

# *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
  - ▶ Doctors
  - ▶ Lawyers
  - ▶ Mediators
  - ▶ Nurses–registered
  - ▶ Social Workers–licensed
  - ▶ Teachers–K–12, public
- ▶ YES
  - ▶ YES
  - ▶ YES
  - ▶ NO
  - ▶ YES
  - ▶ YES
  - ▶ YES

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

Disparity in public accountability

# Examination Required

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

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

Disparity in setting standards for the field

# Required Education Level

## Field/Occupation

## Hours of Post-Secondary Education

- ▶ Accountants–public
  - ▶ Doctors
  - ▶ Lawyers
  - ▶ Mediators
  - ▶ Nurses–registered
  - ▶ Social Workers–licensed
  - ▶ Teachers–public, K–12)
- ▶ 6,750..B.A.–B.S.+30
  - ▶ 10,800...Med School
  - ▶ 9,450...Law School
  - ▶ **NONE REQUIRED**
  - ▶ 2,700...A.S.
  - ▶ 6,750...M.S.
  - ▶ 5,400...B.A.–B.S.

Professionals often command respect based upon their level of education

Educational Disparity

# 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



# National Conflict Resolution Center San Diego, CA (2006)

- ▶ 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

# ABA Task Force Report (2012)

*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.

*Voluntary Mediator Certification Program*



# ABA Task Force Report (2012)

*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.

*Voluntary Mediator Certification Program*

