

# Panel Session 2: Mediation in Healthcare Disputes : A Viable Alternative

討論環節(二)

醫療糾紛：調解一可行之選



**During Covid-19, many patients' family could not visit the patients staying in the hospital.**

**A woman admit the hospital. However, her husband could not visit the patient. He looks very desperate and restless outside the ward...**



Click



Assessment

Technique

Agreement

**As a process, mediation can be used within and external to the clinical setting and requires the use of a trained "neutral" or mediator.**

**With sufficient training and practice, anyone can serve as a mediator provided they have no stake in the outcome of the dispute.**



Assessment

Technique

Agreement

**In the critical care setting, many conflicts arise in the normal course of care delivery. Common examples include :-**

- 1. conflicts related to end-of-life decision-making**
- 2. differences regarding plan of care**
- 3. scheduling and assignment making**
- 4. visiting hours**
- 5. access to equipment and supplies**
- 6. placement of patients.**

**More serious disputes can arise when :-**

- 1. a medical error or adverse outcome occurs or**
- 2. when a patient's family is in conflict with the clinical team.**

Assessment

Technique

Agreement

**It is uncommon for people to clearly identify what is driving their discomfort.**

**2 THINGS TO DO FIRST:  
Observed Needs**

**Possible Unspoken Psychological Needs**

Assessment

Technique

Agreement

## Example :

**Patient's Husband: Will I be able to come back in to see her if I leave?**

**My friend said I may only be able to see her by using zoom once a week, is it true?**

**Have you taken care of her before? She had a really good nurse last time.**

**When will the doctor be here for rounds? Has he seen her scans yet?**

## Observed Needs:

*Information*

## Possible Unspoken Psychological Needs:

*Fear, worry, frustration, control, reassurance, to appear responsible.*

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Assessment

Technique

Agreement

**Effective techniques for improving collaboration and resolving conflicts include listening for understanding, reframing, elevating the definition of the problem, and creating clear agreements.**

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## Technique 1: Listening for Understanding

**Listening for understanding is more than just receiving information, it is a multilayered technique that entails listening without judgment, without planning a response, and without devising solutions or offering advice.**

### Examples:

*What is this family really requesting?*

*What do they need?*

*What would be your response to this family?*

*What sentence could reflect what you hear and summarize what is important for the family member, such as:*

*"It must be frustrating to not have the information you need to make decisions"*



Assessment

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## Technique 2: Reframing

Mediators frequently use reframing to create a safe space for individuals to have difficult conversations. Reframing strong language while acknowledging the emotion helps people stay in the dialogue.

There are four steps in reframing a statement:

- \* acknowledge the emotion
- \* remove the inflammatory language
- \* restate the problem or issue
- request or wait for clarification or validation from the speaker.

Examples:

*Statement: "What are they doing around here?"*

*Anyone could answer my question?"*

*Reframed: "What information would be helpful to you?"*

Assessment

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Agreement

## Technique 3: Elevating the Definition of the Problem

Often in a conflict it seems as though there is no area of agreement or any desire by the other person or group to address the issues. Finding common ground is a principle of mediation that enables individuals to find a starting point for further agreement. Finding common ground is the first step in *humanizing* the situation.

### Examples:

*Patient's husband: "I have promised my wife to take care of her. You doctors and nurses do not allow me to visit the patient because of COVID-19 policy."*

*Clinical Staff: "The COVID-19 policy is for protecting the patients in the hospital from infected by visitors."*

### *Elevated Definition Statement:*

*"To provide care and protect the patient is important to all of us."*



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Assessment

Technique

Agreement

**The goal of managing conflict is to develop clear agreements that guide future interactions.**

**Making clear agreements helps manage expectations and guide future behavior.**

Assessment

Technique

Agreement

**Unlike a real mediation process, it may not need to sign any agreement between the patient and the clinical staff.**

**Agreement = Verbal Agreement**

**Collaborative working relationships are important in establishing these environments, in ensuring safe patient care, and in decreasing costs associated with unresolved conflicts.**

**During Covid-19, many patients' family could not visit the patients staying in the hospital. A woman admit the hospital. However, her husband could not visit the patient. He looks very desperate and restless outside the ward...**

*Husband: I need to know someone cares about her and that no one is going to harm her. If I am not watching over her every minute, I am afraid of what will happen to her.*

*Nurse: It sounds like this is a pretty scary situation for you. What are you afraid will happen? (Surface the unmet emotional need-fear, listening for understanding)*

*Husband: I am afraid she will die. (Begins crying... Emotion is expressed)*

*Nurse: We have mobile equipment for patient to do a video conference with her family. You may contact our nurse station whenever you are ready. You could see her everyday, even when you are at office. Talk to her and let her know you care about her. Is that something you would like to do? (Options generated, seeking clear agreement)*

*Husband: Yes. Thank you for understanding.*

**Integrating the techniques used by mediators can foster collaboration.**

**Better working relationships can improve patient outcomes, improve retention and recruitment of staff, and improve patient satisfaction.**



## Case

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- Female 62 years old
- Cancer of colon, presented with intestinal obstruction
- Emergency laparotomy
- Admitted ICU post-op
- Complicated by pneumonia
- Died 10 days post-operatively
  
- Relatives **angry** about the outcome

# Options relatives have

Options of ventilation



Violence - Extreme mistrust



Legal - trust legal > health  
system



Media – trust in the media >  
system



Hospital – trust in the system





# Media

- Communication to patient – trust
- Communication to staff – morale
- Communication to Mx – manage up
- Communication to public – image-engineering
- Communication to media – **pandora box**

*Loss of confidence*



# Violence

- Medical personnel being hurt
- Culture and norm (維權、醫鬧)
- Status of healthcare
- Impression by public (收紅包)
- Motivation (monetary compensation)

## Legal routes

### Civil court

- Right vs wrong
- Share of responsibility
- Monetary compensation

### Disciplinary board

- Professional misconduct
- Evaluative (expert witness)
- License at stake

# Mediation is a new route

## Mediation Ordinance (CAP. 620) – 1 Jan 2013

- The objects of the Mediation Ordinance are to promote, encourage and facilitate the resolution of disputes by mediation, and to protect the confidential nature of mediation communications (section 3).

## Apology Ordinance (CAP. 631) – 1 Dec 2017

- The objective of the Apology Ordinance is to promote and encourage the making of apologies with a view to preventing the escalation of disputes and facilitating their amicable resolution.

# Going back to the case

The son approached PRO and requested meeting with the clinical team to demand explanation of his mother's death

The clinical team reviewed the case and concluded there is "no concern regarding the clinical management"

**Angry** son, what next?

The bottom line: the son has "trust" in the health system  
No matter how small

## There is no **WRONG** feeling!

Everybody has the right to own his feelings!

“我都試過ZZZ，又唔見我咁嘢”

- Angry – “my appointment is delayed!”
- Jealous – “why my sister gets treatment first!”
- Sad – “I could not save my husband who collapsed at home!”

IT'S **OK** TO FEEL:



EVERYBODY FEELS THAT WAY SOMETIMES.  
WE DON'T LIKE IT, BUT IT DOESN'T MAKE US WEAK. IT MAKES US

**HUMAN.**

AND IT HELPS TO TALK ABOUT IT.

***Acknowledgment can be the  
best medicine we have. It  
makes things better even  
when they can't be made  
RIGHT.***

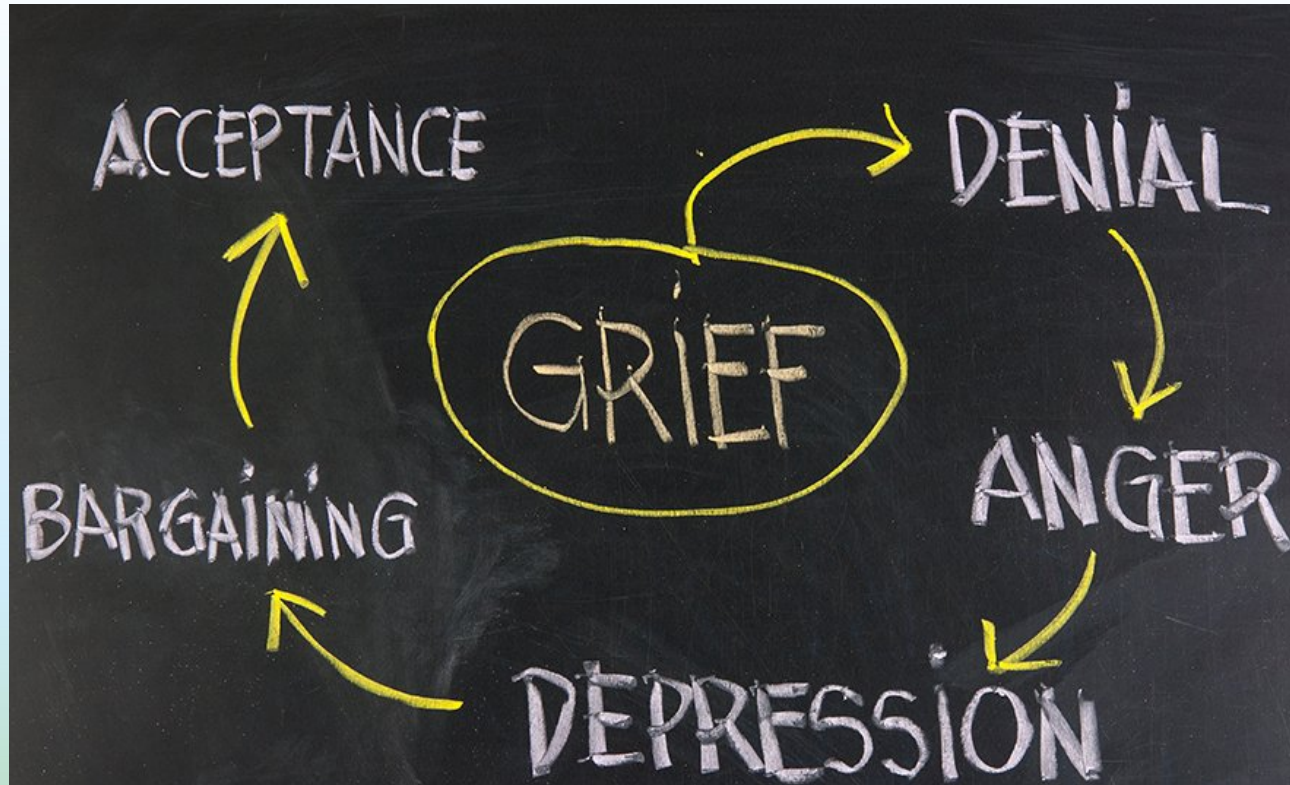
***-Megan Devine***

*Dr. Sue's*



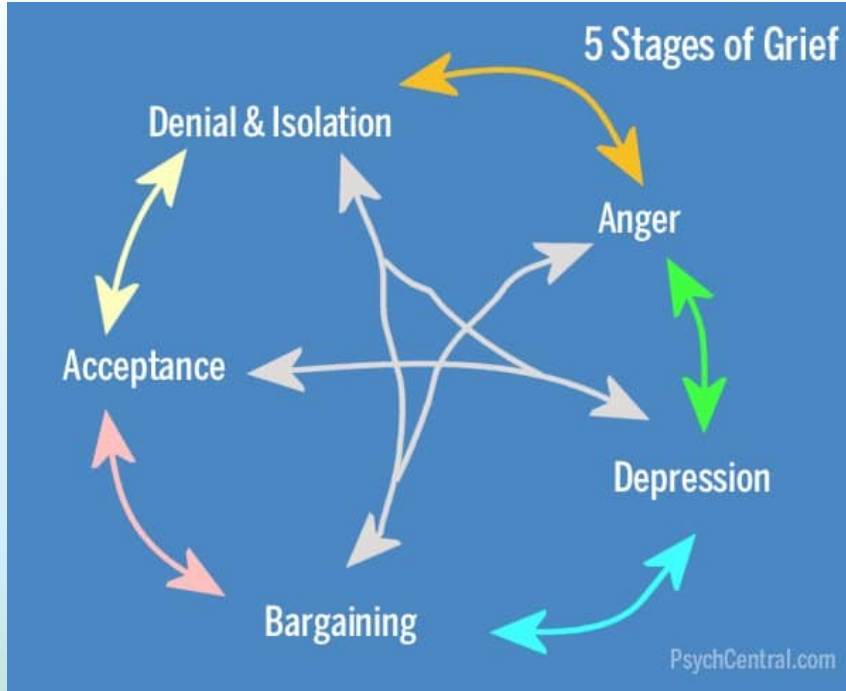
# Recognition of emotions before acknowledgment

- Classic model of grief





# Realistic model of grief



- Bidirectional movement of stages
- Note: No **direct** path between “anger” and acceptance

# Manage your client's anger

Where there is anger, there  
is always pain underneath.

Eckhart Tolle

# Manage your own anger

"Try to manage your  
anger since people  
can't manage their  
stupidity."

101 Quotes [About.com](https://www.about.com)

"When angry, count to ten  
before you speak; if very angry,  
count to a hundred."

-Thomas Jefferson



# Help parties to acknowledge feelings / emotions

- Room
- Pamphlets
- Music / song / melody
- Lighting
- Furniture / flower
- Wall colour / wallpaper
- Box tissue
- Appropriate gesture
- Smell / fragrance
- Snack / candy / drink (paper packaged)

## 6 STEPS TO MINDFULLY DEAL WITH DIFFICULT EMOTIONS



1

**Turn toward your emotions with acceptance**

Become aware of the emotion and identify where you sense it in your body.

**Identify and label the emotion**

To stay mindful, say to yourself, "This is anger" or "This is anxiety."

2



3

**Accept your emotions**

Don't deny the emotion. Acknowledge and accept that it is there.

**Realize the impermanence of your emotions**

Even if the emotion feels overwhelming, remember that it will pass.

4



5

**Inquire and investigate**

Ask yourself, "What triggered me? Why do I feel this way?"

**Let go of the need to control your emotions**

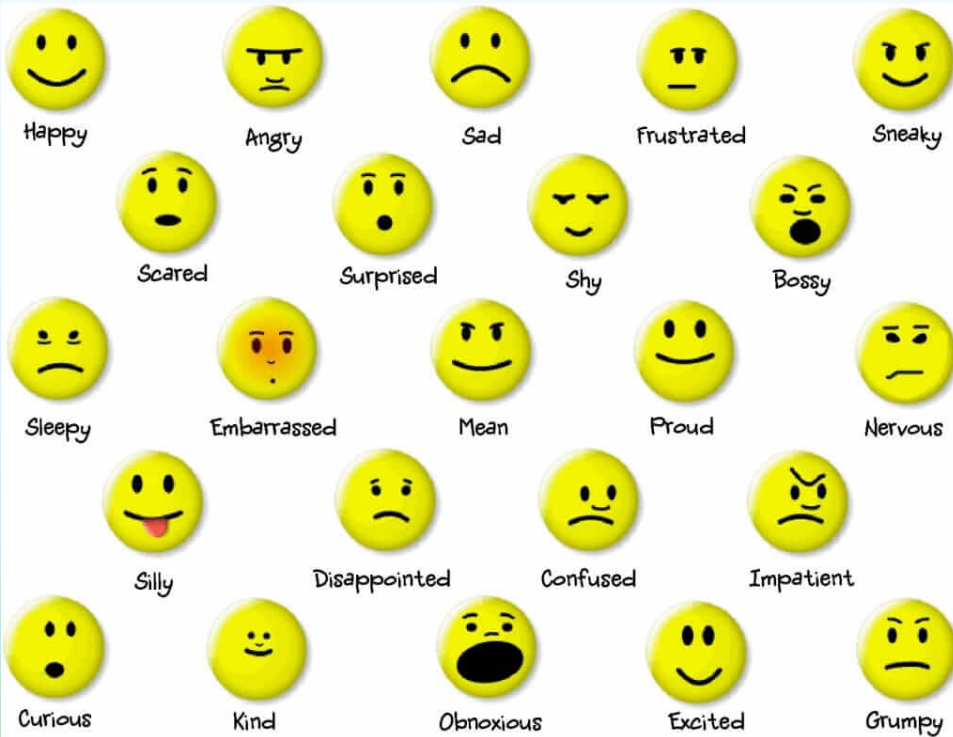
Be open to the outcome of your emotions and what unfolds.

6



The Gottman Institute

# Emotions



## 喜悅情緒：



開心 興奮 感恩 滿足 平靜 自豪 樂觀

## 憤怒情緒：



震怒 憎恨 不公平 受冒犯 受威脅 受抨擊 受傷害

## 哀傷情緒：



難過 失望 孤單 內疚 疲累 迷失 沮喪

## 恐懼情緒：



驚慌 緊張 擔憂 不安 焦慮 震慄 不知所措

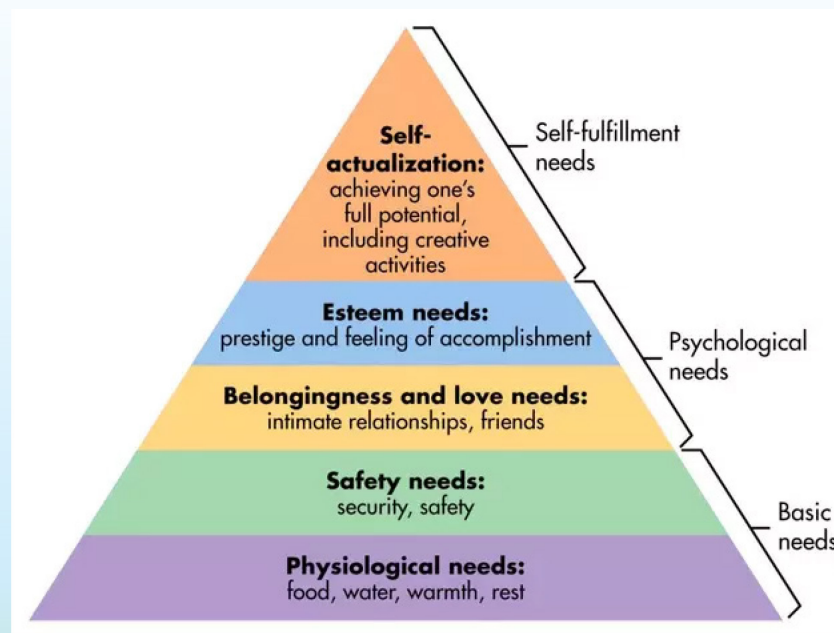
# Acknowledge emotion in mediation

- *“The mediator needs to hear the emotions felt by the parties and then fully explore them. And confidently handle them – however strongly expressed. Once this happens the barriers come down and progress can be made.”*

**Sue Banwell-Moore**  
**LL.B MCI Arb**  
**Mediation Trainer**



# See through it..... the real interests



**Revised Maslow's Hierarchy of Needs**

# 聽 Active Listening for mediators

先了解心情  
後解決事情





# Returning to the case - angry

- “Nobody’s fault that somebody dies” vs “To Err is Human”
- Open disclosure – Just culture
- Apology – say sorry is not the same as "admitting liability"
- Communication of risk – Informed consent
  - Supply information (risks, benefits, alternatives)
  - Allow Q&A
  - Acknowledge the emotion (need / concern / fear) - Art
- Assist the clinical team to bridge the gap



# What mediation is **not**

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- Not panacea
- Not suitable for violence / psychiatric case
- Not to replace medicolegal / disciplinary process
- Not to replace root cause analysis



# Summary

- A means to resolve conflicts in healthcare
- Has legal framework to support
- Timely apology - de-escalate

## Adverse events after laparoscopic appendectomy

- Ms. A , a 35-year-old, lady underwent an emergent laparoscopic appendectomy for acute appendicitis at a private hospital H by Dr. S
- On day 2 after the surgery, Ms. A developed high fever and persistent pain; urgent CT scan showed abscess around the operative site
- Further surgery (open) revealed leaking appendix stump; removal of caecum and drainage procedure were done to salvage the complication
- Patient finally recovered after 10 days in hospital, with an abdominal scar of 8 inches; hospital bill of HKD \$180,000

# Evolution of Grievances to Complaints

## Ms. A grievances and allegations

- Dr. S has not informed her the potential risks and complications of the laparoscopic appendectomy
- Dr. S has not performed the surgery properly, and failed to manage the complications in a timely manner
- The additional investigations and surgery fees were much more than the initial price quotation
- The additional surgery caused her multiple disabilities (e.g. wound pain, scar) that she could no longer work normally
- Ms. A demanded a full explanation on what had happened and why, apologies from Dr. S and Hospital H, and financial compensation; if no satisfactory resolution achieved, she would file a complaint to the **Medical Council of Hong Kong** (MCHK) against Dr. S, and **civil claims** against Dr. S and the Hospital

## Position of Dr. S and Hospital H

### Dr. S

- He has mentioned to Ms. A about the risks of the surgery, which included post operative sepsis, and consent form was signed by Ms. A. Post-operative intra-abdominal sepsis was a known complication after appendicectomy
- In his view, there was no professional issue in this case, and he has done his best in the case management. **He declined to have further communication with Ms. A**

### Hospital H

- Although Dr. S had admission and operating privileges in Hospital H, he was not the hospital's employee
- The patient relationship officer agreed to assist Ms. A to communicate with Dr. S and hospital administration

## Background information for Dr. S to (Re)consider his position

- Adverse events are common in clinical practice
- Complaints after adverse events are generally NOT professional negligent cases
- Patients complain because of perceived lack of care and miscommunication between the patient and the doctor
- What they want to achieve when they take legal actions: **truthful explanation and apologies**, individual and organization accountability, prevention of recurrence of mishaps, financial compensation

# Complaints Handling at Medical Council of Hong Kong – the Current Scene

## 3 stages complaint system

- Screening by PIC chairman/deputy chairman (usually takes 6 to 9 months)
- PIC investigation and consideration (usually takes 12-18months)
- Inquiry Panel (fixing date of inquiry, around 12 months)
- No statutory regime to refer to mediation at MCHK

## Most common allegations on professional responsibility

- Inappropriate prescription of drugs
- Conducting unnecessary or inappropriate treatment / surgery
- Failure to properly / timely diagnose illness
- Doctor's unprofessional attitude / doctor-patient communication



## Practical Consideration: Transaction Cost

### Tangible cost

- legal fee (increasingly expensive, reflected in the professional indemnity insurance/coverage payment)

### Intangible cost

- time lost (preparation of medical records, preparation of statements, interview with legal personnel, solicit expert support / report, attend hearings, etc.)
- psychological stress (self doubt, loss concentration, physical illness, etc.)
- reputation (reports in media, etc.)
- damage the doctor-patient relationship

### Public cost

- resources in medical care diverted to other areas such as disciplinary proceedings, e.g. MCHK has to pay for expert fees (for report and attending hearings), secretariat and legal support, etc.
- defensive medicine (treatment that is legally safe vs. treatment in the patient's best interest)

## What would Dr. S choose?

- Using the mediation skills and benefits of the Apology Legislation to provide a truthful explanation and / or apologies (as appropriate) at the outset and prevent escalation into a complaint / litigation to the disciplinary body

OR

- Keep fingers crossed and maintain the position

## Other Remarks

- **Settlement:** no negative connotation in a negotiation or mediation process
- **Saying sorry:** not necessarily means admitting liability
- **Anecdote:** ‘waiting for an apology from the doctor for years before this hearing...’



# Questions & Answer Session

You are all welcome to send our panelists questions via zoom messaging.



Thank you !