Mediation: The External Solution
To Internal Hospital Conflict

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One of us (DLM) asserted that negotiation was the Chief Medical Officer’s indispensable skill. While this is certainly true, it implies that the CMO has a “dog in the fight.” However, there are a number of conflicts within the hospital between and among the various parties which demand an intermediary perceived as neutral. Conflicts are deep-seated controversies with much history and emotion. Complexity in hospitals 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 avenues.

Physicians are well aware of the frustrations, which result in disrupted relationships with all others concerned: other physicians, 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.
The Nurse Director of Labor and Delivery, concerned about the quality of care on her unit, asks for a private meeting with you. More specifically, she has the perception that there are differences in the quality of care delivered by OB specialists and the Family Practitioners credentialed to perform deliveries and C-sections; she believes that the OB specialists have better outcomes. Data collection has failed to show any statistically significant difference. This is a long-standing issue which has been heatedly discussed at numerous confidential OB Peer Review Committee meetings, many of which you attended. This committee is comprised of representatives of the two physician groups as well as the L&D Nursing Service. The often inflammatory arguments centered on quality of care, but you know an underlying issue is financial. You realize this is escalating to the point whereby there may be a “whistleblower” to the media or to an attorney. You come to the conclusion that your repeated attempts to resolve this matter have been unsuccessful, and that it is now imperative that you bring in a neutral intermediary.

If the parties in conflict (and there may be more than two – as in this vignette) 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 hospital administration or medical staff leadership to decide the solution
4. Arbitration
5. Mediation

The first will leave all unhappy and lead to perverse behaviors by the various actors.

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 persons perceived to have a conflict of interest (hospital administration or medical staff leadership) or an independent decision maker (the
arbitrator). Either way, the parties will make their case and will have no 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 thus suffer.

With difficult hospital conflicts, mediation is the most effective and efficient method to achieve settlement.

**MEDIATION**

Mediation is a voluntary, confidential process in which an objective neutral facilitates dialogue between and among the parties. In addition, the mediator may facilitate solutions to intraparty disagreement. Much effort on the part of the mediator is demanded. Outside of the spontaneous resolution by negotiation by the parties themselves, mediation is the least expensive of the alternatives and gives the parties most control over the conflict. Should mediation fail to resolve the issue, one of the alternatives may then be chosen.

Success in organizational conflict resolution requires the buy-in of 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. Confidentiality must be explained in detail to all involved - they must understand their role in maintaining confidentiality and the severe consequences of a breach. Legal advice should be obtained in order to keep the mediation confidential under state peer review law.
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.

You discuss the situation with the CEO and the President of the Medical Staff, who agree that mediation is necessary. You know that you have to have buy-in from the physicians involved. Additionally, you want nursing to have a sense of ownership in the process. Therefore, you separately bring the Chiefs of OB and Family Practice, as well as the Nurse Director of Labor and Delivery, to discuss this decision. Each of the parties accepts the need for a mediator.

Because this is a matter which requires a sensitivity and understanding of the unique hospital culture, you select an outside physician skilled in mediation. She meets with you and the CEO to gain a sense of the problems. The CEO agrees to her letter of engagement.

She then meets in a brief joint session of the parties (you do not attend any mediation session) where she explains the mediation process, emphasizes the need for confidentiality, and explains that she will notify you and the CEO of any agreed upon solution without betraying the confidentiality of the discussions. She then meets with each of the parties to learn their side of the issue. Sharing of information between and among the parties can only be done with specific permission of the source party.

Trained mediators 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. Depending upon the sensitivity of the issue, the agreed upon solution may or may not be put in writing and signed by each of
the parties. Finally, any agreed upon solution will be presented to the CMO, CEO and the President of the Medical Staff. If the matter is of sufficient importance, governance should be notified of the issue and its solution.

After she feels that she understands the depth and scope of the problem, and has shared the permitted information among the parties, she meets with the three parties in joint session. She again explains the process of mediation and the need for confidentiality. Fortunately, during this session, the parties, in a civil manner, are able to create a set of action items and oversight to improve their professional relationships and the quality of care in the Labor and Delivery Suite. She then relates the solution to you and the CEO. You then notify the President of the Medical Staff. Because of the importance of this problem, governance is aware of the mediation and thus is informed of the solution.

The mediator tells you she remains available to help resolve any problems that subsequently occur in this matter.

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 conflict? 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. It is often advantageous to have the liability carrier involved in this discussion. 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 has a negative effect on mission and margin. The public is becoming more acutely aware of its adverse effect on quality and safety. Joint Commission has formalized its concern for patient safety and quality of care by mandating standards for conflict management 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 outside, formally trained mediators. If done in-house, there should be training for those who will act as “neutral” facilitators. Outside facilitators, however, can be better accepted as neutrals by the conflicted parties.

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iMellman, D and Dauer, EA; The Physician Executive, Vol. 33, July-August, 2007, issue #4, pp 48-51

ii In arbitration, it is the arbitrator who, after hearing the arguments by each of the parties, renders the decision. It is not within the scope of this article to discuss “binding” vs. “non-binding” arbitration.

iii 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.

iv 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.