

Better to mediate than litigate, MDs argue

Barbara Sibbald

Two Canadian physicians hope they're leading the way toward a new method of settling disputes with patients, colleagues and hospitals.

Mediation — intervention aimed at settling or reaching a compromise over contentious issues — is nothing new in the legal system. Indeed, it's now mandatory for all civil matters in Eastern Ontario. However, it's relatively new when it comes to health care, and that's why longtime colleagues Dr. Jan Ahuja, chair of emergency medicine at the University of Ottawa, and Dr. Rob Robson, CEO at the Urgent Care Clinic in the Ottawa suburb of Orleans, recently teamed up to form a company with the Internet-friendly moniker of mediate.calm. They are not aware of any other physician mediators working in Canada.

"I'm just an emergency doc, so of course I never have to deal with conflicts," says Robson with a laugh. After observing — and sometimes participating in — health care conflicts for a combined total of more than 40 years, the 2 became intrigued with the concept of alternate dispute resolution (ADR). Robson took the first step while doing claims-management work for the Canadian Medical Protective Association. A lawyer friend had assured him that mediation was the way to go, and "eventually she broke me down. I went [to a course] and she was right."

Both physicians are now certified in ADR, Robson through Harvard Law School and Ahuja through the University of Windsor Law School. Both do work for the Dispute Resolution Centre of Ottawa–Carleton, a not-for-profit resource used during criminal cases.

Besides its mediation services, mediate.calm provides interactive negotiation training seminars and courses. The aim is to find ways to deal with disputes that are less costly, less stressful, faster

and allow all parties to participate. The overall goal is to find win-win solutions and to avoid the legal system's traditional winner-loser scenario.

"The key thing is for the parties to hear each other and get committed to the resolution," says Robson. "The success rate is much higher that way. People actually follow through on what



Drs. Jan Ahuja and Rob Robson: a less-litigious path

they say they will do."

Nonlawyer mediators offer an outside, impartial view that fosters creative problem solving. And as physicians, Robson and Ahuja also bring an ability to identify fundamental problems (the diagnosis) and help develop durable relationships among the parties (the "therapeutic" solutions to "patient" problems).

Mediate.calm is beginning with training seminars in an attempt to get physicians thinking about mediation and understanding the spectrum of dispute resolution. That spectrum goes from negotiation to mediation to arbitration to ministerial and, finally, to the last resort, litigation. Mediate.calm concentrates on the first 2 areas because they allow parties to design their own solutions.

So far they've held seminars for ER physicians and members of the Canadian Society of Physician Executives. Their aim with the latter group was to teach how to anticipate, prevent and, if need be, deal with conflicts.

Typically, they present "totally fictional" case studies to get participants thinking. A case in point: 2 ob/gyns are in conflict. Dr. Smith is the director of a residency program at a tertiary care hospital; Dr. Jones, is his counterpart at a sister, community hospital and chair of the university department, which makes him Smith's boss. They are in conflict over trainee allocation. Smith wants more residents at his hospital, which handles the more complicated cases, because he believes this gives the residents more experience. Jones wants more residents in his community-based hospital. Then the provincial health ministry decides to amalgamate the 2 hospitals. What should the 2 physicians do?

The mediators begin looking at each person's interests, rather than their rights. Are they mutually exclusive? Is there some common ground? "We ask, 'What are you really concerned about? What do you want to accomplish?'" says Ahuja. "Everyone comes to the table with interests that aren't on the table, and the idea is to get them on it."

What is the solution to this particular conflict? Ahuja won't say — he leaves it up to workshop participants to come up with possible resolutions.

The 2 doctors' interests aren't limited to hospital-based mediation — they also want to apply their skills to conflicts in physicians' offices. Within a few years, they hope to be teaching, mediating and designing ADR systems for organizations outside health care. "We haven't quit our day jobs yet," says Ahuja.

For more information about mediation, they recommend *Getting to Yes*, by Roger Fisher of Harvard University. Their Web site, www.mediatecalm.ca, is currently being developed.

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