Mediation and Healthcare Disputes

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Problems lie in the areas of ...
- Communication
- Information
- Understanding
- Concern
- Trust
Difficulties encountered in resolving medical negligence claims through litigation

- Process is long-drawn
- Costly in time and legal expenses
- End result is fraught with uncertainty

A case of defamation

- Dr A – upset with a newspaper for alleging that he was negligent in performing an operation
- Dr A sends a letter to the newspaper demanding damages and a public apology
- Dr A’s position: claim for damages, public apology
- Dr A’s interest: concern for professional reputation
- Newspaper’s position: refusal to give in to Dr A’s demands
- Newspaper’s interest: journalistic integrity

Interests reconciled and satisfied

- Publication by the newspaper of a carefully worded clarification
- An undertaking by the newspaper not to repeat the original allegations

Interest-based mediation

- Problem-solving approach
- Encourages parties to negotiate in terms of their needs and concerns instead of legal entitlements
- Focus not on who is right / who is wrong; or who has a stronger / weaker case in court
- Mediator helps the parties to:
  - re-examine the reason for the positions that they have adapted
  - reconsider the validity of the underlying assumptions
  - Have open discussions of their needs and concerns
- Result: generation of a range of options that help the parties to solve their problems in a practical fashion
Mediation and medical treatment

- Four-step to treat patients
- **S** – Subjective data
- **O** – Objective data
- **A** – Assessment
- **P** – Plan

Mediation

- **S** - Subjective input of the parties
- **O** - Objective materials
- **A** - (Assists the parties in) Assess the problem – identify and understand own and other's interests and concerns
- **P** – (Works with the party to) Plan a workable solution to the problem

Benefits of mediation for medical negligence disputes (Singapore experience)

- Jan 1998 – Dec 2001: nine cases were mediated at the Singapore Mediation Centre, all were resolved through mediation
- Helps to bridge the gap in communication as parties are reluctant to communicate openly with each other before mediation
- Gives the parties great control over the outcome of the dispute
- Process is informal and non-confrontational → Builds rapport between the parties
- Process is private and confidential → Information disclosed and views expressed shall not be used in any proceedings

Benefits of mediation for medical negligence disputes

- Documents will not be admissible as evidence or discoverable in any proceedings connected with the dispute
- Greater privacy and confidentiality → Parties are more willing to explore different options for settlement
- More likely to arrive at creative and pragmatic solutions
- Collaborative process that allows the parties to maintain their social, professional or business relationships
- Settled through consensus, parties are less antagonistic and in a better position to restore their strained relationships
Benefits for personal injury case

- In personal injury case, complainant / claimant feels a sense of grievance as a result of the injury
- is often immensely resentful about the treatment they received from the other party

- During mediation
  ✓ first names are used
  ✓ parties talk directly to each other
  ✓ he / she can air grievances
  ✓ has ownership of any settlement
  ✓ has direct control of the negotiations

- For insurers
  ✓ Early settlement → significant saving in legal costs
  ✓ Fine-tuning of conflicting evidence or opinions
  ✓ Even if not mediated, issues will have been narrowed or distilled

Mediation has therapeutic effect

- Provides the parties with the opportunity to
  ✓ Share their grievances
  ✓ Express how they truly feel about the events that gave rise to the dispute
  ✓ Voice genuine expression of regret
  ✓ Heal emotional wounds
  ✓ Bring about reconciliation

Conclusion - Mediation

- To affirm and uphold the physician-patient relations
- Non-adversarial problem-solving approach
- Not to threaten the fragile relationship between the parties
- To promote constructive communication and understanding between the parties
- To create an environment for co-operation
- Not fault-finding, no need to compile documentary evidence, obtain the opinions of experts or prepare witness statements
- Informality of the process, leads to considerable savings in time
- Parties may revert to litigation or arbitration anytime
Hong Kong Mediation Centre
- Practices interest-based mediation
- Interest is a motivation behind a demand made by a party to a dispute
- Interest is needs and concerns of the party
- Position is an expression of how to satisfy the perceived interests

What does mediation training cover?
- Questioning
- Paraphrasing / Summarizing / Perception check
- Active listening
- Facilitation (facial expression / body language)
- Reframing
- Negotiation
- Options generation

How does mediation skills help solve healthcare disputes?
- Questioning
- Paraphrasing / Summarizing / Perception check
- Active listening
- Facilitation (facial expression / body language)
- Reframing
- Negotiation
- Options generation
- Communication
- Information
- Understanding
- Concern
- Trust

How mediation can resolve healthcare disputes?
1. Other’s POV
   - Information
   - Understanding
   - Trust
2. Other’s needs/interest
3. Options
   - Healthcare plan
   - Discharge plan
   - Follow up plan
Annita Mau

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- 1995 – 2006 – Hospital Authority’s Head of News Section
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Thank you and Question time

Reference
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Common concerns

- How to get two parties to enter into mediation?
- Why would lawyers encourage their clients to enter into mediation?
- How to protect patients’ privacy in mediation meetings?
- Who of the healthcare staff should be trained in mediation skills?
- Are there required basic qualities to become a mediator?
- How to become an accredited mediator?