# The Advantages of Early Mediation of Physician Disputes

**By Thomas I. Elkind, Esq.**

Many physicians practice as sole practitioners, as partners in a group or in other affiliations. When physicians buy, sell, join or leave these practices, or bring others into them, disputes can arise regarding the valuation of the practice, future relationships of the parties, and ownership, among other things. If these disputes cannot be resolved amicably by the physicians, the next step is usually for all parties to "lawyer up," which often results in a "business divorce." Most lawyers agree that ugly marital divorces are among the biggest wastes of time and money of any legal dispute. Business divorces are no different. Lawyers acting in the best interests of their clients will do anything they can to avoid getting their clients bogged down in litigating these disputes.

There are several ways to avoid litigation. Arbitration can be a faster and less costly alternative than court litigation. Arbitration awards can be overturned by the courts only in very limited and unusual circumstances.

However, arbitration is solely a creature of contract. A party that has not contractually agreed to arbitrate a dispute cannot be forced to participate in an arbitration. Also, if a dispute involves more than two parties, only if all parties involved consent to it can other parties be joined in one arbitration. This can lead to a situation where all involved parties cannot be brought into one proceeding to resolve the dispute. A party can be forced to arbitrate against one or more parties at the same time as it is engaged in court litigation against other parties involved in the same dispute. Such a situation not only can be very expensive, but there is also the possibility of inconsistent results being reached in the multiple proceedings.

Whether or not the parties to a dispute have contractually agreed to arbitration, mediation is another method to resolve a dispute. Unlike arbitration, mediation is a non-binding process that parties can use before, during or even after the litigation of a dispute. The parties must agree on the mediator, whose function is to assist the parties in negotiating a resolution. If the process is not successful, anything done in connection with the mediation remains confidential, and the parties can then proceed with, or continue, their litigation.

Physicians who face the prospect of a "business divorce" are well-advised to seek an early reso-

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Visit www.jamsadr.com/elkind or contact Case Manager Roxanne Zinkowitz at 617.228.9124 or rzinkowitz@jamsadr.com.

lution. If the parties cannot negotiate a resolution, mediation is the best and least expensive way to proceed. In mediation, all the parties can agree to participate in the process even if they have not agreed to arbitrate their dispute. The cost of the mediator, which is usually shared equally by the parties, is minimal when compared to the cost of engaging in an adjudicatory proceeding.

Another advantage of mediation is that the dispute can be resolved quickly so that the parties can get back to productive activities. Arbitrations that involve the valuation of a medical practice, for example, can be very complex, with many facts to examine, experts to get testimony from and documents to review and explain. Arbitration hearings of these proceedings can take several days over several months, and litigation can take even longer.

The advantages of speed, low cost and potential resolution make mediation an especially attractive tool prior to the commencement of litigation.

*Thomas I. Elkind, Esq., is a JAMS neutral based in Boston. He has four decades of experience handling health care, business and commercial disputes as a mediator, arbitrator and litigator. He can be reached at telkind@jamsadr.com.*