INTRODUCTION

Complexity in hospitals and physician organizations is evident in the conflicts that arise between and among the special interests and agendas, hidden and overt. These are often so emotionally charged and adversarial that they escalate into situations that can only be resolved by expensive legal means.

Physicians are well aware of the frustrations which result in disrupted relationships with all others concerned: patients, nurses, administration, governance and payers. Such disruption leads to reduction and ineffectiveness in patient care and safety with considerable cost in time and resources. Healthcare is prone to such conflict because the fears, real and imagined, are faced by all.

Because of the negative effect on patient safety and quality of care, the Joint Commission has mandated standards for conflict management that hospitals must meet to achieve certification.

If the parties in conflict (and there may be more than two) cannot negotiate a resolution satisfactory to all involved, there are five alternatives:

1. Do nothing and continue with “business as usual.”
2. File a law suit
3. Allow a higher authority such as hospital administration or group CEO to decide the solution

4. Arbitration.¹

5. Mediation.

The first will leave all unhappy and lead to perverse behaviors by the various actors. A culture of *we* versus *they* is created and the organization will suffer.

The second will be expensive and often not in the best interest of the parties.

The third and fourth choices put the resolution into the hands of either the CEO, an individual with an obvious conflict of interest, or an independent decision maker (the arbitrator). Either way, the parties will make their case and will have no say or control over the decision; a decision they have to accept. At least one party, if not all, will be unhappy with the outcome; the organization will suffer.

**MEDIATION**

Mediation is a voluntary, confidential² process in which an objective neutral facilitates dialogue among the parties. Much effort on the part of the mediator is demanded. Outside of the rare, spontaneous resolution by negotiation by the parties themselves, mediation is the least expensive of the alternatives and gives the parties most control

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¹ It is not within the scope of this article to differentiate binding v. non-binding arbitration.

² Facts of the issues as well as matters that would be illegal to be kept confidential cannot be held in confidentiality. Otherwise, all discussions in a mediation are considered confidential.
over the dispute. Should mediation fail to resolve the dispute, one of the alternatives may then be chosen.

Success in organizational conflict resolution requires buy-in by the formal leadership. After acceptance of the mediation process as the initial formal attempt to resolve the conflict, the chosen mediator will meet with the parties in joint session to explain the process, gain a basic understanding of the issues and help the parties define, in general, a desired conclusion.

The next step will be interviews with each of the parties, called “caucuses.” The purpose of the caucus is to allow the mediator to better understand the issues from each party’s standpoint as well as to get both parties to think “outside the box” about potential solutions. The mediator must ask what information, if any, may be shared with the other party and may bring potential solutions from one party to the other.

The trained mediator will demonstrate neutrality while attempting to understand the dynamics of the conflict, including issues of power. They will respect confidentiality, remain patient with all parties and generate a climate of cooperation. There may be multiple caucuses and joint sessions prior to resolution. Some mediations may take place over several days. The agreed upon solution will be put in writing and signed by each of the parties.

If no agreement is reached, an impasse will be declared. Despite a lack of formal resolution, the parties would have a better understanding of the strengths and weaknesses of their own position and those of the counter-party (ies). Confidentiality of the proceedings, including the
caucuses, whether or not an agreement is reached, is to be maintained indefinitely.

The downside of an impasse is that the parties have now given up their control of determining an outcome. The next question would be how to settle the dispute? The answer would depend on the particular situation as to which alternative is selected.

A SPECIAL CASE

Attention must be paid to the special healthcare issue of the disclosure of errors and adverse events. The value of an early interest-based mediation intervention cannot be overemphasized. Parties in this situation are often concerned about factors beyond dollars. When adequate information is available to the parties, resolution can often be achieved. A third party facilitator is invaluable to this particular process.

CONCLUSION

Conflict within the hospital or medical group has a negative effect on mission and margin. The public is becoming more acutely aware of the adverse effect of conflict on quality and safety. Joint Commission has formalized its concern for patient safety and quality of care by mandating standards that must be met by the hospital.

Should informal negotiation by the parties fail to resolve a conflict, mediation is the most effective and efficient method to achieve settlement. Mediation can be facilitated by in-house persons or by

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3 One is referred to Carol Liebman and Chris Hyman, A Mediation Skills Model To Manage Disclosure Of Errors And Adverse Events To Patients. Health Affairs, Volume 23, Number 4, July-August 2004: 22-32.
outside, formally-trained mediators. If done in-house, there should be training for those who will act as “neutral” facilitators. Outside facilitators can be better recognized as neutrals by the conflicted parties.

A successful conclusion to the special case of disclosure of adverse events requires an almost absolute need for an outside mediator.

Physicians should understand that mediation will only work if leadership alters the traditional norms of self-protection and creates a culture of dialogue and understanding during times of conflict. Healthcare organizations should realize that mediation is the formal process of choice for their inevitable professional conflicts.