



# And So It Goes!

A Quarterly Newsletter from David M. Zacks, Esq.

In September I had work in Cleveland, Ohio. I had not been there in a number of years and I was astonished at the positive developments the city has made. It is filled with open spaces, little traffic congestion and winning sports teams but for the Cleveland Browns, who have more team spirit than all winning franchises!

While there I toured the Rock & Roll Hall of Fame. It is truly extraordinary and I encourage all of you to visit it if you like good music. When the rock band KISS was inducted into the Rock & Roll Hall of Fame, the question was asked, "What makes great rock and roll?" The emcee stated "Impact, Influence, and Awesomeness." I believe the same could be said when the parties, counsel and the neutral successfully resolve a complicated case through mediation. Everyone walks away with a sense of "impact, influence and awesomeness." Three great words to remember in any major accomplishment.

## On the "QT"

***"Talent wins games. But teamwork and intelligence win championships." —Michael Jordan***

Tip: In mediation we can have talented and brilliant lawyers in the room but only through both sides working together as a team can we win the championship called – a fair resolution.

## Worth Reading

**15 Minutes by Joey Asher, Persuasive Speaker Press**

Several years ago, Atlanta Joey Asher, who is the CEO of Speechworks, wrote this short paperback book. As the front cover suggests, it is a "plan to save the world from lousy presentations." In a very straightforward manner, Joey discusses how all of us can:

- Create "rifle shot" presentations that hit the mark and satisfies listeners.
- Answer questions in a way that inspires confidence.
- Deliver messages in a style that makes you look good and sound like a leader.

I encourage everyone to spend a few minutes with this paperback which will inspire more effective communication in any presentation.

## Going from Better to Best

I honestly believe if the lawyers and mediator enter the mediation process with a thought that it will be just as it was the last time, we're all probably doing something wrong. I think there is a danger that things will just get old with time. The process will seem boring. Little may be accomplished. Instead I think we should all be challenged to think about the next mediation with a view that things will get

*(continued on the back)*

better. We all should be pushed to finding the way to make that happen.

## The Most Effective Option for Medical Malpractice Cases

A botched surgery. A misdiagnosis. An unnecessary procedure. Unfortunately, these realities befall our health care system all too often. No matter who's at fault, these tragic mishaps can cause tremendous pain and suffering to patients and their families, as well as inflict damage on the professional reputations of doctors and hospitals.

But these incidents often are made worse when those involved turn to the courts to allocate blame and seek damages. Frequently, they come to realize that litigation costs them more money, time and stress than they had expected. Even the "winners" learn that the ends did not justify the means.

It doesn't have to be this way. The process of resolving a medical malpractice complaint does not have to be complicated, antagonistic or expensive.

Medical malpractice cases, with all their intense emotions and complexity, are designed for mediation, which can give parties numerous advantages over litigation, such as the following:

**Speed and savings:** With a skilled neutral, medical malpractice disputes can be resolved quicker and cheaper than litigation. Generally, mediation is not burdened by the protocols of court rules, which cause delays and drive up costs in areas like discovery, depositions and evidence. By filing a case in court, plaintiffs surrender to the court's schedule and procedures. By using mediation, the parties are in control. This means they can set their limits on discovery and establish their own timetable.

**Outcome certainty:** In the event a medical malpractice lawsuit proceeds to a jury verdict, the case would still be a long way from completed. Inevitably, appeals are filed, which can take years

to resolve. Both sides must live with uncertainty and the stress that comes with that. By contrast, participants in mediation can be assured of an outcome as soon as a decision is rendered. For plaintiffs, this may mean receiving a check within a few weeks of the conclusion of a mediation.

**Confidentiality:** Medical malpractice cases can take a toll emotionally—on both plaintiffs and defendants—and litigating them in public does nothing to alleviate the stress. In some cases, the adversarial nature of litigation can further harden the feelings between the parties and create more distrust. Mediation, by contrast, takes place behind closed doors, where proceedings remain confidential and where reconciliation and candor are the goals. The confidentiality of mediation proceedings can also protect professional reputations and personal privacy.

**Mediator expertise:** Parties in mediation aren't burdened with the task of educating a jury about complex medical procedures, as they would be at trial. Instead, the parties can focus on the facts of their particular dispute. A mediator who is steeped in medical malpractice litigation will know where to focus the efforts of the negotiations.

**Flexibility and creativity:** Most of the time, medical malpractice litigation is all about monetary damages. This singular focus tends to make parties rigid in their approach to solutions to the dispute. Mediation, by contrast, can offer more flexibility and creativity. Sometimes an explanation for what happened, new safety protocols or an apology is as important to a patient as money.

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## The Last Word

I recall hearing a local Atlanta sports agent, Molly Fletcher, give some valuable advice:

*"If you ask for advice you get business; if you ask for business you get advice."*

*Have a great Fall! —David*