cal. 4<sup>th</sup> 951, 64 Cal. Rptr. 2d 843, 938 P.2d 903. The California Supreme Court's criticism of the then self-administered Kaiser arbitration system led to the creation of the Blue Ribbon Panel.

## **F. Cases with Party Arbitrators**

In medical malpractice cases, if the amount of damages exceeds \$200,000, a California statute gives parties a right to proceed with three arbitrators: one neutral arbitrator and two party arbitrators.<sup>57</sup> The parties may waive this right. The Blue Ribbon Panel (BRP) that gave rise to the OIA questioned whether the value added by party arbitrators justified their expense and the delay associated with two more participants in the arbitration process. The BRP, therefore, suggested that the system create incentives for cases to proceed with a single neutral arbitrator.

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

Few party arbitrators are used in the OIA system. All the cases that went to hearing were decided by a single neutral arbitrator.

Of the cases that remained open at the end of the year, parties have designated party arbitrators in four cases.

## **VI. MAINTAINING THE CASE TIMETABLE**

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

First, through its software, the OIA tracks whether key events set out in the *Rules* – service of the arbitrator’s disclosure statement, the arbitration management conference, the mandatory settlement meeting, and the hearing – occur on time. If arbitrators fail to notify the OIA that a key event has taken place by its deadline, the OIA contacts them and asks for confirmation that it has occurred. In most cases, the events have occurred and arbitrators confirm in writing. When it has not, it is rapidly scheduled. In instances where the event has not occurred and/or confirmation is not received, the OIA suspends the neutral arbitrator from receiving new cases until confirmation is received and the case is in compliance with the *Rules*.<sup>58</sup>

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<sup>57</sup>California Health & Safety Code §1373.19.

<sup>58</sup>When neutral arbitrators are suspended, the OIA removes the neutral arbitrators’ names from the OIA panel – until they take the necessary action. Suspended neutrals are not listed on any LPA and cannot be jointly selected by the parties.

Second, the OIA looks at cases overall and their progress toward closing on time. When a case enters the system, the OIA computer system calendars a status reminder for 12 months. As discussed in Section VII, most cases close within 12 months. For those that remain open, the OIA contacts the neutral arbitrators to ensure that the hearing is still on calendar and the case is on track to be closed in compliance with the *Rules*. In addition, the Independent Administrator holds monthly meetings to discuss the status of all cases open more than 15 months.

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

Once neutral arbitrators have been selected, California law requires that they make written disclosures to the parties within ten days. The *Rules* require neutral arbitrators to serve the OIA with a copy of these disclosures. The OIA monitors all cases to ensure that disclosures are timely served, and they include disclosure reports provided by the OIA that are required by California law. No neutral was suspended for failing to timely serve disclosures.

#### **B. Arbitration Management Conference**

The *Rules* require neutral arbitrators to hold an Arbitration Management Conference (AMC) within 60 days of their selection.<sup>59</sup> Neutrals are also required to return an AMC form to the OIA within five days of the conference. The schedule set forth on the form establishes the deadlines for the rest of the case. It also allows the OIA to see that the case has been scheduled to finish within the time allowed by the *Rules*; usually 18 months. Receipt of the form is therefore important. One neutral arbitrator was suspended for failing to return the AMC form, but promptly complied.

#### **C. Mandatory Settlement Meeting**

Rule 26 instructs the parties to hold a Mandatory Settlement Meeting (MSM) within six months of the AMC. It states that the neutral arbitrator should not be present at this meeting. The OIA provides the parties with an MSM form to complete and return, stating that the meeting took place and its result. The OIA received notice from the parties in 264 cases that they held a MSM. Thirty-seven of them reported that the case had settled at the MSM. One case involved a *pro per* claimant. In 26 cases, neither party returned the MSM form to the OIA by the end of the year.<sup>60</sup>

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<sup>59</sup>Exhibit B, Rule 25.

<sup>60</sup>While the OIA contacts the parties requesting the MSM form, it has no power to compel them to report or to meet. A neutral arbitrator, on the other hand, can order the parties to meet if a party complains that the other side refuses to do so.

#### D. Hearing and Award

The neutral arbitrator is responsible for ensuring that the hearing occurs and an award is served within the time limits set out in the *Rules*. Four neutral arbitrators were suspended for failing to schedule an arbitration hearing. All have complied.

Four neutral arbitrators, one in two different cases, were suspended for failing to issue orders extending the deadline to serve the award. All have complied.

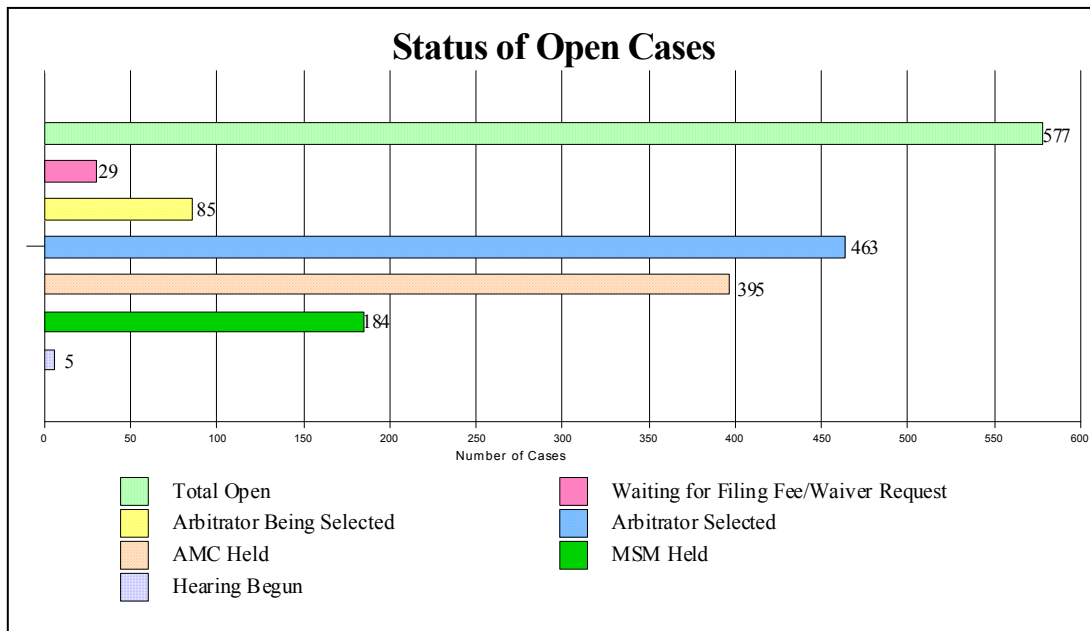
One neutral arbitrator was suspended for failing to timely serve the award, but has complied.

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

#### E. Status of Open Cases

There were 577 open cases at the end of 2020. In 29 cases, the LPA had not been sent because the filing fee had not yet been paid or waived. In 85 cases, the parties were in the process of selecting a neutral arbitrator. In 463 cases, a neutral arbitrator had been selected. Of these, the AMC had been held in 395. In 184 cases, the parties had held the MSM. In five cases, the hearing had begun, but either there were additional hearing days or the OIA had not yet been served with the award. Chart 7 illustrates the status of open cases.

Chart 7



## VII. THE CASES THAT CLOSED

Cases close either because of action by the parties (cases that are settled, withdrawn, or abandoned for non-payment of the filing fee), or action of the neutral arbitrator (cases are dismissed, summary judgment is granted, or cases are decided after a hearing). This discussion looks at each of these methods, how many closed, and how long it took. The discussion of cases that closed after a hearing also includes the results: who won and who lost. See Chart 8 and 9.

The second half of this section discusses cases that applied special rules to either have the cases decided faster or slower than most. Under the *Rules*, cases must ordinarily be closed within 18 months. Eighty-five percent (85%) of the cases are closed within this period, and 61% closed in a year or less. If a claimant needs a case decided in less time, the case can be expedited. If the case needs more than 18 months, the neutral arbitrator and/or parties can classify the case as complex or extraordinary under Rule 24. The neutral arbitrator can also order the deadline to be extended under Rule 28 for good cause.<sup>61</sup> See Chart 10.

### A. How Cases Closed

#### 1. Settlements – 45% of Closures

Settlements occurred in 239 cases. This represents 45% of closed cases. The average time to settle was 376 days. The range was 7 – 1,237 days.<sup>62</sup> In 22 settled cases, or 9%, the claimant was in *pro per*. Thirty-seven cases settled at the mandatory settlement meeting.

#### 2. Withdrawn Cases – 27% of Closures

Withdrawal notices were received in 142 cases. In 59 of these cases, or 42%, the claimant was in *pro per*. We categorize a case as withdrawn when a claimant executes a notice of withdrawal form, writes us a letter withdrawing the claim, or when we receive a dismissal without prejudice from the parties. When we receive a “dismissal with prejudice,” we contact the parties to ask whether the case was “withdrawn,” meaning voluntarily dismissed, or “settled” and enter the closure accordingly. Twenty-seven percent (27%) of closed cases were withdrawn.

The average time it took for a party to withdraw a claim was 267 days. The range was 4 – 967 days.<sup>63</sup>

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<sup>61</sup>A complex case can also be the subject of a Rule 28 extension if it turns out the case requires more than 30 months to close. Ten cases that closed were both complex and had a Rule 28 extension.

<sup>62</sup>The case that took 1,237 days to settle is described in footnote 62.

<sup>63</sup>In the case that was withdrawn after 967 days, the *pro per* claimant is incarcerated. At claimant’s request, the neutral arbitrator continued the dispositive hearing multiple times. The case was designated extraordinary two years later. The hearing eventually went forward and the claimant decided to withdraw. The COVID-19 pandemic then delayed the claimant’s ability to promptly do so.

### **3. Abandoned Cases – 5% of Closures**

Claimants failed to either pay the filing fee or obtain a fee waiver in 29 cases.<sup>64</sup> These cases were deemed abandoned for non-payment. In 24 of the 29 cases, the claimants were in *pro per*. Before claimants are excluded from this system for not paying the filing fee, they receive three notices from the OIA and each time are offered the opportunity to apply for fee waivers.

Temporary Rule 1<sup>65</sup> automatically extended the deadline for claimant to pay the fee or have it waived for at least 30 days. The OIA contacted the *pro per* claimant or counsel by phone, email, and mail offering additional extensions due to the restrictions of the COVID-19 pandemic. There were 48 cases that received Temporary Rule 1 extensions. Twenty of these cases received more than one extension. Of these cases, eight were closed as abandoned for non-payment.

### **4. Dismissed Cases – 5% of Closures**

Neutral arbitrators dismissed 25 cases. Neutral arbitrators dismiss cases if the claimant fails to respond to hearing notices or otherwise conform to the *Rules* or applicable statutes. Twenty-two (22) of these closed cases involved *pro pers*.

### **5. Summary Judgment – 14% of Closures**

Summary judgment was granted in Kaiser's favor in 72 cases. In 51 cases, or 71%, the claimant was in *pro per*. The most common reasons given by neutral arbitrators were: failed to file an opposition (32 cases), failed to have an expert witness (17 cases), no triable issue of fact (14 cases), and exceeded the statute of limitations (7 cases).

The average number of days to close a case by summary judgment was 363 days. The range was 136 – 968 days.<sup>66</sup>

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<sup>64</sup>The arbitration filing fee is \$150 regardless of the number of claimants or claims. This is significantly lower than court filing fees except for small claims court. If a Kaiser member's claim is within the small claims court's jurisdiction, the claim is not subject to arbitration and is not administered by the OIA. Both the OIA and Kaiser inform these claimants of their right to go to small claims court.

<sup>65</sup>See Section II.C. for more information regarding cases the temporary rules enacted to address the COVID-19 pandemic.

<sup>66</sup>In the case that closed in 968 days, the claimant attorney first obtained a 90 day postponement. Claimant attorney then requested an additional postponement from the neutral arbitrator after the addition of claimants to the case. One year later, the case was designated extraordinary, and three months after that, the motion for summary judgment was heard and granted.

## 6. Cases Decided After Hearing – 4% of Closures

### a. Who Won

Twenty-three cases (4%) proceeded through a full arbitration hearing to an award. Judgment was for Kaiser in 17 of these cases, or 74%. In one case, the claimant was *pro per*. The claimant prevailed in 6 cases, or 26%. None was a *pro per* claimant.

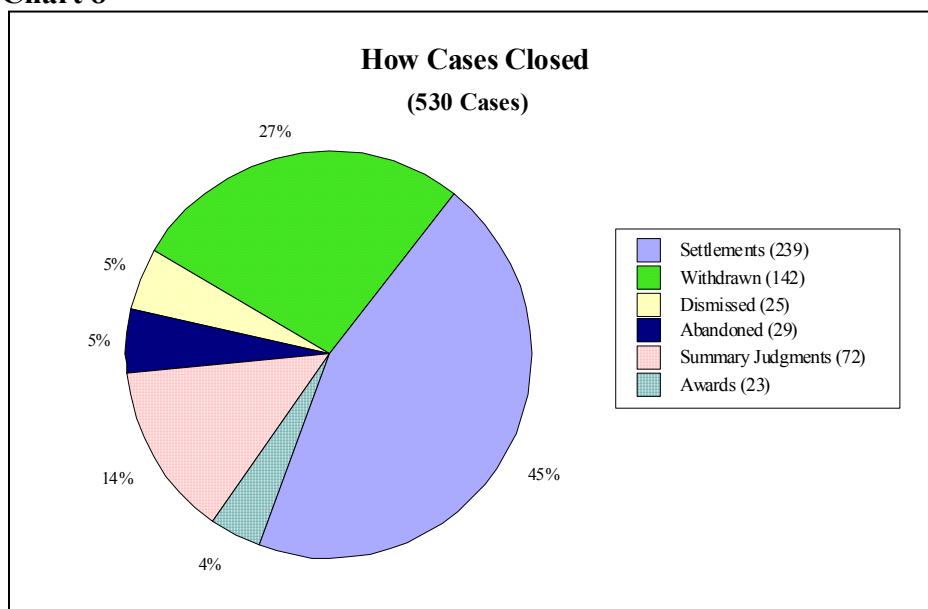
### b. How Much Claimants Won

Six cases resulted in awards to claimants. The range was \$40,000 - \$1,677,649. The average amount of an award was \$491,076. A list of the awards made is attached as Exhibit H.

### c. How Long it Took

The 23 cases that proceeded to a hearing, on average, closed in 660 days.<sup>67</sup> The range was 245 – 1,099 days.<sup>68</sup> Cases that go to a hearing are the most likely to employ the special procedures discussed in the next section to give the parties more time to complete the case.

**Chart 8**



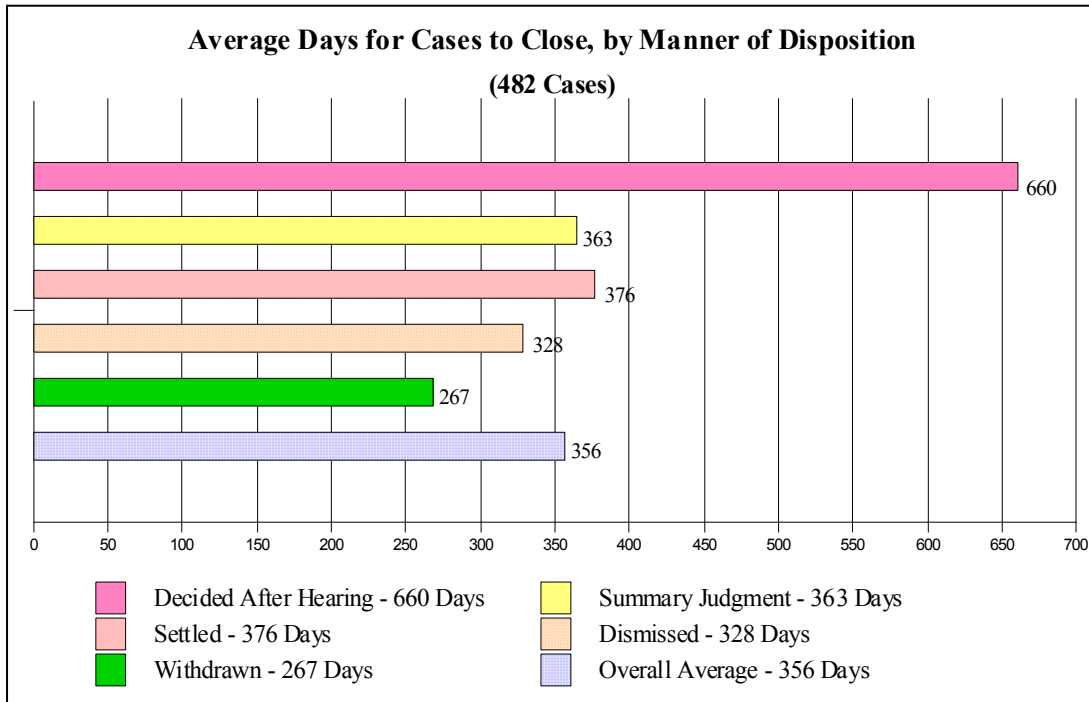
<sup>67</sup>Six of them are considered “regular” cases and closed in 484 days (about 16 months). The deadline for “regular” cases is 18 months. See Rule 24(a).

<sup>68</sup>In the case that took 1,099 days to close, the parties disqualified 7 neutral arbitrators (6 by claimant’s attorney and 1 by Kaiser’s attorney) before jointly agreeing to a neutral arbitrator more than 1 year later. The case was designated extraordinary and required multiple non-consecutive arbitration hearing dates over the course of six months, which resulted in an award for Kaiser.



As shown on Chart 9, cases closed on average in 356 days.<sup>69</sup> The range was 4 – 1,237 days.<sup>70</sup> No case closed after its deadline, i.e., none was “late.”

**Chart 9**



## B. Cases Using Special Procedures

### 1. Expedited Procedures

The *Rules* include provisions for cases which need to be expedited, that is, resolved in less time than 18 months. Grounds for expediting a case include a claimant’s illness or condition raising substantial medical doubt of survival, a claimant’s need for a drug or medical procedure, or other good cause.<sup>71</sup>

<sup>69</sup>Chart 9 refers to 482 closed cases, not 530, because the OIA does not begin measuring the time until the fee is either paid or waived. This excludes 29 abandoned cases and 19 cases that were withdrawn or settled before the fee was paid.

<sup>70</sup>In the case that took 1,237 days to close, the claimant’s attorney disqualified the first neutral arbitrator. The parties then requested that the next neutral arbitrator continue the arbitration hearing on four different occasions over a three year period before designating the case extraordinary. Seven months later the case settled.

<sup>71</sup>Exhibit B, Rules 33 – 36.

Claimants made four requests for expedited procedures to the OIA. One request was granted, three were denied<sup>72</sup> without prejudice to make the request to the neutral arbitrator. Kaiser objected to three of these requests; one was granted over Kaiser's objection and the others were denied.

Five requests for expedited procedures were made to the neutral arbitrator. Four requests were granted by the neutral arbitrator and one request was denied.

The OIA had nine open expedited cases pending during the year.<sup>73</sup> Six expedited cases closed. Five settled and one went to hearing, which resulted in an award for Kaiser. One case was extended by Rule 28 and is counted in that section.<sup>74</sup> One case no longer needed the expedited designation and became a complex case. The average for these cases to close was 209 days, and the range was 143 – 329 days. One expedited case remained open at the end of the year.

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

## **2. Complex Procedures**

The *Rules* also include provisions for cases that need more time to be completed. In complex cases, the parties believe that they need 24 – 30 months.<sup>75</sup> The designation does not have to occur at the beginning of a case. It may be made as the case proceeds and the parties develop a better sense of what evidence they need. There were 80 cases designated complex. Thirty-six complex cases closed.<sup>76</sup> The average length of time for complex matters to close was 597 days. The range was 151 – 882 days (29 months).<sup>77</sup>

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<sup>72</sup>All three failed to provide sufficient reasons or evidence for the request under Rule 33(a).

<sup>73</sup>Four cases made their requests the prior year.

<sup>74</sup>See Section VII.B.4.

<sup>75</sup>Exhibit B, Rule 24(b).

<sup>76</sup>Ten cases were extended by Rule 28 and are counted in that section. See Section VII.B.4.

<sup>77</sup>The arbitration hearing in the complex case that took 882 days to close was continued 3 times before the first phase of the bifurcated hearing went forward. The second phase of the hearing concluded nearly five months later and resulted in an award for Kaiser.

### **3. Extraordinary Procedures**

Extraordinary cases need more than 30 months for resolution.<sup>78</sup> Twenty-two cases were designated extraordinary, and 15 cases closed. The average time to close an extraordinary case was 839 days. The range was 373 – 1,237 days (about 3 ½ years).<sup>79</sup>

### **4. Rule 28 Extensions**

Rule 28 allows neutral arbitrators to extend the deadline to close the case for good cause. Neutral arbitrators made Rule 28 determinations of good cause in 100 cases. Where neutral arbitrators gave specific reasons, the most common reason was the COVID-19 pandemic. Sixty-three cases with a Rule 28 extension closed. The average time to close cases with a Rule 28 extension was 629 days. The range was 229 – 1,113 days.<sup>80</sup>

### **5. COVID-19 Extensions<sup>81</sup>**

A neutral arbitrator may extend the deadline to close the case under Rule 28 for good cause, or by designating the case as complex or extraordinary under Rule 24. Many neutral arbitrators used one or more of these mechanisms in order to extend the deadline because of the COVID-19 pandemic. Some neutral arbitrators extended the deadline multiple times in a given case.

The deadline to close was extended in 189 cases. There were 228 extensions provided. Sixty-two cases were designated complex. Twenty cases were designated extraordinary. The deadline for the remaining 107 cases was extended under Rule 28.

Thirty-three cases had multiple extensions. Twenty-seven cases extended the deadline twice. Three of these cases have closed. Two cases were settled and one was withdrawn. Six cases had three extensions and in one instance a case was designated extraordinary to accommodate a third extension. Two of these cases have closed, both were settled. Considering

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<sup>78</sup>Exhibit B, Rule 24(c).

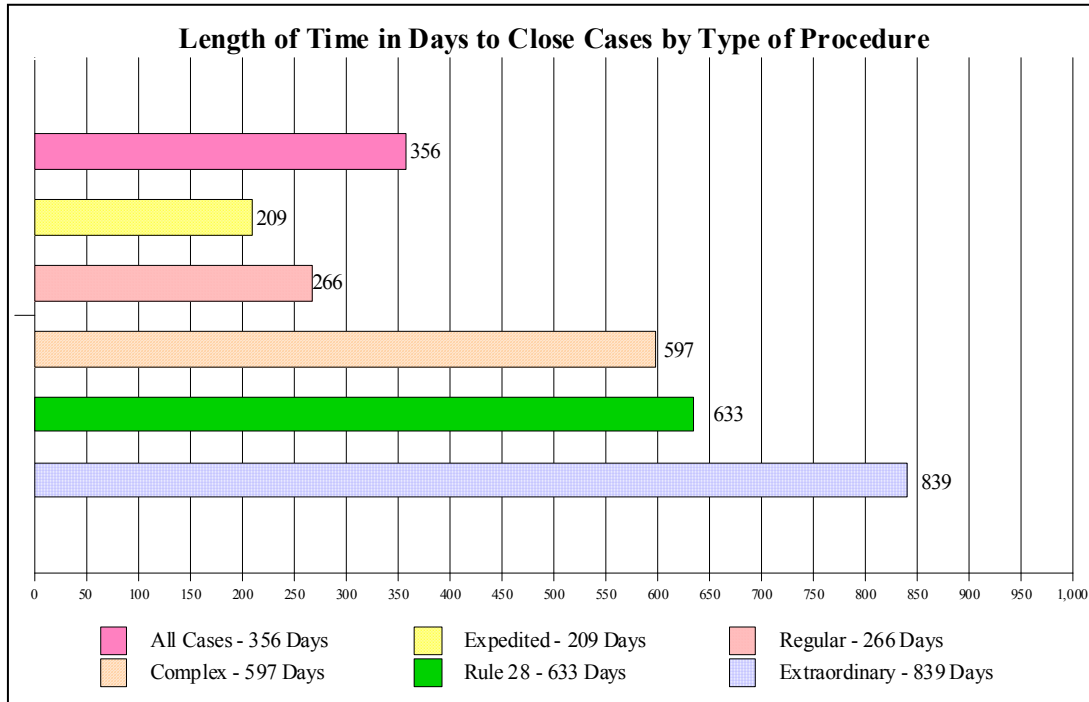
<sup>79</sup>The extraordinary case that took 1,237 days to close is described in footnote 62.

<sup>80</sup>In the case that took 1,113 days to close, the arbitration hearing was continued 4 times before it went forward more than 2 years later. The parties then settled the case after the arbitration hearing closed but before the neutral arbitrator made a decision.

<sup>81</sup>These cases are already included in the statistics in Sections 2, 3, and 4 above but are discussed here in more detail. They include extensions provided by neutral arbitrators beginning March 19, 2020 when the “safer at home” public health orders were issued.

only the cases with multiple extensions, the average time to close cases was 774 days. The range was 609 – 941<sup>82</sup> days (more than 2 ½ years).

**Chart 10**



## VIII. THE COST OF ARBITRATIONS

### A. What Fees Exist in OIA Arbitrations

Whether in court or in private arbitration, parties face certain fees. In an OIA arbitration, in addition to attorney’s fees and fees for expert witnesses, a claimant must pay a \$150 arbitration filing fee and half of the neutral arbitrator’s fees. State law provides that neutral arbitrator’s fees be divided equally between the claimant and the respondent.<sup>83</sup> In addition, state law provides that if the claim is for more than \$200,000, the matter will be heard by an arbitration panel, which consists of three arbitrators – a single neutral arbitrator and two party arbitrators, one selected and paid for by each side. Parties may waive their right to party arbitrators.

<sup>82</sup>The case that took 941 days to close was continued 4 times, twice because of the COVID-19 pandemic. The case was then designated complex to accommodate the new hearing dates, and settled nine months later.

<sup>83</sup>California Code of Civil Procedure §1284.2.

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

## **B. Mechanisms Claimants Have to Avoid These Fees**

There are three mechanisms for waiving some or all fees previously described. The first two are based on financial need and required by statute. The third is open to everyone.

### **1. How to Waive the \$150 Arbitration Filing Fee**

This waiver is available to individuals whose gross monthly income is less than three times the national poverty guidelines. The OIA informs claimants of this waiver in the first letter we send to them. They have 75 days to submit this form, from the date the OIA receives their demands for arbitration.<sup>84</sup> According to statute and Rule 12, this completed form is confidential and only the claimant and claimant's attorney know if a request for the waiver was made, granted or denied. If claimants' income meets the guidelines, the \$150 arbitration fee is waived.

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

This type of fee waiver, which is required by state law, depends upon the claimants' ability to afford the cost of the arbitration filing fee and the neutral arbitrators' fees. Claimants must disclose certain information about their income and expenses. The fee waiver application is based on the form used by state court for waiver of the filing fee to allow a plaintiff to proceed *in forma pauperis*. According to the *Rules*, the form is served on both the OIA and Kaiser. Kaiser has the opportunity to object before the OIA grants or denies this waiver.<sup>85</sup> If this waiver is granted, claimant does not have to pay either the neutral arbitrator's fees or the \$150 arbitration filing fee. A claimant who obtains this waiver is allowed to have a party arbitrator, but must pay for the party arbitrator.

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<sup>84</sup>California Code of Civil Procedure §1284.3; Exhibit B, Rule 12.

<sup>85</sup>See Exhibit B, Rule 13.

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

The *Rules* also contain provisions to shift the claimants' portion of the neutral arbitrators' fees and expenses to Kaiser.<sup>86</sup> For claims under \$200,000, the claimant must agree in writing not to object later that the arbitration was unfair because Kaiser paid the fees and expenses of the neutral arbitrator. For claims over \$200,000, the claimant must also agree not to use a party arbitrator.<sup>87</sup> No financial information is required. The waiver forms are served on Kaiser, the neutral arbitrator, and the OIA.

#### **C. Number of Cases in Which Claimants Have Waived Their Fees**

##### **1. The \$150 Arbitration Filing Fee**

The OIA received 49 request forms to waive the \$150 filing fee, and one was pending at the beginning of the year. The OIA granted 44 and denied 6.<sup>88</sup> Nineteen of these claimants also submitted and received a waiver of the filing fee and a waiver of the neutral arbitrators' fees and expenses discussed in the next section. By obtaining the waiver of the filing fee, the neutral arbitrator selection process can begin immediately.

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

The OIA decided 64 fee waiver requests, four of which were pending from last year. Kaiser objected to three.<sup>89</sup> The OIA granted 62 requests, denied 1,<sup>90</sup> and 1 case closed before the request was decided. One request is pending.

##### **3. Neutral Arbitrators' Fee Allocation**

State law requires arbitration providers, such as the OIA, to disclose neutral arbitrators' fees and fee allocations for closed cases.<sup>91</sup> We received fee information from neutral arbitrators for 444 cases that closed.

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<sup>86</sup>See Exhibit B, Rules 14 and 15.

<sup>87</sup>If the claimant waives his/her right to a party arbitrator but Kaiser wants to proceed with party arbitrators, Kaiser will pay all of the neutral arbitrator's fees and expenses.

<sup>88</sup>Three had the other fee waiver granted; one paid the filing fee; one submitted a second request providing additional information and it was granted; and one was abandoned for not paying the filing fee.

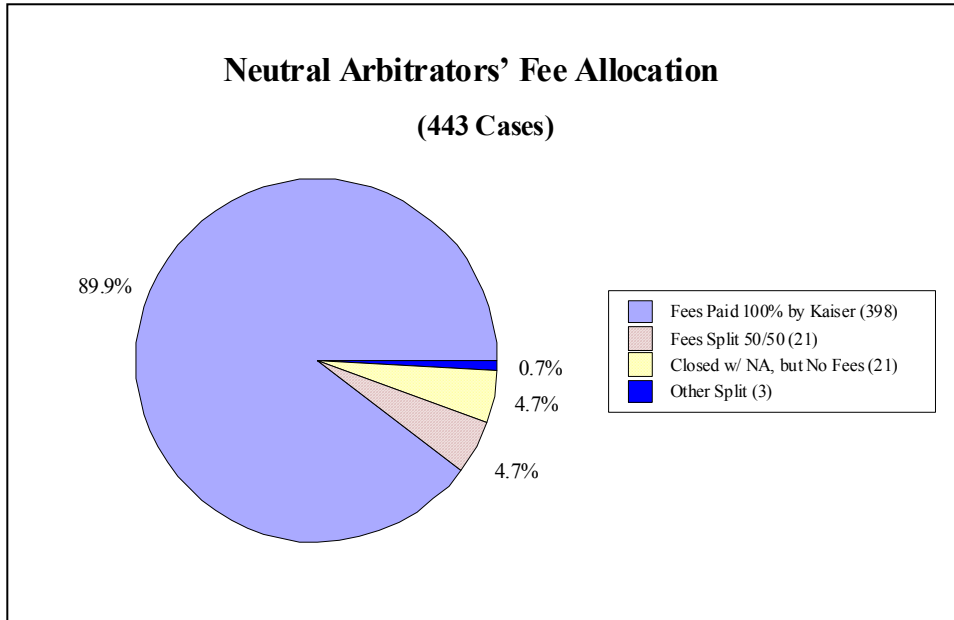
<sup>89</sup>The OIA granted these requests over Kaiser's objection.

<sup>90</sup>Claimant submitted a second request removing conditional language, and it was granted.

<sup>91</sup>California Code of Civil Procedure §1281.96. This information is available on the OIA website.

Kaiser paid 100% of the neutral arbitrators' fees and expenses in 398 cases. Fees were split 50/50 in 21 cases.<sup>92</sup> In 21 cases, no fees were charged. See Chart 11.

**Chart 11**



**D. The Fees Charged by Neutral Arbitrators**

Neutral arbitrators on the OIA panel set their own fees. They are allowed to raise their fees once a year, but the increases do not affect cases on which they have begun to serve. The fees range from \$200/hour – \$1,200/hour. The average hourly fee was \$555. Some neutral arbitrators also offer a daily fee. This range was \$1,050/day – \$12,000/day. The average daily fee was \$4,563.

In 422 cases where the neutral arbitrators charged fees, Kaiser paid all of the neutral arbitrators' fees in 94% of the cases. The average neutral arbitrator fee was \$7,867. The range was \$100 – \$163,280. This excludes the 21 cases in which there were no fees. The average for all cases, including those with no fees, was \$7,495.

If only the cases where the neutral arbitrator wrote an award are considered, the average neutral arbitrator fee was \$49,625. The range was \$19,725 – \$163,280.

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<sup>92</sup>Three cases had a different split, with claimants paying 8%, 14%, and 33%, respectively.

## **IX. ANALYSIS OF LIEN CASES**

This section applies only to lien cases. In lien cases, Kaiser makes the demand for arbitration against a member to recoup the costs of medical care it provided where Kaiser asserts the member has recovered something from a third party, such as in a car accident.

No new lien cases were submitted to the OIA. Two lien cases closed. In both cases, the selection of a neutral arbitrator occurred in 2019.

### **A. Maintaining the Case Timetable**

Two lien cases closed. One was a Northern California case and the other was from Southern California. No lien cases are pending.

The OIA received notice that the parties held the MSM in both cases. They did not settle at the MSM.

### **B. The Cases that Closed**

Both lien cases closed. One resulted in a \$31,666.67 award for Kaiser, and the other settled. They closed in 355 and 811<sup>93</sup> days, respectively.

### **C. The Cost of Lien Arbitrations**

The neutral arbitrators' fees were \$19,691.97 (case that settled) and \$3,000 (case that went to hearing). Kaiser respectively paid 57% and 100% of the fees in these cases.

## **X. EVALUATIONS OF NEUTRAL ARBITRATORS AND THE OIA SYSTEM**

When cases close, the OIA sends forms to counsel for the parties and *pro per* claimants asking them questions about the neutral arbitrator, the arbitration process, the OIA, or all of the above. The OIA sends the neutral arbitrator a similar form asking them questions about the OIA and the arbitration process. This section discusses the highlights of the responses we received from the parties and the arbitrators. The copies of the forms are set out in Exhibits I, J, and K, respectively. This section considers all evaluations returned in all cases, including liens.

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<sup>93</sup>In the case that took 811 days to close, the member's attorney challenged the neutral arbitrator's jurisdiction nearly 5 months after the neutral arbitrator's appointment and became non-responsive. After Kaiser's attorney filed discovery motions and requests for sanctions, the member's attorney responded with a cross-complaint. The parties eventually agreed upon a hearing date but it was continued due to the COVID-19 pandemic. The parties then settled the case eight months later.



**A. The Parties Evaluate the Neutral Arbitrators**

The OIA sends neutral arbitrator evaluations to counsel for the parties or *pro per* claimants only in cases in which the neutral arbitrator made a decision that ended the case.

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

The OIA sent 240 evaluations and received 36 responses, or 15%. Five identified themselves as claimants, 8 as claimants’ counsel, and 22 as respondents’ counsel. One did not specify a side.

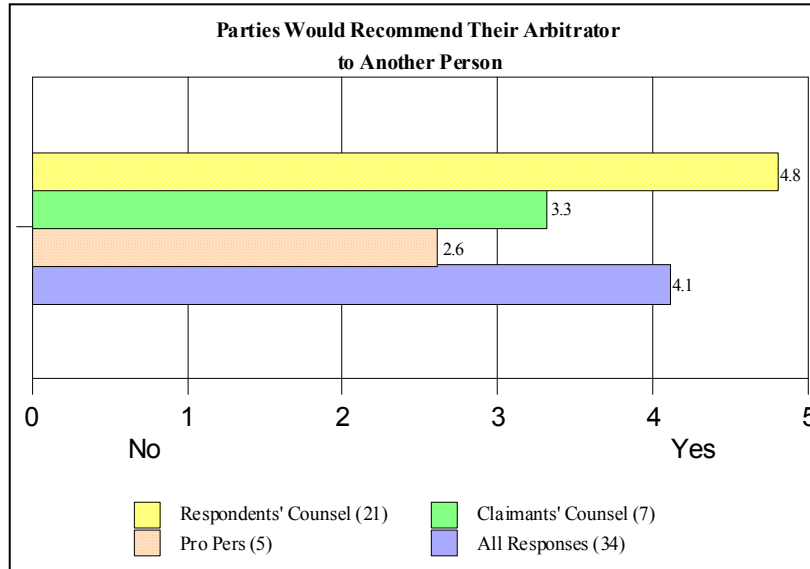
Table 5 highlights the average responses to some of the inquiries.

**Table 5 - Parties’ Evaluations of Neutral Arbitrators**

<b>Question</b>	<b>Claimants’ Counsel</b>	<b><i>Pro per</i></b>	<b>Respondents’ Counsel</b>	<b>Not Specified</b>	<b>Total</b>
Impartial and treated parties fairly	4.0	2.6	4.9	1.0	4.3
Treated parties with respect	4.8	3.4	5.0	5.0	4.7
Explained procedures and decisions clearly	4.5	3.8	4.8	5.0	4.6
Understood applicable law	3.9	2.8	4.8	3.0	4.3
Understood facts of the case	4.3	2.6	4.8	1.0	4.2
Fees reasonable for work performed	5.0	3.0	4.9	0	4.7
Would recommend this neutral	3.3	2.6	4.8	1.0	4.1

As shown in Chart 12, the average on all responses when asked whether they would recommend this neutral to another person with a similar case was 4.1.

**Chart 12**



**B. The Neutral Arbitrators Evaluate the OIA System**

Under Rule 48, when cases close, the neutral arbitrators complete questionnaires about their experiences with the *Rules* and with the overall system. The information is solicited to evaluate and improve the system. As with the evaluations sent to the parties to evaluate the neutral arbitrators, the OIA sends these forms to neutral arbitrators in cases where the neutral arbitrator closed the case. The OIA sent questionnaires in 120 closed cases and received neutral arbitrator responses in all cases.

The neutrals average 4.9 in saying that the procedures set out in the *Rules* had worked well in the specific case. The responses average 5.0 in saying that based on this experience they would participate in another arbitration in the OIA system. They average 5.0 in saying that the OIA had accommodated their questions and concerns in the specific case.

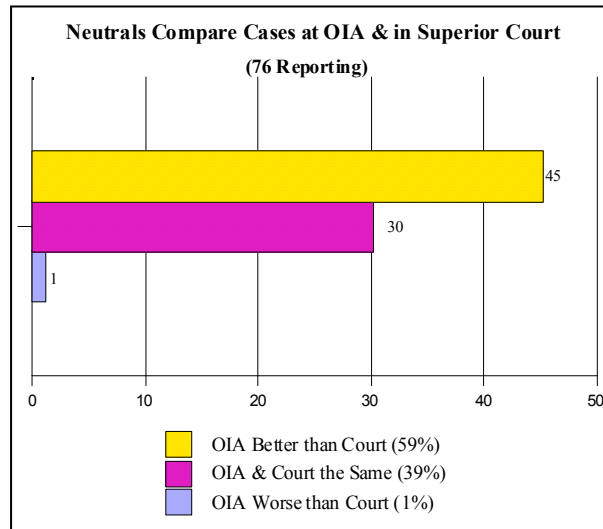
The questionnaires also includes two questions that ask arbitrators to check off features of the system which worked well or needed improvement in the specific case. The vast majority identified features of the OIA system that worked well. See Table 6.

**Table 6 - Neutral Arbitrators' Opinions Regarding the OIA System**

Feature of OIA System	Works Well	Needs Improvement
Manner of neutral arbitrator's appointment	97	1
Early management conference	84	1
Availability of expedited proceedings	48	0
Award within 15 business days of hearing closure	43	6
Claimants' ability to have Kaiser pay neutral arbitrator	89	1
System's Rules overall	100	1
Hearing within 18 months	52	0
Availability of complex/extraordinary proceedings	40	0

Finally, the questionnaires ask the neutrals whether they would rank the OIA experience as better, worse, or about the same as a similar case tried in court. Seventy-six neutral arbitrators made the comparison. Forty-five neutrals, or 59%, said the OIA experience was better. Thirty neutrals, or 39%, said it was about the same. One neutral (1%) who said the OIA experience was worse may have done so by mistake as they checked all features as working well and checked none that needed improvement. See Chart 13.

**Chart 13**



Most neutral arbitrators praised the OIA as responsive and helpful. They also praised the system as more efficient and less cumbersome than court. They appreciated the system's flexibility to accommodate the needs of the parties, acknowledging that the *Rules* worked well.

While the majority of the comments praised the system, many neutral arbitrators expressed frustration with their *pro per* cases. A few suggested that the OIA develop a better procedure for explaining the *Rules* and arbitration process before selecting neutral arbitrators in *pro per* cases. One suggested that the OIA require *pro per* claimants to sign an acknowledgment that they have reviewed and understand the *Rules* and procedures, particularly the medical expert requirement.

There were several neutrals who asked for more time for awards, one suggested that all the OIA forms be converted so they may be filled out electronically, and another suggested a permanent suspension of mail service if all parties have email.

Neutral arbitrators also praised the flexibility of the *Rules*, particularly during the pandemic, but many asked for rule changes that specifically covered certain circumstances - - judgment on the pleadings; demurrers; motions for summary judgment; bifurcation of issues; and general continuances. The OIA will monitor these situations and if necessary will propose rule changes to the AOB.

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

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

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

The OIA sent 876 evaluations and received 98 responses, or 11%. Eight identified themselves as *pro per* claimants, 35 as claimants' counsel, and 47 as respondents' counsel. Eight did not specify a side.

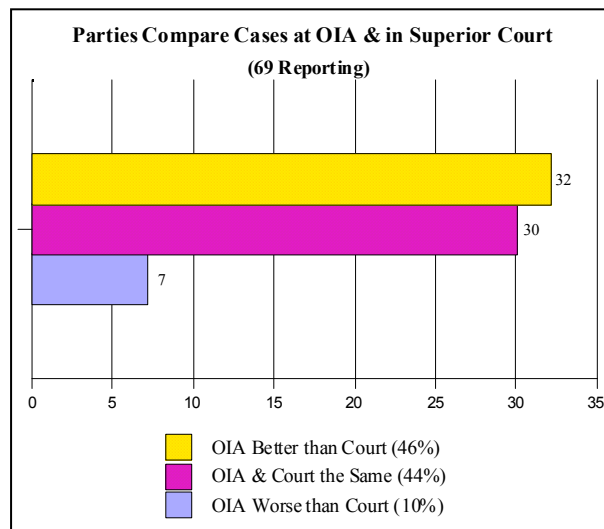
Table 7 highlights the average responses for some of the inquiries.

**Table 7 - Parties' Evaluations of the OIA System**

Question	Claimants' Counsel	<i>Pro per</i>	<i>Respondents' Counsel</i>	<i>Not Specified</i>	<i>Total</i>
Procedures worked well	4.3	3.4	4.9	5.0	4.6
Obtaining medical records went well	4.4	2.7	4.9	5.0	4.5
OIA responsive to questions/concerns	4.5	3.8	4.9	5.0	4.7

The form also asked the parties if they have had a similar experience in Superior Court and, if so, to compare the two. Of the 69 people who made the comparison, 32 said it was better. Thirty said it was the same. Seven said it was worse.<sup>94</sup> See Chart 14 and Table 8 for the breakdown.

**Chart 14**



<sup>94</sup>Of the seven people who said the OIA experience was worse, four responded with complaints about a system which only favors Kaiser or its attorneys, or with complaints that arbitration is inherently unfair. One complained about a party's ability to dismiss the arbitration without prejudice when a dispositive motion was pending, an option not allowed in court.

**Table 8 - Parties Compare the OIA System & in Superior Court**

	<b>Made Comparison</b>	<b>Better</b>	<b>Worse</b>	<b>About the Same</b>
Claimants' Counsel	29	8	5	16
<i>Pro per</i>	0	0	0	0
Respondents' Counsel	37	23	2	12
Not Specified	3	1	0	2
Total	69	32	7	30

Although the parties also praised the OIA system as more efficient than court with easier access to neutral arbitrators, the most common complaint concerned obtaining medical records. Those who responded complained that they never received copies, despite repeated requests, or that they received copies that did not match opposing counsels' copies. One complained that Kaiser refused to recut pathology slides, alleging it to be the standard in discovery production.

There were complaints about arbitration in general, that these cases belong in Superior Court with a jury. One suggested a limit on the number of cases a neutral arbitrator can have, or to provide a system that does not allow a neutral arbitrator to know who is paying his/her fee.

*Pro pers* complained that the system is inherently unfair and too expensive. Some suggested that *pro pers* should be provided with *pro bono* attorneys and free expert testimony. Others complained about the lack of face-to-face meetings and the disadvantages for *pro pers* who are not technologically savvy.

## **XI. THE ROLE OF THE ARBITRATION OVERSIGHT BOARD**

### **A. Membership**

The AOB is chaired by Richard Spinello, retired Executive Director of Financial Risk and Insurance, Children's Hospital of Orange County. The vice-chair is Donna Yee, retired Chief Executive Officer of the Asian Community Center of Sacramento Valley.

Beong-Soo Kim, Vice President and Assistant General Counsel, Kaiser Foundation Health Plan, Inc., resigned in June. Dr. Roxana Heidi Yoonessi-Martin, Compliance Officer and Lead Counsel, Southern California Permanente Medical Group, joined in March. Annette Carnegie, Lead Division Counsel, Kaiser Foundation Health Plan, Inc., also joined in March as an interim member until Tony Rodriguez, Vice President and Assistant General Counsel, Kaiser Foundation Hospitals / Health Plan, joined in October.

The membership of the AOB is a distinguished one, comprised of Kaiser Foundation Health Plan members, employers, labor representatives, plaintiff attorneys, defense attorneys, physicians, and other well respected members of the community. No more than four may be Kaiser affiliated. Changing the *Rules* requires the agreement of two-thirds of all the members of the AOB, as well as a majority of the non-Kaiser related board members.

The current membership of the AOB in alphabetical order:

**Carlos Camacho**, Staff Director for Orange County Labor Federation, AFL-CIO, Orange County.

**Doris Cheng**, medical malpractice attorney representing claimants, San Francisco.  
**Patrick Dowling**, MD, MPH, Professor and Chair Family Medicine, David Geffen School of Medicine at UCLA, Los Angeles.

**Sylvia Drew Ivie**, Special Assistant to the President, Charles R. Drew University of Medicine and Science, Los Angeles.

**Margaret B. Martinez**, MPH, Chief Executive Officer of Community Health Alliance of Pasadena, dba Chap Care, Pasadena.

**Honorable Carlos R. Moreno**, former California Supreme Court Justice, Los Angeles.

**Kenneth Pivo**, retired medical malpractice attorney representing respondents, Santa Ana.

**Kennedy Richardson**, retired Litigation Practice Manager, Kaiser Foundation Health Plan, Oakland.

**Tony Rodriguez**, Vice President and Assistant General Counsel, Litigation / Legal Department, Kaiser Foundation Hospitals / Health Plan, Oakland.

**Richard Spinello**, retired Executive Director of Financial Risk and Insurance, Children's Hospital of Orange County.

**John Swartzberg**, MD, FACP, Clinical Professor, *Emeritus*, University of California Berkeley School of Public Health, Berkeley.

**Donna L. Yee**, MSW, PhD, retired Chief Executive Officer of the Asian Community Center of Sacramento Valley, Sacramento.

**Roxana Heidi Yoonessi-Martin**, MD, JD, Compliance Officer and Lead Counsel,  
Southern California Permanente Medical Group, Pasadena.

## **B. Activities**

The AOB has an active role. It meets quarterly to review the operation of the OIA and to receive reports from OIA staff. This includes quarterly reports of statistics similar to those included in the annual report. It reviews the statistics and makes requests for supporting information when the need arises.

The AOB selected the auditors to review the OIA records and files, and to examine the OIA's security and IT procedures. It then worked to have the audits conducted, and had several discussions with the OIA regarding the results.

The AOB authorized the OIA to enact temporary rules<sup>95</sup> in response to the COVID-19 pandemic, and requested quarterly updates from the OIA regarding the status of cases impacted by the temporary rules. It also discussed the possibility of allowing the parties to use e-service, and settled on the suggestion to provide neutral arbitrators with the authority to serve decisions and/or orders electronically rather than by U.S. mail as required by Rule 39. This is Temporary Rule 4 and it remains in effect.

The AOB requested that the OIA collect demographic data from jointly selected neutral arbitrators not on the OIA panel. The OIA now combines this data with the data collected from OIA neutral arbitrators and includes the information in the aggregate on the OIA website.

The AOB renewed its contract with Ms. Bell to act as the Independent Administrator for three more years, through March 28, 2024.

Last year, the AOB adopted the following statement: "Collecting diversity data will help raise awareness of barriers, create an evidence base for examining diversity issues, identify sector-specific problems areas, and measure progress toward improved diversity and inclusivity." The AOB asked that in addition to the state law requirement to collect and post demographic data,<sup>96</sup> that the OIA recognize the value in collecting the data. In recognition, the OIA added this statement to the neutral arbitrator application and to the demographic data disclosed on the OIA website.

The AOB also requested that the OIA continue to contact minority bar association leaders and offer to attend any upcoming events in an effort to recruit new members to the panel. Because of the COVID-19 "safer at home" measures, the OIA participated in a number of virtual

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<sup>95</sup>See Section II.C. for a list of the temporary rules.

<sup>96</sup>See California Code of Civil Procedure §1281.96(a)(12) and Exhibit E.



events focused on diversity, access, and inclusion. In an effort to recruit new members to the panel, the OIA has also reached out to minority bar associations and provided information about the OIA.

At the request of the AOB, the OIA is researching how best to include race, ethnicity, and language of neutral arbitrators on the OIA website. The AOB suggested that the OIA identify neutral arbitrators who may be able to provide guidance on how to encourage attorneys and retired judges from diverse backgrounds to apply to the OIA panel.

Finally, the AOB reviews the draft annual report and comments. Exhibit L is the AOB Comments on the Annual Report for 2020.

## **XII. TRENDS AND DATA OVER THE YEARS OF OPERATION OF THE OIA<sup>97</sup>**

Using the data that the OIA has published in prior reports, this section considers the operation of the OIA over time. As in the preceding sections, lien cases are not considered in Sections G through L.

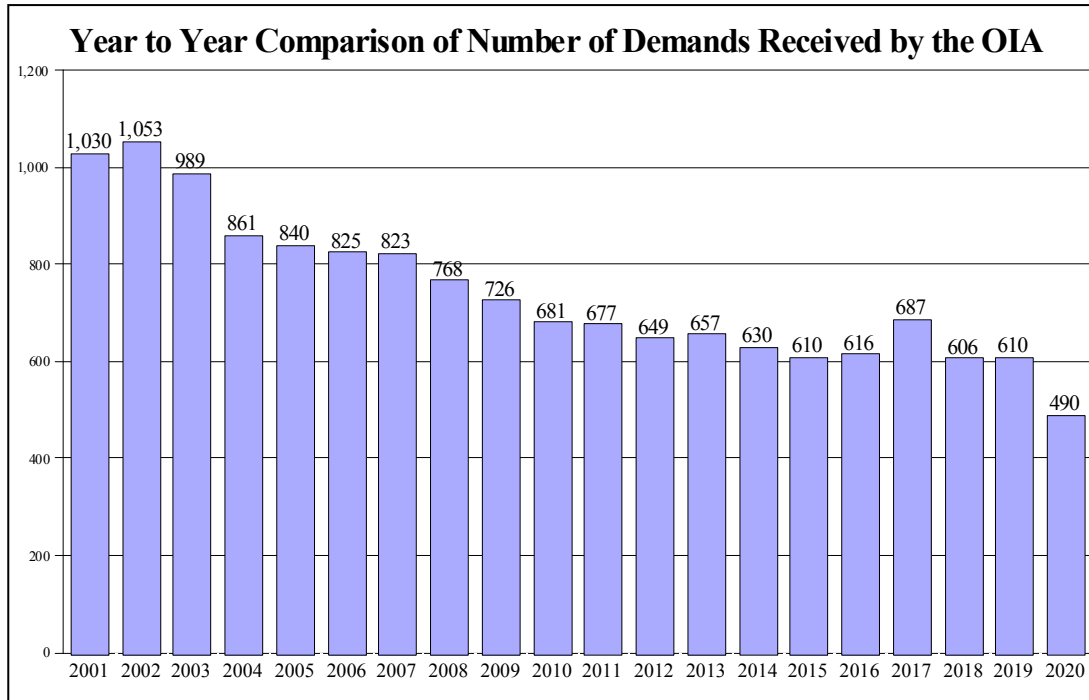
### **A. The Number of Demands for Arbitration**

In 2020, the OIA received 490 demands for arbitration, 120 less than last year and the lowest number of all time but not the lowest decline in a given year. Chart 15 shows the sharpest decline of demands received occurred between 2003 and 2004 (a decrease of 128) with the largest increase from 2016 to 2017 (an increase of 71).

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<sup>97</sup>Unless otherwise noted, this section compares data over the years since 2001, the first time the OIA reported on a calendar year. Prior reports covered partial years.

**Chart 15**



**B. The Number of Neutral Arbitrators**

There are 182 neutral arbitrators on the OIA panel, 11 fewer than last year when the panel contained 193 neutrals. Nineteen neutral arbitrators left the panel. The panel has ranged from 326 in 2006 to this year’s new low of 182. On average, 39% have been retired judges. This year 43% are retired judges. The composition of the panel of neutral arbitrators includes those who have plaintiff’s side experience and those who have defendant’s side experience. This year, 93% report medical malpractice experience.

**C. The Number Who Served**

The percentage of neutral arbitrators who have served in any given year remains consistent with the number of demands. It reached a high of 70% in 2003, when the OIA received 989 demands for arbitration and had 287 neutral arbitrators on its panel.<sup>98</sup> Fifty-seven percent (57%) of neutral arbitrators served this year, 3% less than last year, but 5% more than the lowest percentage over all time (52% in 2018).

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<sup>98</sup>By contrast, compared to 2003, this year there were 499 fewer demands for arbitration and 105 fewer neutral arbitrators on the panel.

#### **D. The Number Who Wrote Awards<sup>99</sup>**

Prior to 2020, the number of neutral arbitrators who have written awards ranged from 34 (in 2018) to 93 (in 2004), with 68 – 87% writing a single award. This year 22 neutral arbitrators wrote 24 awards. By contrast, last year, 35 neutral arbitrators wrote 46 awards.<sup>100</sup> For all neutral arbitrators who wrote awards in 2020, 91% wrote a single award.

#### **E. The Number Who Have Served After Making a Large Award<sup>101</sup>**

Since 2000, 105 different neutral arbitrators have made 146 awards of \$500,000 or more in favor of claimants. Most of the neutral arbitrators who made the awards were members of the OIA panel, but ten were not. The awards have ranged from \$500,000 to \$15,007,152.

As Chart 16 illustrates, most neutral arbitrators who have made awards of \$500,000 or more served again. Specifically, 81 neutral arbitrators served 2,093 times after making their awards for \$500,000 or more. In almost half of these cases (950), the parties jointly selected the neutral arbitrator.<sup>102</sup>

Of the 24 neutral arbitrators who were not selected after making their awards for \$500,000 or more, 4 were never on the OIA panel and 18 left the panel. Two of the neutral arbitrators who made such awards and were still on the panel have not served again. One of these neutral arbitrators made such award in 2020.

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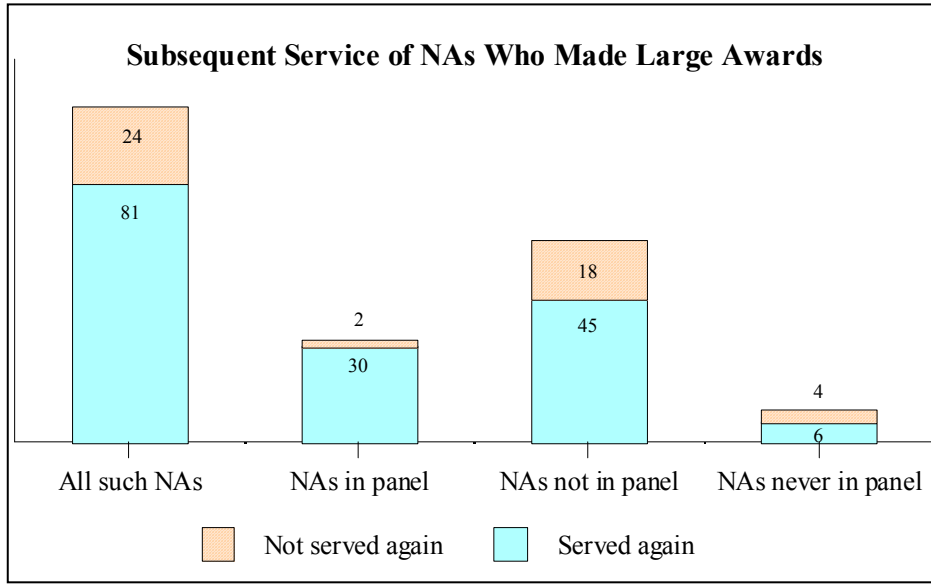
<sup>99</sup>The OIA began comparing this data in 2003.

<sup>100</sup>This decrease is likely the result of continued hearings due to the COVID-19 pandemic. See Section II.C. regarding COVID-19 extensions.

<sup>101</sup>The OIA received its first award over \$500,000 in 2000.

<sup>102</sup>Twenty-six neutral arbitrators who made such awards were selected in 114 cases in 2020. In 46 of the cases, they were jointly selected.

**Chart 16**



**F. Types of Claims**

The large majority of demands for arbitration are, and have always been, claims that allege medical malpractice. This has ranged from 86 – 97%.<sup>103</sup> This year, like last year, 95% of the cases involved allegations of medical malpractice. Benefit claims are generally less than two percent (2%).

**G. Claimants Without Attorneys**

The average percentage of cases with claimants who are not represented by an attorney is 25%. This year, 33% of claimants did not have an attorney, a new high since 2018 when it was 32%.<sup>104</sup> Dealing with the concerns raised by *pro per* claimants has been a continuing issue for the OIA, the AOB, and neutral arbitrators. Both the AOB and the OIA have revised forms and the “*pro per* handout” to make them easier for *pro pers* to understand. See Exhibit B, Rule 54. The OIA is also readily available by phone and email to answer questions from *pro per* claimants about the filing fee, neutral arbitrator selection, the *Rules*, and related items.

<sup>103</sup>The range may actually be smaller because during the early years, a large percentage of demands gave no specifics and were categorized as “unknown.” Now, Kaiser provides information as to the type of claim being made.

<sup>104</sup>By contrast, compare this year’s new high of 33% to 2004, when only 17% of claimants did not have an attorney.

## **H. Joint Selection vs. Strike and Rank Selection**

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

The parties select neutral arbitrators by the strike and rank process in a majority of cases. The percentage of neutral arbitrators chosen by joint selection has ranged from 26% (2003 and 2013) to 35% (2015). This year, 27% were jointly selected by the parties. The percentage of neutral arbitrators jointly selected who are members of the OIA panel has ranged from 55% (2011) to 84% (2014).<sup>105</sup> This year, 74% of the neutral arbitrators jointly selected are members of the OIA panel.

## **I. Parties' Use of Options During Selection of Neutral Arbitrator**

The parties in 34 – 57% of the cases used postponement and disqualification allowing more time to select a neutral arbitrator.<sup>106</sup> Claimants made almost all of the postponements (99%, 6,765 out of 6,812) and the vast majority of disqualifications (77%, 1,075 out of 1,394).

The length of time to select a neutral arbitrator has remained consistent: 23 – 27 days for cases with no postponements. This year, like last year, it took 23 days, the lowest average 2 years in a row, and an average not seen since 2001.

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<sup>105</sup>There have only been 16 cases in which the neutral arbitrator was selected by court order.

<sup>106</sup>A member of the OIA staff contacts the parties to remind them of the deadline to return the LPA. When contacting claimants or their attorneys, the OIA reminds them that they may seek a postponement if they are not able to return their responses by the deadline.

See Table 9 for year to year comparison of days to select neutral arbitrators since 2012.

**Table 9 - Year to Year Comparison of No Delay vs. Delays:  
Percentage and Average Number of Days to Select Neutral Arbitrators**

	2012	2013	2014	2015	2016	2017	2018	2019	2020
No delay	24 days 52%	24 days 48%	25 days 47%	25 days 44%	24 days 51.7%	24 days 51.7%	24 days 51%	23 days 55%	23 days 46%
Only Postponement	108 days 42%	108 days 45%	108 days 46%	109 days 47%	110 days 40.9%	104 days 40.8%	104 days 42%	109 days 40%	108 days 48%
Only Disqual.	63 days 2%	59 days 2%	66 days 3%	62 days 4%	64 days 3.7%	61 days 3.4%	54 days 3%	55 days 2%	67 days 2%
Postponement & Disqual.	175 days 4%	162 days 5%	178 days 4%	173 days 5%	158 days 3.7%	165 days 4.1%	144 days 4%	149 days 3%	210 days 4%
Total Selections	66 days	69 days	71 days	73 days	66 days	64 days	63 days	62 days	72 days

The average number of days to select a neutral arbitrator for all cases has consistently dropped since 2015 when it took 73 days. This year it took 72 days, 10 more days than last year.<sup>107</sup> While more than half of the claimants use procedures contained in the *Rules* and California law to delay selecting a neutral arbitrator, the time to select a neutral arbitrator remains timely and is many times faster than the pre-OIA system.

#### **J. How Cases Closed**

The most common way cases close has always been settlement, 40 – 49%. This is followed by cases withdrawn by the claimant, 21 – 28%. This year 45% of cases settled and 27% were withdrawn. This year 4% less cases were decided after hearing (4%) than last year (8%). Slightly less cases were abandoned (5%) this year and, consistent with last year, the same percentage were dismissed by neutral arbitrator (5%). The remaining cases were closed by summary judgment.

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<sup>107</sup>This increase may be attributed to Temporary Rule 2 extending the deadline for parties to return their LPAs in cases where a party had not returned it. See Section II.C. and V.C.

Table 10 displays how cases have closed since 2012.

**Table 10 - Year to Year Comparison of How Cases Closed<sup>108</sup>**

	2012	2013	2014	2015	2016	2017	2018	2019	2020
Settlements	44%	44%	46%	44%	44%	47%	46%	45%	45%
Withdrawn	26%	27%	27%	26%	25%	25%	23%	26%	27%
Abandoned	3%	5%	4%	6%	6%	5%	7%	6%	5%
Dismissed	3%	3%	3%	3%	3%	4%	5%	5%	5%
Summary Judgment	11%	9%	13%	10%	12%	11%	13%	11%	14%
Awards	13%	11%	9%	10%	9%	8%	6%	8%	4%

**K. The Results After Hearing**

In those cases in which the claimant won after a hearing, the awards have ranged from a single dollar to \$15,007,152. The average is \$500,247. Because the number of cases in any given year is small, the yearly averages can fluctuate greatly from year to year. The lowest average, \$156,001, was in 2001, when the largest award was \$1,100,000. The largest average, \$1,282,547, was in 2015, which had an award of \$11,640,000. This year, the average was \$491,076, and the largest award was \$1,677,649.

Since 2010, the average percentage of cases in which claimants prevailed after a hearing is 35%.<sup>109</sup> In 2020, 26% of claimants prevailed after a hearing while in 2017, 45% prevailed.

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<sup>108</sup>The totals may not add up to 100% due to rounding up or down.

<sup>109</sup>Up until 2009, lien cases were included in this percentage, but are now reported separately in Section IX.

## L. How Long it Took to Close

The lowest average for all cases to close was 281 days in 2001. This year it took 356 days, 10 days less than last year. The overall average for most categories decreased this year. See Table 11.

**Table 11 - Year to Year Comparison of Average Number of Days to Close, by Disposition**

	2012	2013	2014	2015	2016	2017	2018	2019	2020
Settlements	330 days	318 days	334 days	344 days	376 days	383 days	357 days	386 days	376 days
Withdrawn	240 days	241 days	226 days	227 days	255 days	249 days	230 days	238 days	267 days
Summary Judgment	343 days	336 days	344 days	371 days	363 days	372 days	356 days	388 days	363 days
Awards	558 days	538 days	510 days	584 days	589 days	598 days	653 days	676 days	660 days
All Cases	340 days	325 days	323 days	342 days	363 days	368 days	343 days	366 days	356 days

The OIA closely follows each case that is open after 15 months to make sure that the case remains in compliance with the *Rules*. Forty cases over all time have closed beyond the deadline set by the *Rules*. None closed late in 2020.

## M. Cost of Arbitration<sup>110</sup>

California law provides that, absent any other arrangement by the parties, the fees of the neutral arbitrator will be divided evenly between the parties. The *Rules*, however, provide several ways to shift those fees to Kaiser. In 88% of all cases, including liens, that had fees since January 1, 2003, the fees were paid by Kaiser. This is the highest average of all time. This year, 90% of the fees were paid by Kaiser, excluding liens. This is most easily and most commonly done by the claimants signing a form and agreeing not to use party arbitrators. Claimants may also request a waiver based on financial hardship, which exempts them from paying the \$150 filing fee or waiving the right to party arbitrators. California law also allows claimants who meet certain criteria to avoid paying the \$150 filing fee.<sup>111</sup>

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<sup>110</sup>The OIA began reporting this data in 2003 when California law required provider organizations, like the OIA, to report the amount of a neutral arbitrator's fees and the allocation on their websites.

<sup>111</sup>Unlike California Superior Courts, the filing fee has not increased during the OIA's operation and is lower than court filing fees (other than small claims court).



## **N. Evaluations of Neutral Arbitrators and the OIA System**

Since 2000, the OIA sends the parties evaluations of the neutral arbitrators.<sup>112</sup> The evaluations ask, among other things, whether the neutral arbitrator treated the parties with respect and whether the parties would recommend the arbitrator to others. The responses to the evaluations have generally been quite positive, especially from the attorneys. This year, the overall average increased slightly from 4.0 last year to 4.1 (on a 1 – 5 scale) for whether the parties would recommend the arbitrator to others. Compare this average with a 3.9 in 2014 versus a 4.7 in 2004.

The OIA also asks neutral arbitrators to evaluate the OIA system. The questions ask them to identify whether particular features are useful or not, whether the OIA is helpful or responsive, and to compare the OIA system with the court system. The arbitrators' evaluations have always been positive. This year, 99% of the neutral arbitrators who answered the question rated the OIA system the same as or better than the state court system.

In 2009, the OIA began asking parties to evaluate the OIA system and the ease of obtaining medical records. The form is similar to the form sent to neutral arbitrators and also asks parties to compare the OIA system to court. This year, 90% of the parties who answered the question rated the OIA system the same as or better than the state court system. The parties' same rating of the OIA ranged from a low of 86% (2013) to a high of 96% (2018).

## **O. Conclusion**

The goals of the arbitration system as outlined by the BRP are set out in Rule 1. They provide for a fair, timely, and low cost arbitration process that respects the privacy of the parties. The *Rules* and OIA procedures were created with these goals in mind.

The annual reports provide more information about arbitrations than any other arbitration provider.<sup>113</sup> The OIA website provides a searchable database of all its cases since January 1, 2003, in addition to the sortable database about cases received in the past five years as required by state law.<sup>114</sup>

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<sup>112</sup>In 2013, the OIA began sending neutral arbitrator evaluations only in cases in which the neutral arbitrator made a decision that ended the case.

<sup>113</sup>A member of the National Academy of Science's Committee on Science, Technology, and Law published an article largely based on the OIA's annual reports. "Can Mandatory Arbitration of Medical Malpractice Claims be Fair? The Kaiser Permanente System," published in the November, 2015 *Dispute Resolution Journal*, Vol. 70, No. 3.

<sup>114</sup>No names of individual claimants or respondents are included, only corporate entities.

This report describes the ways in which the *Rules* and OIA meet these goals. Some of the highlights are:

Neutral arbitrators are selected expeditiously, and cases close faster than the BRP recommendation.

The arbitration filing fee is lower than in court, and parties can and do shift the cost of neutral arbitrators to Kaiser.

The OIA provides parties with neutral arbitrators' applications; any updates and evaluations received from the parties; and redacted decisions by OIA neutral arbitrators within the last five years.

Parties may jointly select any neutral arbitrator, so long as the neutral agrees to follow the *Rules*.

Either party can timely disqualify the neutral arbitrator after the selection.

OIA arbitrations are confidential; names of individual claimants and respondents are not disclosed.

The information in this report is collected and published on the OIA website to allow the AOB and the public to determine how well the arbitration system meets the goals in Rule 1.