

Appeared in the Miami Herald, Business Monday Section, "Legacy" insert, December 16, 2013



## Black Healthcare Issue

The State of Black Healthcare in South Florida

Affordable Healthcare Act, Obamacare Simplified

Black's Dubious Ranking With Major Health Afflictions

The Black Community and Alzheimer's

... and more

Page 1

## Mediation: Making medical malpractice litigation more humane



**BY STANLEY ZAMOR**  
FLORIDA SUPREME  
COURT CERTIFIED  
CIRCUIT CIVIL/FAMILY/  
COUNTY MEDIATOR &  
TRAINER  
FLORIDA SUPREME  
COURT QUALIFIED  
ARBITRATOR  
PRESIDENT, FLORIDA  
ACADEMY OF PROFES-  
SIONAL MEDIATORS,  
INC. (FLORIDA'S FIRST  
ADR NOT-FOR-PROFIT,  
EST. 1988)

"When in the worst of circumstances, we can find and negotiate with the best in people..." I often state this during my opening statement in mediation. Medical malpractice mediation is an emotional process, where parties are straddling feelings of lost of trust, betrayal and pain. When a patient is dealing with the perception of improper care, misdiagnosis or wrongful death due to negligence, they feel emotionally hurt, betrayed and demand satisfaction. The harmed/damaged patient seeks legal counsel and files a malpractice suit against the physician, his practice and any other person who can be attached to the claim. When physicians are faced with a malpractice claim, they also feel emotionally hurt and betrayed by the patient and immediately seek the advice of their insurer and legal counsel in order to protect themselves, preserve certain rights they may have, and not to admit negligence. The physician often never gets a chance to speak directly to the patient again, and the patient often never gets a chance to address the physician directly with his or her concerns and emotional pain.

With a legal action filed and the adversarial lines drawn, the dispute is now reduced to numerical statistics, expert opinions and a strategic legal chess match. At this point, is it possible to address both parties' needs/wants and provide each party with a resolution that resolves the case in a less adversarial manner? Yes, through the process of mediation. Mediation offers an opportunity to

reach an amicable resolution often not found in litigation by parties sharing their story (in their own words), by humanizing the dispute, by sharing and gaining perspective of what happened, and often it gives an opportunity to say "sorry" (should an apology be appropriate).

The following are just a few aspects of mediation that makes it an extraordinarily useful and productive approach to medical malpractice claims:

- Mediation is a voluntary and confidential process. Under the appropriate Florida Statutes and the Florida Rules of Civil Procedures, all communication between the parties is confidential (unless required or permitted by law). Although attendance at mediation is usually required by the court, participation in the process is voluntary.
- Mediation is an opportunity for party "self-determination". Mediation is for, and about, the parties, not the attorneys (or even the mediator); and no one can force or coerce the parties to settle. At all times during mediation, the parties have the complete discretion to negotiate and settle with the guidance of their legal counsel.

- Mediation requires that parties to have "full authority" to settle the case. Meaning, whoever attends the mediation should have the legal capacity to negotiate, sign and execute a written settlement agreement.

- Mediation encourages communication between the parties, while litigation often discourages communication.

Mediation offers the opportunity to explore a win-win solution while litigation is based on a win-lose approach.

### THE PROMISE

Medical malpractice litigation can be a long, painful and costly process, where litigants have to relive painful events repeatedly. Litigating a medical malpractice claim can cost up to millions of dollars, and can last for up to three years (or even longer). Litigation is our right, it is important and helps create policy and standards of care. Litigation also holds parties accountable for their actions. However, contrary to litigation, mediation is an alternative that can take only hours and cost a fraction of what litigation does. The promise of mediation is in its process. It is a process that transforms an adversarial painful dispute into an opportunity where all parties can mutually benefit from a settlement that they created and agree to. When facilitated by a skilled mediator, a harmed patient can feel "heard", as often his or her emotional needs are addressed. Simultaneously, the physician can also feel heard, address his or her emotional concerns, and get a chance to share humanity during the process. Mediation can truly be a win/win for all who participate in the process.

[Zamor\\_adr@yahoo.com](mailto:Zamor_adr@yahoo.com)  
[www.Linkedin.com/in/stanleyzamoradr](http://www.Linkedin.com/in/stanleyzamoradr)  
954-261-8600

Online copy: <http://tablet.olivesoftware.com/Olive/Tablet/PBPLegacy>