Professionalizing Mediation: Understanding the Impact of Taking the Next Steps

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Professions – with a capital “P”

Anyone can *claim* they are a mediator.

What makes an occupation a Profession? So what?
- Behaving “professionally”?
- Earning money to do a job?

**Professions have Five Key Characteristics:**
1. Service to the Public
2. Code of Ethics
3. Self-Regulation
4. Specialized Education
5. Authority
Professions: Key Criteria

Service to the Public
- Professions emerged as practitioners valued serving humanity, or because society determined that some practitioners should abide by standards that require accountability to the public.

Code of Ethics
- Commonly applied sanctioned practices that are articulated by regulating bodies. Professions possess a code of ethics by which all members are required to obey.

Self–Regulation
- An occupational group is not a profession without self–regulation. Without regulation, an occupation cannot fully serve the public. Regulation includes autonomy of practice, qualifying exams, & oversight bodies.

Specialized Education
- Occupational work involves learning skills/knowledge. Professional work requires: 1) education → abstract, complex knowledge–base, 2) practical training, & 3) continuing education.

Authority
- Because professionals possess specialized knowledge/skills that are valued by the public, professions exist to support the greater good of a society. Combined with the power to self–regulate, professionals possess significant authority in society.
Licensure and/or Ethics Code Required

- Accountants—public: YES
- Doctors: YES
- Lawyers: YES
- Mediators: NO
- Nurses—registered: YES
- Social Workers—licensed: YES
- Teachers—K–12, public: YES

Professionals who serve the public on important matters have a required ethics code.

Disparity in public accountability

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Professionals are often expected to have demonstrated they have mastered minimum qualifications.

Disparity in setting standards for the field.

- Accountants—public
- Doctors
- Lawyers
- Mediators
- Nurses—registered
- Social Workers—licensed
- Teachers—public, K–12

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Professionals often command respect based upon their level of education.

### Educational Disparity

<table>
<thead>
<tr>
<th>Field/Occupation</th>
<th>Hours of Post–Secondary Education</th>
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</thead>
<tbody>
<tr>
<td>Accountants–public</td>
<td>6,750..B.A.–B.S.+30</td>
</tr>
<tr>
<td>Doctors</td>
<td>10,800…Med School</td>
</tr>
<tr>
<td>Lawyers</td>
<td>9,450…Law School</td>
</tr>
<tr>
<td>Mediators</td>
<td>NONE REQUIRED</td>
</tr>
<tr>
<td>Nurses–registered</td>
<td>2,700…A.S.</td>
</tr>
<tr>
<td>Social Workers–licensed</td>
<td>6,750…M.S.</td>
</tr>
<tr>
<td>Teachers–public, K–12)</td>
<td>5,400…B.A.–B.S.</td>
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</tbody>
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Impact of not Professionalizing

Three major consequences:

- **Public Protection.** “Regulation is necessary to protect the public from bad actors, incompetent practitioners, and unqualified providers.” ~ *Hinshaw*

- **Public Awareness.** The public is not aware of the occupational work or how to obtain a practitioner.

- **Inclusiveness of a Diverse Practitioner Pool.** Successful practitioners come from existing professions, and most would-be practitioners cannot make a living wage; practitioners do not represent the diversity of the client-base: society.
Mediators are in the other 60%

More than 40% of the United States workforce is subject to some sort of occupational regulation which may include:

- Registering with the government and/or
- Completing a certain amount of education and/or
- Passing an examination and/or
- Demonstrating a minimal degree of competency in an objective way
If we do not decide practice standards for ourselves, someone else will.

Mediation is “growing up” and needs to accept responsibilities of adulthood.

Consumers of mediation need protection; right to know how to find a quality mediator.

“Sacred cow” of mediator confidentiality remains at risk should we not develop methodology for quality assurance.
California’s Next Steps Towards Professionalization

- Mediator Certification Consortium of California
  - Committee of Southern California Mediation Association (SCMA) for last 4.5 years
  - Non-profit 501 (c) (6) organization
  - Hopeful of working with court systems and panels throughout California on a voluntary certification process that is operated by the field
Voluntary Mediator Certification

- Consortium seeks to build certification on key concepts of greater education for mediators, establishing minimum qualification standards, and requiring mediators to adhere to an ethics code
  - Raises the credibility of mediation in the public eyes
  - Sets forth higher practice standards, adding testing and an ethics code, key components for public expectations and credibility
  - As a VOLUNTARY program, it still allows for mediators who choose not to meet the standards to continue practicing as they have been

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What should an effective credentialing program include?

- Have an assessment process capable of determining with consistency whether or not candidates possess the defined skills, knowledge and values.
- Explain clearly to persons likely to rely on its credential what is being certified.
- Provide an accessible, transparent system to register complaints against credentialed mediators. Promptly and fairly investigate complaints and, if appropriate, de-credential a mediator who fails to comply with standards.
What should a credentialing system not do?

- Operate as mandatory licensing.
  - ✓
- Bar non-lawyers from becoming credentialed.
  - ✓
- Bar disputants from selecting a non-credentialed mediator.
  - ✓