

UNIVERSITY OF PENNSYLVANIA
PERELMAN SCHOOL OF MEDICINE
DEPARTMENT OF MEDICAL ETHICS AND HEALTH POLICY
EDWARD J. BERGMAN, J.D.

BIOE 540-001
**CHALLENGING CLINICAL ETHICS:
MANAGING PATIENT/CAREGIVER CONFLICT THROUGH MEDIATION**

SPRING 2015

Classes: Thursdays 4:30 p.m. to 7 p.m.
Room: 321
Phone: 609-921-1502 (Princeton law office)
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Assigned Reading

Fisher, Ury & Patton, Getting to Yes, revised ed., Penguin (2011)
Dubler and Liebman, Bioethics Mediation, 2d ed. Vanderbilt University Press (2011) -
**PAGES xiii-91 ONLY (please do not read the case analyses or role play
information) THIS TEXT MUST BE READ PRIOR TO CLASS 6.**

Articles noted within the Syllabus as "Bulk Pack" will be posted on CANVAS

Course Format

Although this class will include lectures, videos, and class discussions, a series of simulated mediation exercises is central to the course.

Attendance Policy

A. Students are expected to attend all classes and to participate in all mediation exercises and class discussions. This intensive participation is critical to the dynamic of the course. Each student's ability to benefit from this course literally depends on every classmate's active contribution and commitment. Moreover, in-class exercises will not work if key parties are absent or late for class. Therefore, students should consider whether they can commit to this course. IN ANY CASE, IF YOU ARE GOING TO MISS A CLASS IN WHICH A MEDIATION SIMULATION IS TO BE CONDUCTED, IT IS IMPERATIVE THAT YOU ADVISE ME A FEW DAYS IN ADVANCE IF POSSIBLE. TO EASE THE DISRUPTION CAUSED BY YOUR ABSENCE, PLEASE LEAVE WORD AT MY PRINCETON OFFICE.

B. Students are encouraged to meet with me at least once during the semester to discuss their progress.

Grading and Course Requirements

1. Class Participation (30% of your grade)
The overall quality of your participation in the negotiation and mediation exercises forms part of the Class Participation grade. Students are expected to participate in ALL exercises and class discussions. Assigned readings frequently form the basis for class discussions. Your familiarity with, and understanding of, these materials as evidenced by your contributions in class, form a part of the Class Participation grade.
2. Mid-Term Examination (30% of your grade)
A take-home mid-term examination will be distributed on March 5, 2015. The answers will be submitted prior to class on March 19, 2015.
3. Final Project (40% of your grade)
Teams of two, three, or four students (in some cases permission will be granted for five-person teams) will design and complete final projects on topics to be agreed upon as the semester progresses. Choice of topic is an important aspect of the project and should be determined with regard to the specific interests of the authors and its relevance to the study of clinical health care mediation theory and/or practice.

Readings for January 15, 2015

Bulk Pack #1	Bergman, "Wrangling to the Rhythm"
Bulk Pack #3	Bazerman & Neale, "Framing Negotiations"
Bulk Pack #21	Deborah Franklin, "Come Again? Good Medicine Requires Clarity"
BOOK	Fisher, Ury & Patton, <u>Getting to Yes</u> , revised ed., Penguin (2011), pp.3-95

Class 1 - January 15, 2015

COURSE OVERVIEW; INTRODUCTION TO NEGOTIATION STUDIES; DISTRIBUTIVE/POSITIONAL BARGAINING

In Class: Overview of course content, requirements, grading and calendar; introduction to negotiation; definitions Film clips from "Take the Money and Run," Woody Allen (1969); "Defending Your Life," Albert Brooks (1991); "The Devil's Advocate," Taylor Hackford (1997); "Be Cool," Gary Gray (2005), "50/50" (2001), "Range of Motion" (2000). Class discussion of probing, active listening, communication, anxiety, preparation, perception, rapport building and framing; anatomy of clinical communication

Overheads: Negotiation Defined; Basic Negotiation Concepts; Communication (3); Clinical Communication I and II

Readings for January 22, 2015

Bulk Pack #6 Lax & Sebenius, "Interests: the Measure of Negotiation"
Bulk Pack #7 Shell, "The Other Party's Interests"
Bulk Pack #4 Bazerman & Neale, "Negotiating Through Third Parties"
Bulk Pack #49 Lewicki, "Integrative Bargaining"

Class 2 - January 22, 2015

POWER/LEVERAGE; AGENCY; INTRODUCTION TO INTEGRATIVE/INTEREST-BASED NEGOTIATION; RELATIONSHIPS; COLLABORATION

In Class: Class discussion of the role of power in negotiation and the power versus leverage distinction; class discussion of benefits and problems associated with negotiating through agents; agency and advance directives in the healthcare context; statutory differences; introduction to Integrative/Interest-Based Negotiation; Getting to Yes

Overheads: Power, Leverage, Agency (3), Distributive Bargaining, Integrative Bargaining, Getting to Yes, Interests (2)

Readings for January 29, 2015

Bulk Pack #20 Dubler, "Mediation and Managed Care" (optional)
Bulk Pack #9 Lewicki et al, "Multiparty Negotiations"
Bulk Pack #8 Shell, "Relationships"
Bulk Pack #33 Gray, "Collaboration: The Constructive Management of Differences"

Assignment for January 29, 2015

Read role sheets and instructions for in-class negotiation. You can and should confer with any or all players in the same role prior to class for discussion of strategies.

Class 3 - January 29, 2015

INTEGRATIVE/INTEREST BASED BARGAINING; MULTIPARTY NEGOTIATION

In Class: Negotiation role play & debriefing: "St. Francis Hospital and the Managed Medical Model"; further discussion of Interests in negotiation; discussion of special problems in multiparty negotiation; discussion of collaboration.

Overheads: Relationships, Collaboration, Multi-Party/Multi-Issue Negotiations

Readings for February 5, 2015

- Bulk Pack #10 Faure & Sjostedt, "Culture & Negotiation: An Introduction"
Bulk Pack #17 Jonsen, Siegler & Winslade, "Clinical Ethics" excerpts regarding cultural issues in clinical decisions
Bulk Pack #25 Lazare, "Negotiating Apologies" from On Apology, p. 5
Bulk Pack #38 Barr, Health Disparities in the United States, Ch. 1, "Introduction to the Social Roots of Health Disparities"
Bulk Pack #39 Barr, Health Disparities in the United States Ch. 7, "All Things Being Equal, Does Race/Ethnicity Affect How Physicians Treat Patients?"

Class 4 - February 5, 2015

CULTURE AND NEGOTIATION; HEALTH DISPARITIES AND ETHNICITY; APOLOGY

In Class: Film clip from "The Middleman" Satyajit Ray (India 1975); film clip from Zhang Yimou, "The Story of Qiu Ju" (China 1994); class discussion of the role of culture in negotiation; film clip from "Rising Sun"; problems in cross-cultural negotiations with examples in the healthcare context; healthcare disparities; "Orderly/Nurse" role-play; the role of apology in mediation; recurring themes in clinical conflict

Overheads: Culture & Healthcare, Culture & Negotiation (5); Disparities in US Healthcare (5); Recurring Themes in Clinical Conflict (3)

Readings for February 12, 2015

- Bulk Pack #11 Moore, "Variables that Influence Mediation Strategies and Activities"
Bulk Pack #12 Gibson, "Mediator Attitudes Toward Outcomes: A Philosophical View"
Bulk Pack #13 Alfini, Press et al, Mediation Theory and Practice, Matthew Bender, Chapter 4, "Mediator Roles, Orientations and Styles"

Class 5 - February 12, 2015

MEDIATION PRINCIPLES AND TECHNIQUES

In Class: Introduction to mediation as a dispute resolution mechanism; class discussion of traits associated with effective mediators; class discussion of mediator roles; mediation video; mediator opening statements.

Overheads: Mediation (3); Mediator Roles (3); Mediator Attributes (2)

Readings for February 19, 2015

Book	Dubler & Liebman, <u>Bioethics Mediation</u> , 2d ed, pp. xiii-91
Bulk Pack #36	Bergman & Fiester, Penn Guide Chapter, "Mediation and Health Care" (optional)
Bulk Pack #15	Jonson, et al, <u>Clinical Ethics</u> , 5th ed., "Introduction"
Bulk Pack #29	Clouser & Gert, "A Critique of Principlism"
Bulk Pack #34	Jerome Groopman, <u>How Doctors Think</u> , Houghton Mifflin (2007), Introduction pp. 1-26
Bulk Pack #44	Solbakk, "Catharsis and Moral Therapy I: A Platonic Account"

Class 6 - February 19, 2015

INTRODUCTION TO MEDIATION OF HEALTHCARE DISPUTES

In Class	Distinguishing healthcare mediation from utilization of the process in other contexts; power imbalances; bioethics mediation: a misnomer?; hospital ethics committees; mediation vs. consultation; the role of legal and ethical norms; "principlism"; a negotiation-based model of physician-patient relationships; moral aporia
Overheads	Characteristics of Mediated Clinical Disputes (4); Mediation and Consultation Distinguished (2); Mediation Outcomes (4); Transformative Mediation; Bioethics Principles (4); Nomenclature; Moral Aporia, Platonic Moral Dialogue (2); Dominant Moral Tradition, Alternative Tradition, Value Pluralism (2); Bioethics Mediation (2)

NO CLASS FEBRUARY 26, 2015

Readings for March 5, 2015

Bulk Pack #16	Marcus, et al, <u>Renegotiating Healthcare</u> , chapter 12
Bulk Pack #31	Fiester, "The Failure of the Consult Model"
Bulk Pack #37	Blackall, Sims & Green, <u>Breaking the Cycle</u> , Ch. 3 How to Begin: Building Collaborative Relationships
Bulk Pack # 40	Fiester, "Mediation and Moral Aporia", <u>The Journal of Clinical Ethics</u> Vol. 18 No. 4, pp. 355-356
Bulk Pack #43	Marcus, "Mediation and Medical Ethics: An Overview"
Bulk Pack #47	Roter & Hall, <u>Doctors Talking With Patients/Patients Talking With Doctors</u> , "Paternalism" pp. 27-31
Bulk Pack #50	Bergman, "Surmounting Elusive Barriers" <u>JCE</u> , Spring 2013

Class 7 - March 5, 2015

MEDIATION OF HEALTHCARE DISPUTES IN A CLINICAL CONTEXT

- In Class View video clip from 50/50, Jonathan Levine 2011; View Video "Critical Care," Sidney Lumet December 1997; Continued discussion of clinical ethics mediation. Distribute mid-term examination. Discussion of Final Paper Topics and Teams.
- Overheads Negotiation in Physician-Patient Relationships (5); Hypothesis; Additional Characteristics of Mediation of Clinical Disputes (7); Shared Decision Making; Five Universal Principles (2); Implementation of the Mediation Process in a Clinical Context (3); Consensus

NO CLASS MARCH 12, 2015 - SPRING BREAK

Assignment for March 19, 2015

Select Final Paper Topics and Teams; review role sheets and instructions for in-class Mediation

Readings for March 19, 2015

- Bulk Pack #24 Hoffmann, "Mediating Life and Death Decisions", pp. 842-877 only (optional)
- Bulk Pack #35 Rita Charon & Martha Montello, Stories Matter: The Role of Narrative in Medical Ethics, Routledge (2002) pp. ix-xii; pp. 1-20
- Bulk Pack #54 Bergman & Fiester, "Bioethics Mediation," Encyclopedia of Global Bioethics, Springer (in press)

Class 8 - March 19, 2015

MEDIATION OF HEALTHCARE DISPUTES IN A CLINICAL CONTEXT

- In Class Role play and debriefing
Hand in mid-term examination

Assignment for March 26, 2015

Work on Final Papers; review role sheets and instructions for in-class mediation; complete mid-term examination

Readings for Class 9 - March 26, 2015

- Bulk Pack #41 Nancy Dubler et al and the National Working Group for the Clinical Ethics Credentialing Project, "Charting the Future: Credentialing, Privileging, Quality, and Evaluation in Clinical Ethics Consultation", Hastings Center Report, November-December 2009

- Bulk Pack #42 "Core Competencies for Health Care Ethics Consultation," pp. 3-23
- Bulk Pack #51 Charity Scott, "Ethics Consultations and Conflict Management in Health Care," *Cardozo Journal of Conflict Resolution*, Vol 15. No. 2, 2014

Class 9 - March 26, 2015

MEDIATION OF HEALTHCARE DISPUTES IN A CLINICAL CONTEXT

In Class Role play and debriefing

Assignment for April 2, 2015

Work on Final Papers; review role sheets and instructions for in-class mediation

Readings for Class 10 - April 2, 2015

- Bulk Pack #45 Dubler, "A 'Principled Resolution': The Fulcrum for Bioethics Mediation," *Law and Contemporary Problems*, Vol 74: 177-200, 2011.
- Bulk Pack #52 Bergman, "Managing Conflict in Clinical Health Care with Diminished Reliance on Third Party Intervention," *Cardozo Journal of Conflict Resolution*, Vol 15. No. 2, 2014
- Bulk Pack #53 Fiester, "Bioethics Mediation and the End of Clinical Ethics as We know It," *Cardozo Journal of Conflict Resolution*, Vol 15. No. 2, 2014

Class 10 - April 2, 2015

MEDIATION OF HEALTHCARE DISPUTES IN A CLINICAL CONTEXT

In Class Role play and debriefing

Assignment for April 9, 2015

Work on Final Papers; Prepare for presentations

Class 11 - April 9, 2015

MEDIATION OF HEALTHCARE DISPUTES IN A CLINICAL CONTEXT

In Class Role play and debriefing

Assignment for April 16, 2015

Work on Final Papers; Prepare for presentations

Class 12 - April 16, 2015

MEDIATION OF HEALTHCARE DISPUTES IN A CLINICAL CONTEXT

In Class

Team presentations of Final Papers in Progress

Assignment for April 23, 2015

Work on Final Papers; Prepare for presentations

Class 13 - April 23, 2015

MEDIATION OF HEALTHCARE DISPUTES IN A CLINICAL CONTEXT

In Class

Team presentations of Final Papers in Progress

FINAL PAPERS DUE 3 P.M. ON THURSDAY, MAY 7, 2015

Please submit by e-mail

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