

Clinical Ethics Intensive

Bioethics Mediation: Content Process and Skills

October 2020

Mr. Tallman

Mr. Tallman is a 82 year-old gentlemen with dementia admitted to the hospital from a nursing home for respiratory failure. Reportedly, upon admittance he is heard saying that he wants to go back to the home. Soon after admission he is intubated. Now it is time to decide whether he should receive a trach and peg, and be sent to an L-TAC, or, whether treatment should be decelerated. The family is favoring a trach and peg. You are called because some of the nurses believe anything short of deceleration of treatment goes against Mr. Tallman's wishes.

What Mediation Techniques Offer...

- *identify the parties to the conflict (although disagreements between family and care providers are common, many **conflicts have more than two sides**);*
- ***level the playing field** to minimize disparities of power, knowledge, skill, and experience (to the degree possible) that separate medical professional, patient, and family;*
- *help the parties **define and understand their interests**... stated and unstated;*
- *help **maximize options** for a resolution of the conflict;*
- *search for **common ground** or areas of consensus;*
- *ensure that the **consensus can be justified** as a “principled resolution,” compatible with the principles of bioethics and the legal rights of patients and families;*
- *help to **implement the agreement**; and conduct follow-up.*

Simple Intentionality

70% of critical incident stress goes away when one colleague tells another colleague about what happened



Mediation “Success” ...

- *Demonstrates respect for all of the participants.*
- *Assists the participants in understanding each other.*
- *Ensures that no one party dominates the conversation, intimidates the others, or bars appropriate topics from discussion.*
- *Identifies patient rights or values that might have been overlooked in prior segments of the decision-making process.*
- *Translates the language of the medical staff into the language of nonmedical persons, thereby demystifying the discourse.*
- *Categorizes and arrays overlapping concerns.*
- *Maximizes the options that will be considered.*

What Kinds of Cases are Candidates for Mediation?

- *Our Most Intractable Cases*
 - *Futility at End of Life*
 - *Deciding for Another*
 - *Discharge into Community*
 - *Underlying Addiction Behavior*
 - *Others?*

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- **Process Skills**

- Facilitate meetings
- Build consensus
- Ability to utilize structure and resources to implement the chosen option
- Elicit feedback

- **Interpersonal Skills**

- Listen well
- Communicate respect, support, and empathy
- Represent views of various parties to others
- Recognize and resolve barriers to communication
- Enable parties to communicate effectively and be heard by other parties
- Express supportive statement early

Three Key Skills:

Nancy Dubler & Carol Liebman

1. Summarizing,
2. Questioning:
 - Open ended,
 - narrow,
 - closed,
3. Generating Movement:

Summarizing

- ***“It seems that we all want what is best for Dorothy and we agree on...”***
- *Lets the parties know that the mediator has been listening. “You are hearing me.”
Lets the mediator test her understanding of what was said.*
- *Helps the parties hear what others are saying.*
- *Shows the parties areas of common interest.*
- *Lets the mediator remind parties of progress that has been made.*

Questioning

- *Andrew...why is the trach important for you? Husband...I want to be able to kiss my wife on the lips one last time.*
- **Open ended:** give the person the opportunity to say what is most important, 1) *Tell me your view of the situation?* 2) *what is most important to you?*
- **Narrow:** Help focus the person, 1) *Tell me about the conversation?*
- **Closed:** Looking for specific information or a Yes or No answer, 1) *Did she have an advance directive? Did he want this type of treatment?*

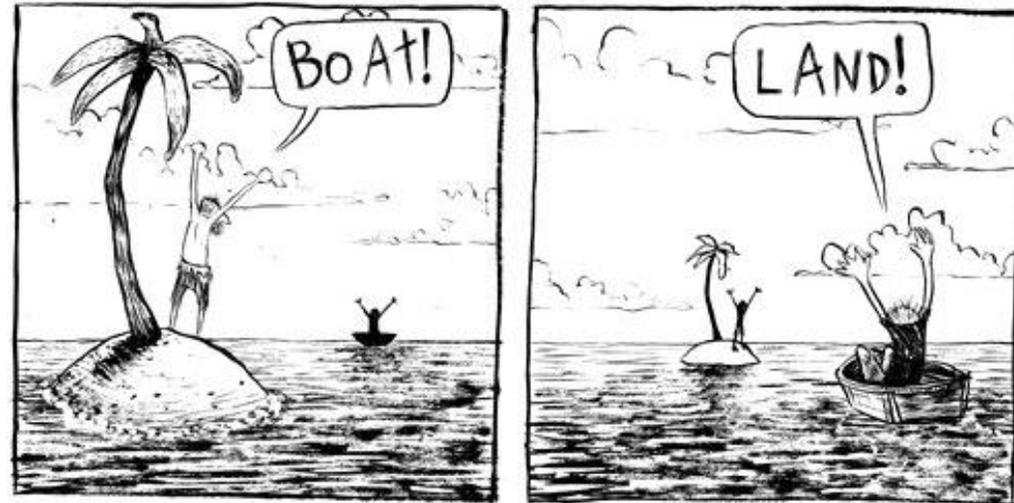
- *Avoid jargon and ask questions to explain it*
 - *“Sorry Doctor, what does empyema mean?”*
- *Ask even if you know the answer*
- *What would the patient/surrogate want to know?*

Generating Movement: Overcoming Impasses and Keeping the Conversation Moving

1. Asking Problem Solving Questions	8. Reality Testing
2. Reframing	9. Reversing Roles
3. Raising Issues	10. Developing Options
4. Hearing Proposals	11. Normalizing
5. Stroking	12. Packaging Proposals
6. Allowing Silence	13. Focusing on the future
7. Holding Caucuses	<u>Write in one question for each technique.</u>

Reframing

- Remove the sting from hostile, negative, threatening statements while preserving the meaning
 - “She’s coming in here, questioning our expertise and causing problem.”
 - “She’s concerned about the patient and wants to make sure that he has the best care possible.”



Reframe Your Own Words

Instead of:

- You are misunderstanding me
- I know
- That won't work
- This is pretty simple
- This isn't an ethics issue
(**Never** say this!)

Try:

- Let me see if I can explain it better
- I think you're right
- Let's explore that a little more
- What might I be missing?
- What concerns you about this case?



What are examples of the best ways you have seen or heard this done over the past year?

Defusing Techniques

- Stay calm even if you do not feel calm.
- Use a soft tone of voice.
- Do not argue.
- Firmly, gently set limits.
- Stop interrupters.
- Help wounded parties save face.
- Divert comments toward you.
- Move toward solution: What can we do?

Considerations

- Not all ethics consults require mediation
- Skill-set applicable to other areas
- Outcomes, outcomes, outcomes
- Follow-up plans
 - Education, support
- One person, two, team?
- Time
- What do you represent in the meeting?
 - Physician, nurse, administrator
- The role of “facts”

Know Thyself!

- Are you aware of your own reactions, biases, values and goals and how they may affect the mediation?
- Are you aware of your own needs and issues, and can you separate them from the parties'?
- Are you aware of what “triggers” your own emotion? When and which ones?

Bioethics Mediation: Practice

Process and Skills

Mediation Role Play

- 1. Preparation: Read Case Aloud. Ask clarifying questions, Prepare Role (10 Min)*
- 2. Role Play: (35 Min)*
- 3. Group Feedback: (15 Min)*

Logistics

- *Zoom breakout rooms*
- *3 Cases*
- *2 Ethics Consultants per case*
- *3-4 Actors (see assignment sheet)*
- *Kevin and Becket will pop in and out like yesterday*

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Mediator Evaluation

1. *What was your best mediation response?*
2. *Where did you feel stuck?*
3. *What would you have done differently?*
4. *What “Success Features” did you address or not address.*
5. *What is your biggest “take away”.*

A DRAFT Process of “Stages”

1. Novice Introduction: Introduction to, and practice of, the Techniques. (May)
2. Testing: Individual “testing of techniques” and assessment of next step.
(Time Period)
3. Improvement and Capacity Building: Session with Alan Sanders. (When?)