

EXPERIENCE EXCHANGE

Mediation in a healthcare setting: Strategies and implementation

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ABSTRACT

Conflicts and friction are part and parcel of healthcare environments. Associated complexity and multilayered intricacies that exist, leads to unsettling and unresolved circumstances. Issues and problems may occur at all levels in the hierarchical set up universally in healthcare institutions. Resolution of these conflictual experiences has to occur with a pervasive and streamlined methodology that fully dissects out the issues, in order to gain understanding as a preemptive strategy. Through a collaborative framework and mediation, success can be achieved.

Key Words: Mediation, Healthcare, Institutional conflict, Negotiation, Strategies

1. INTRODUCTION

Conflict in a health care setting is inevitable and can occur among individuals of all classes and among professionals in the same or of different groups. Given the complexity of healthcare organizations and need for self and organizational reflection and improvement, quality outcomes and patient wellbeing are paramount to an institution's success. Other impacting factors and circumstances include: issues related to productivity, human relationships, volume of patients, complicated processes/strategies, finances and emotions. Disputes will invariably result and suffering among all people (personnel and patients) will result. Specific examples include, conflict between directors of institutional divisions or programs and administrators related to finances, appropriate staffing, how and when to use on-call providers, consultant differences of opinion, conflict between staff within divisions, etc. The Joint Commission, one of the accrediting bodies of health care institutions has stated that failure to address

conflict will affect all aspects of a healthcare organization, including safety for patients, clinical outcomes, service costs and the well-being of health professionals.^[1]

In a similar way, Benjamin in his article entitled, "The Natural History of Negotiation and Mediation: the Evolution of Negotiated Behaviors Rituals and Approaches", states that when "rules, laws, regulations and formalized policies cannot or do not effectively serve to settle controversies or issues that require greater nuance or flexibility, negotiation and mediation are the primary means by which people reach some level of accommodation to live and work together".^[2]

2. GENERAL STRATEGIES

To carry out these strategies further, one must be able to address conflict and mediate effective solutions which will require a complete appraisal of the four P's (person, place, problem and process) of conflict analysis, along with a frame-

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work that describes the evaluation and mediation procedures involved in disputes in a healthcare setting.

(1) Person in conflict - No analysis of conflict would even start without understanding the person(s) involved in conflict; the individuals role, responsibilities, personality type/style, his/her perspective on the issue, the facts and opinions surrounding the issue, data regarding the basis of attempted solutions, interviews surrounding the perceptions of others, the positions and interest of those affected, interpretations from other identified stakeholders and complete case histories.

Part of developing the most appropriate mediation strategies and tactics involves having a full understanding of the parties, their personality styles and mannerisms, their communications (delivery and tone), their affective demeanor and emotions, the context of the problem or dispute, the relational dynamics between individuals or groups, i.e., the nature and process involved by individuals engaging in or managing conflict, giving feedback, boosting morale, etc. Inherent in the success of the mediation session is the concept and demonstration of honesty, fairness and compromise in relationships, the behaviors that contribute to the formulation of the problem or lack of success in correcting it, how interests versus positions interact between individuals or groups and finding the strategies that involve compromise, contingency, validation, empowerment, relationship building, trust for each other and for the greater good of the healthcare institution.

(2) Place of conflict - According to Gerardi, "conflict is inevitable in complex healthcare systems such as hospitals, where high levels of inter-dependence, production pressures and role ambiguity are common."^[3] As such, healthcare organizations and systems are dynamic, always in flux-with many simultaneous activities adding to the complexity of healthcare processes. Because of this,^[4] qualities emerge in a changing adaptive system: they are self-organizing, patterns emerge over time, processes are nonlinear, meaning they are unpredictable and patterns result from personal interactions and relationships.^[4] Suffice it to say, these system adaptations may cause problems, such as, irregular patterns (independently carried out versus process oriented), miscommunication or inadequate or insufficient alignment of care or resource over-usage. Furthermore, the place or environment can create obstacles that lead to or contribute to conflict, that is, time constraints, financial costs, resource limitations, competing meetings, staffing shortages, efficiency pressures, space limitations, limitation in individual skills, fragmented, incomplete or omitted communication, presumed information or assumptions, etc.

Understanding conflict within the context of complex systems is key toward understanding conflict resolution. As Gerardi, points out, understanding conflict within the context of complex systems requires that there be more than just good communication skills particularly in work environments where tensions are heightened by power dynamics, professional sub-cultures, productivity pressures and emotionally taxing work.^[3] A healthy systems approach cannot rely on the current system of unanswered or incomplete investigations, a dismissal of environmental concerns, unclear or misunderstood solutions, formal documentation solely for the purpose of being put into a "mysterious file", diminutive disciplinary actions or a continuation of resource limitations or having incomplete or ill-determined processes.

Cultivating conflict competence in a healthcare environment requires an understanding of the conflict within the organization and an open and fair response to environmental concerns. Transformative mediation focuses primarily on interactions between the disputing parties. The goal is to improve relationships and increase insight, respect, knowledge, communication and problem-solving skills. Understanding the context of the dispute and the environment that contributes to the adversarial relationship, while creating a sense of professionalism and accountability add to the contextual positivity found in more healthy complex healthcare settings. In addition, being prepared, gathering facts and appreciating case-based factual data adds to understanding through joint and caucus sessions. In healthcare organizations, layers of contributing factors create ripe conditions for conflict patterns to develop. Systems thinking, a managerial orientation that looks at the parts and the relationships within a system helps to understand the inter-relatedness of the system components and patterns that relate these connections. Questions that help to sort through the issues, more often than not, relate to the need to understand where improvement should occur, what current trends/processes exist - who is engaged in them, and can the environment/resource deficiencies or problems improve. Investigation must also answer what resources, personnel or processes are needed in order to achieve correction? Asking open-ended diagnostic questions allows the mediator to understand the parties' motivations, goals and to help diagnose or solve the problem. Interrogating the parties by asking who, what, when, where, why, and how allows for a clearer understanding of the issue(s) and potential resolution to the dispute. In addition, when, and if impasse occurs, these questions may help to elicit the root cause of the issue and clarify or add to missing details, which helps to satisfy parties with more complete information.

(3) Problem to resolve - In a service-oriented healthcare delivery system, the complexities of human relationships

and understanding create many possible conflicts. Benjamin states that in a culture dedicated to belief and rationality, most people in a dispute have a sense of being right and view the matter in a justified way and stay unwilling to compromise; to do it is like “giving in!” He further states, that most people in a dispute don’t want to lose face, don’t want to feel threatened, are prone to tell the story from their own vantage point and may even be unwilling to listen, even giving ultimatums that border on irrational logic.^[3] Such disputes in a medical environment may theoretically involve any aspect, issue or focus that impacts care; health or procedural/surgical processes, personnel issues (hiring, terminations, salaries, privileges, etc.), turf battles among specialties, various forms of harassment, insubordination, compliance deviations of multiple types, unprofessional behaviors (real or misperceived), workplace disruptions, political messaging, errors of communication, ineffective performance and lack of accountability/responsibility, misuse of resources, inadequate management/leadership, inadequate clinical performance, budgetary mismanagement, etc.

3. MEDIATION FRAMEWORK

As with all subjects and matters of dispute, the mediator must dissect out, in a neutral, yet positive way the issues and have an understanding of the nuances and circumstances that bring the parties together. Within the framework of mediation, it is imperative that the mediator understand the nature and circumstances surrounding the dispute, the relationships of the disputing parties, the details surrounding prior resolution attempts, why an agreement is important and how best to strategize and provide well-meaning support in order to achieve an agreement. This is also the time to build credibility as a mediator, establish rapport, assess the parties bargaining power, screen for potential conflicts and understand the politics and processes involved in the healthcare centers administrative oversight or efforts to intervene. Furthermore, the mediator can obtain information, vital to the success of the process, including written policies, procedures, bylaws or regulations that impact the issue that may serve as the basis for any contingencies, compromises or negotiated settlement offers. Because many issues encountered in a healthcare setting are personal, sensitive, effect reputation or promotion, job security, etc., it is important that procedural justice be a part of any opportunity to convene and work toward a confidential, well understood, fair and diplomatic solution. Therefore, the interactions and conversations among parties must demonstrate that the session is confidential, that the parties have the ability to object, that they may fully express themselves and their views of the conflict, that there be assurances of respect and dignity, that each

party can provide their own interpretation of the problem or dispute and that they be allowed to brainstorm and offer rationale for demands, offers or counter offers.

Other possible conflict management strategies may include, individual or group coaching using a peer or professional coach to develop a plan for addressing specific work-related problems, face-to-face conversations between those in a dispute and a neutral hospital-based person who can facilitate differences among colleagues, facilitated meetings using a skilled facilitator who can bring a group together for cohesive and collaborative problem-solving, facilitated dialogue, whereby sharing of ideas occurs in order to gain the perspectives of others with similar values or experiences, informal mediation through the use of a third-party, such as an organizational ombudsman, communication specialist or conflict resolution trained individual or story circles where story telling is used to move from personal experiences or occurrences in real life to broader issues as a basis for negotiating between groups having conflict or stress-related differences.^[5]

(4) Process in a healthcare environment, involves mediating toward a settlement agreement based on carrying out the strategic steps and phases involved in mediating other issues or conflicts in a non-healthcare setting including, convening, opening, communication, negotiation and closing. Although touched upon in several of the sections as depicted above, an attempt will be made to summarize each phase outlining the main goals.

4. MEDIATION PHASES

Convening – The usual process starts by hiring, in a contractual relationship, a hospital or healthcare focused mediator who can discuss and gather information from the hiring party. Information obtained may include, the nature of and reasons causing the dispute among individuals or groups, the place or environment in which the conflict occurred, the nature and circumstances regarding the issue or dispute, any attempts or challenges that have taken place to settle, how impasse was managed, consequences of the dispute to both parties, history of any legal action, costs/contracts/timeframe related to mediator services, etc. In addition, any documents created previously that would contribute to the mediator’s success and compliance should be forwarded, which may include policies and procedures, guidelines, legal/other statements, etc.

Opening - An opening typically takes place between the parties, but may include a preemptive visit with administration/leadership or other parties who may provide a background or be able to give information or insights related to

the dispute. In general, the mediator's style may be evaluative (giving opinions) or facilitative (open dialogue) or a combination depending on the parties, circumstances, tone of the communication, relational stressors, and other variable factors. The mediator's opening is also a time to verify the role of the mediator, how he/she will be diplomatic and neutral, that the process will be confidential, what the ground rules will entail, an explanation of joint versus caucus sessions, and what the eventual goals will be with regard to settlement, contingencies or offers. Often specific to a healthcare environment, sometimes personality inventories or various written data assessment surveys are administered in order to determine the basis, incidences, and compromising strategies of the parties. This strategy may be used in order to get a better, more useful handle on the nature of their relationships, conflicts and goal setting tactics.

Communication – Thorough and detailed communication is essential in order for the parties to have a full understanding of the “magic” in words. Communication comes in many forms such as, verbal, nonverbal, paraphrasing, validating words; all used in a neutral and facilitating manner. The mediator is a diplomat who speaks in a nonjudgmental, respectful manner and carries messages to each party. Messages can be conveyed in the form of analogies or metaphors, generalized or specific, all with the aim of moving toward agreement. The mediator is also obliged to discourage offensive comments, normalize the “dance,” extract concessions and help the parties maintain credibility while moving the process forward. Sessions may occur in joint format or in caucus depending on the subject matter the response of the parties, the bargaining that is taking place, impasse difficulties, obstacles or other unforeseen challenges. Lastly, the mediator is ultimately there to assist, structure and manage manipulation and psychologically prepare parties toward resolution.

Negotiation - As with all conflicts requiring resolution, the institution, through some form of administrative or leadership driven plan or directive must decide on the best course of action looking at alternatives to settlement prior to formal mediation, as described previously. As with all focused and successful distributive bargaining and negotiating, strategies must include preemptive planning and information gathering. Particular to the healthcare setting where there are multiple moving “parts,” personnel and processes, innovative strategies may include a creative and relaxing opening, i.e., getting the parties to a settled place with greater willingness and openness to communicate, role-playing to act out the conflict, using “culture” transforming assessment tools and using individual, group or caucus gathering strategies. As relationship disintegration and ego-based behaviors are at the crux of many health care institution conflicts, Gerardi has suggested

the following that works well in hospital-based conflict: listen for understanding, let others speak, respect confidences, speak from your experiences, own your participation, invite diverse viewpoints and perspectives, bring your whole self, silence is not agreement and use humor when appropriate.^[5] In addition, relationship building is essential whereby values, actions, trust, alignment, self-awareness and choice help to initiate conversations in social interactions. Unlike in other forms of mediation, the mediator in a health care institution functions as a collaborator and coach who can entice change, bring awareness, teach emotional intelligence competencies (emotional awareness, accurate self-assessment, self-confidence) and self-regulation (self-control, trustworthiness, conscientiousness, adaptability, innovativeness).^[6]

Closing - Despite these differences in tactics and strategies, the ultimate goal is to formulate a plan going forward, achieve consensus, compromise on issues, eliminate cognitive biases, and provide an innovative, fair and workable plan incorporating concepts and standard principles of mediation. In order to, “close the deal”, the mediator must take those steps necessary to achieve settlement. This may involve greater assertiveness, directives, implement changes through a pilot program or time-honored trial period, etc. The risk of not doing so includes time and costs invested, reputation of the mediator, emotional and relationship costs for all parties, collateral damage and the perpetuation of continued health-related conflict. In the end, parties must agree to invest time, energy and commitment, to develop written protocols or other documentary evidence regarding the changes that will occur and to commit to any remediation, additional training, changes in communication, manipulation in personnel, or any other concessionary alterations. The mediated changes must also take into account the commitment to ethical and moral behavior, integrity of relationships, an assessment of change, re-evaluation and analysis going forward and the realistic determination that if conflict swings backwards or changes in any way, that another intervention must occur or mediation be, in some form repeated.

5. CONCLUSIONS

Mediation in the healthcare setting involves an organized and strategic approach that relies on the standard mediation phases. It is vital that the mediator plan and convene the session, accurately assess the situation, evaluate the circumstances surrounding the parties in dispute, communicate effectively, negotiate strategically and appropriately for the setting personnel in conflict and close with the aim of creating a lasting, fair and time-honored settlement.

CONFLICTS OF INTEREST DISCLOSURE

The authors declare they have no conflicts of interest.

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