

The Do's and a few Don'ts of Mediation in Healthcare

It is late on a Friday afternoon and you are just about to leave your office when your phone rings. It is the VP of Patient Services of the local community hospital, who frantically declares that there is a crisis in one of the units.

A number of the specialized obstetrical nurses have threatened to quit because a physician who had been on leave is returning to the unit. The nurses are refusing to work with him, stating that they can't trust him and that he is incompetent.

However, the physician has been audited by the provincial medical association and deemed competent to practice so the hospital must accept him back.

The VP implores you to come to the hospital Monday morning and "mediate this situation and fix these nurses"

So you have the weekend to figure out how you might go about doing that. Where do you start?

DON'T Assume

It is patently clear to any mediator that there are many positions in every conflict so remember not to assume that the VP has adequately described the problem. In virtually all cases, the conflict reaches much farther than the nursing staff. If the staff is experiencing conflict you can be sure that there has been a breakdown in communication between staff and middle management as well as between middle and upper management.

DO Gather Data

Be prepared to spend some time gathering data and to have the administration balk at the process of doing so. In their minds the situation may be very clear; 'difficult and pushy nurses that need to be fixed' Recognize that it will take time for the nurses to trust you enough to come and talk to you. Once a few have been brave enough to come to see you, they will report back to the others about the experience so make it a welcoming and comfortable situation for them. Make sure that members of the staff know that all information gathered will be treated confidentially.

Do a Conflict Assessment

Determine how the organization deals with conflict currently. Most organizations deal with conflict through avoidance, power plays, resorting to higher authorities or less commonly by collaboration. The mediator can assist the organization to determine which method or option is encouraged and rewarded. Organizations can be helped to understand that they must determine where they are now and where they want to be. Mediators can work with organizations to identify the current resources available to assist with culture change and decide what extra resources will be required to move towards a culture of conflict management and positive collaboration.

DON'T write a report

In many situations in which a healthcare mediator is called in, the administration hands over a pile of reports that “the other mediators produced” They are always very surprised when I tell them that mediators don't write reports, consultants write reports. If you are providing mediation services, you should not be writing long winded reports that are full of recommendations. That is what consultants do. Nothing wrong with it, it's just not mediation.

Hospitals have enough trouble trying to figure out what mediation is and what conflict resolution specialists do. Don't muddy the waters by acting as a consultant and calling yourself a mediator.

DO get administration to commit to the process

Most hospitals are not familiar with using a mediation/facilitation model to resolve conflicts. Their usual experience is to use adversarial processes such as grievances, arbitration, wrongful dismissal suits, harassment claims, regulatory complaints and reports, and negligence litigation. This means there is a traditionally a large role for lawyers and a small or non-existent use of other processes. Healthcare mediators should be prepared for resistance from the legal counsel who work with healthcare facilities. They will undoubtedly undermine the utility and benefit of non-legal processes such as mediation, facilitation and training.

Hospital budgets always include legal expenses as a significant portion of their expected costs. Rarely are alternative modes of dispute resolution included in the budgeting planning. Inform administration that while collaborative processes take time, the outcomes are almost invariably more durable.

DO point out the benefits of CR processes;

- using an interest-based collaborative approach allows parties to get to the points at issue and focus on moving forward rather than finding fault
- mediation maintains and improves relationships,
- confidentiality can be maintained, unlike litigation which is a public process

DO introduce yourself to the group

If management has hired you, there will be natural resistance to your role. In many cases, nursing staff, support staff and physicians will see you as a pawn of the administration and will be reluctant to engage with you. Try to meet with them in groups initially to introduce yourself. It is particularly helpful to describe your past experience with other healthcare situations. If you have a nursing, medical or other allied health background you will have a great deal more credibility and acceptance.

DO use a co-mediation model

The best model for healthcare mediation is a team that includes at least one mediator with a healthcare background. Ideally a nurse/physician team of mediators should be used.

However, most facilities are dealing with resource challenges and are not willing or able to commit extensive resources to this process. One approach to deal with this is to utilize the skill sets of the team members to maximum advantage.

The physician may be best utilized in interviewing the physician group, while the nurse can focus on the nursing and support staff groups.

DO remember the work situation

Recognize that hospital units operate 24/7 and that it will be very difficult to get people away from the unit in order to meet with you. Make sure you provide a flexible schedule that allows people multiple opportunities to gain access to you. Provide alternate modes of contact such as e-mail and cell phone numbers. Meet them in their space, go to the unit, be among them and show them that you are interested in experiencing the work environment from their point of view.

Remember that hospitals have become much more like businesses over the past few years. The structures are hierarchical, with multiple layers of management. Staff feel that management and administration are removed from the reality of patient care and don't really "get it" To counteract this, ensure that management is included in all problem-solving processes and that individuals with authority to make decisions are at the table.

DO get all the parties to the table

The importance of getting the right parties to the table is crucial in complex multiparty situations. In our experience, most healthcare disputes are multiparty conflicts. Rare are the situations where there is one physician and one nurse in dispute. More often there are numerous physicians and nurses as well as member of administration and support staff. In disputes involving patients, there are also multiple parties such as the patient, family members, nurses, physicians, allied health workers as well as administration. Any effort

to resolve conflicts in which all the appropriate parties are not present is doomed to failure.

DON'T stop at resolving the current conflict

Once the initial problem has been resolved, encourage the facility to look towards designing a conflict resolution system for future conflict situations. Ensure that the system includes prevention and early intervention as key components. There must be multiple points of access for staff, physicians and patients with loop-backs built in. For example if a nurse has a conflict with a physician she should be encouraged and coached in how to discuss that matter with the physician directly. If this is unsuccessful there should be an internal ombudsperson or mediator who can assist the parties to get together and begin communicating. Once they have been aided in resolving the situation, the mediator can step back and let the parties continue to work together to improve their relationship and only step back in as assistance is required.

Healthcare organizations often resist the need to design and implement conflict-management processes and argue that there are already well-defined processes within union agreements, individual contracts or in HR policies. Conflict-management processes are not used in place of already existing contracts and policies, but as complementary additions. In many instances, conflict-resolution processes allow for early resolution of issues so that other, more adversarial options are not required.

DO encourage CR training for all

It is vital to ensure that staff, management and physicians are adept at managing conflict. Hospitals and other healthcare organizations must commit resources to train everyone in basic conflict-resolution and communication skills. The training must include opportunities for role playing and group exercises that give individuals practice in dealing with difficult situations. In addition, identify talented internal individuals who can receive additional training to act as internal conflict coaches and mediators.

DO make the connection to patient safety

The research is unequivocal. Units that are undergoing conflict are more likely to produce errors and to compromise patient safety. There is ample and longstanding evidence of the importance of communication, collaboration and respect among healthcare team members as a vital component contributing to providing safe quality care to patients. Yet healthcare professionals have little or no training in or understanding of the factors that can help to prevent and manage conflict.

Patient Safety is a current buzzword and gets the attention of healthcare facility management. If you can convince them that managing conflict will help them avoid errors and improve the quality of patient care you will be well on the way to getting commitment to using collaborative processes as a preferred mode for resolving conflict.

If you remember the DOs and DON'TS of Healthcare Mediation as described above, you can present yourself on Monday morning ready and able to assist this facility to retain the nursing staff and encourage a collaborative problem-solving process between the nurses and the physician. In addition you will be able to help the facility to look forward and build on the success of this situation by developing a training program and conflict systems design that will ensure that future conflicts are managed in a proactive, positive and inclusive manner.

