

## International Mediation Clinical Network Conference

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### ICMN \_ CLINICAL MEDIATOR EDUCATION PROPOSAL

#### **Integrating Ethical Frameworks in Clinical Mediator Education**

Clinical mediator training prepares prospective mediators to resolve conflicts using mediation techniques, with an emphasis on practical experience in real-life clinical environments. A clinical mediator is an impartial and fair professional who is trained to help resolve conflicts. This study investigates how ethical principles, including confidentiality, neutrality, and informed consent, are incorporated into the training of clinical mediators. Since mediators frequently deal with complicated and emotionally intense scenarios, it is crucial to incorporate ethical training to guarantee fair and equitable results. Clinical mediator programs can promote ethical sensitivity and improve decision-making by integrating case-based learning and reflective practice. This study argues for a curriculum that prioritises ethics as a fundamental component in mediator training, ensuring that mediators possess both practical abilities and a solid moral direction to navigate complicated cases.

**Keywords :** Mediation, Ethics, Clinical training, confidentiality, Decision making

#### **I. Introduction**

The study "Integrating Ethical Frameworks in Clinical Mediator Education" reveals the potential of ethics in mediation practice. The effectiveness of communication as a conflict resolution technique depends on the mediator's capacity to maintain objectivity, ensure confidentiality, and obtain informed consent. The essence of the study is the ethical principles, which are considered as the basic element in mediators' training. In light of the fact that disputes are becoming more complicated and mediators are confronting diverse problems, this research will highlight the connection between the ethical sources and mediation practice. Since mediators handle issues that are emotionally charged, following ethical guidelines is crucial to maintaining the impartiality, credibility, and confidence of the mediation procedures. This study intends to improve mediation's effectiveness and recognition as an alternative dispute resolution technique by reflecting on these ethical issues. Mediators deal with emotionally loaded cases, and thus adherence to ethical principles is essential for upholding the fairness, trust, and credibility of the processes of mediation. It has been shown that by these principles parties can trust and be sure of fairness among each other. In the next stage, the study investigates the existing teaching methods in mediation training, pointing out the deficiencies in the ethics-centered instruction. The paper presents a curriculum that includes ethical sensitivity into mediator education to overcome these deficiencies and to provide a guideline for mediators to deal with complex disputes in an honest way.<sup>1</sup>

The paper explores the aforementioned debates in depth, further analysing the cross-cultural and jurisdictional differences in ethical standards, which in turn stresses the adaptability of the training programs and its inclusiveness. It thus points out the difficulties in conducting ethics-based teaching and makes some suggestions about how to work towards the consistency and the availability to all people in mediator education. Drawing attention to the potentially empowering outcomes of ethical training, this study argues for such instruction to become integral to all forms of mediator education worldwide.

## **II. Key Ethical Principles in Mediation**

In mediation three core ethical principles, Confidentiality, Neutrality, and informed Consent Serves as the foundation for effective and just processes.

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<sup>1</sup>The Importance of Ethics in practice of Mediation - Available-at-  
[https://ink.library.smu.edu.sg/context/sol\\_research/article/5776/viewcontent/03\\_The\\_Importance\\_of\\_Ethics\\_in\\_the\\_Practice\\_of\\_Mediation.pdf](https://ink.library.smu.edu.sg/context/sol_research/article/5776/viewcontent/03_The_Importance_of_Ethics_in_the_Practice_of_Mediation.pdf)

- a. Confidentiality :** Confidentiality in mediation is the most crucial ethical principle. It is about the assurance that everything which has been shared during mediation will not be disclosed to others outside mediation even if the parties agree to it or law requires it. Such a principle gives the parties a chance to communicate without barriers, in a safe zone where they can come up with an innovative solution without worrying about the future. This is about the protection of sensitive information and open discussion between the involved parties is the target. The legal and ethical implications in confidentiality emerge, when trying to find a balance between keeping trust and the possible legal obligations that might take precedence over confidentiality. To give an example, in situations where the parties might be endangered (such as domestic violence) or meditating about illegal activities are discovered, the mediator could be forced to break confidentiality. The situations then become ethically difficult because it is a question of breaking confidentiality for the sake of the safety of one or the process integrity of the other.<sup>2</sup>
- b. Neutrality :** Neutrality is one of the most important ethical principles that mediators are obligated to maintain in order to keep the mediation process fair. Neutrality refers to the mediator's role as an impartial third party who does not take sides, favour one party over the other, or impose their own views or interests on the parties involved. A neutral mediator has the task of meditation and communication between the participants and aims to find common ground and mutually agreeable solutions. Neutrality of the mediator allows to establish trust by guaranteeing that everyone is listened to and nobody misfit or mistreated. However, neutrality can be difficult to sustain, especially when there is imbalance of power or resources in one way or another, e.g. For example, in a workplace mediation where an employee may be in a position of vulnerability in relation to their employer, the mediator may find it difficult to remain neutral if the power imbalance is too stark.<sup>3</sup> In these situations, not only is it important for the mediator to act as a mixer of influences between the parties, but also without appearing to take sides or to be biased. Further complicating the issue is the potential of unconscious bias, whereby a mediator can inadvertently give one party an advantage over another, through their own personal positiveness or negative bias. As an intervention to avoid this, mediators must be self-reflective and

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<sup>2</sup>*Confidentiality of the Mediation Process- Available-at-*  
<https://adryearbook.tsu.ge/index.php/ADR/article/view/7081>

<sup>3</sup>*Neutrality In Mediation- Available-at-*  
<https://lr.law.qut.edu.au/article/download/88/83/88-1-168-1-10-20120619.pdf>

have a genuine ongoing effort to identify and push back against potential biases that may contaminate their neutrality. There may also be situations where neutrality is tested by the mediator's role in addressing the emotional dynamics between the parties. [For example] if one party shows to be controlling or aggressive and domineering, the mediator can not show a bias and at the same time allocate time for the other party to be able to object. When this occurs, the mediator might have to intervene and control behaviour without appearing to side with one party or take a position on the individuals involved in the conflict. Essentially, neutrality in trust-building is fundamental, but needs to be carefully managed, perpetually monitored and the balance tends to ensure that all participants are treated fairly, and the process does not drift too far one way or another.<sup>4</sup>

- c. **Informed consent** : It is an ethical cornerstone in mediation that relates to making sure that all participants are fully informed and voluntarily consent to the mediation process. It entails informing participants of how mediation works, what mediation can achieve, the potential result of mediation and also participants' rights and obligations. The purpose of informed consent is to ensure that each participant is endowed with the autonomy to give an informed and free decision on whether to engage in the mediation.

Informed consent encompasses several key elements: Which includes the mediator's place within mediation, the voluntariness of mediation, the informality of the process, and the participant's right to withdraw from mediation at any time. It also covers informing that the mediator does not have decision making power and that any arrangement made is a product of the mutual agreement between the parties. Ensuring that all parties fully understand the process is critical because mediation is a consensual process; there can be no mediation without the voluntary and informed participation of all parties involved. In practice, the validity of informed consent can be assessed when there is suspicion of understanding on the part of the participants, or as it relates to the possibility of captivity/coercion, under which condition they are unable, or not able, to give a truly appropriate affirmative answer. For example, if there is a power imbalance in family mediation, where one partner, such as a coercive partner, attempts to pressure the other into accepting mediation or an agreement without fully comprehending what it means. At such moments, the mediator needs to

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<sup>4</sup> Impartiality and Neutrality- Available-at-  
<https://ojs.maynoothuniversity.ie/index.php/jmaca/article/download/57/50/206>

properly consider whether both may consent voluntarily to the process and whether they understand what they are consenting to and the potential ends such a process may lead to. Similarly, in workplace disputes, an employee may feel obligated to participate in mediation due to the pressure of an employer, even though they may not fully understand the voluntary nature of the process or their rights to withdraw.<sup>5</sup> For example, consider a mediation scenario in which a participant is not fully aware that any agreements reached in mediation are not legally binding unless formalised in writing. The mediator must ensure that both parties understand this distinction before proceeding. If a participant is feeling threatened or unable to grasp the process (e.g., in situations of disabilities or lack of ability to communicate), the mediator should consequently figure out to give informed consent in a voluntary and appropriate way. This may include offering additional assistance, like a liaison or lawyer, to guarantee full information at all times. In certain instances, the idea of informed consent may be further examined whenever subjects report a sense of incomprehension regarding their capacity to withdraw from mediation. The mediator should state explicitly that participation in mediation is un compelled, and either party may withdraw at any time, without any penalty. This is of particular significance in sensitive situations where one party may be coerced to continue participation despite negative consequences.

### **III. Integrating Ethics into Mediator Education: A Curriculum Proposal**

In order to guarantee the practitioners are equipped to deal with the ethical issues involved in practice, their training should be integrated with ethics throughout all levels. This section proposes ways to effectively integrate ethics into clinical mediator training.

**1. Foundation of Ethical Principles :** The program training must start with preparing students in the main ethics of mediation—confidentiality, neutrality, and informed consent. These principles should not be understood only on a theoretical level, but also practiced in a practical context.

- **Ethics-First Approach:** Ethical considerations should be introduced from the earliest stage of mediator education as a guide through all future learning and practice. This method enables the students to learn that the ethical element is a permanent one in the mediation process.

#### **2. Case-Based Learning and Simulations**

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<sup>5</sup> *Informed Consent in Mediation- Available-at-*  
[https://heinonline.org/hol/cgi-bin/get\\_pdf.cgi?handle=hein.journals/tnd174&section=26](https://heinonline.org/hol/cgi-bin/get_pdf.cgi?handle=hein.journals/tnd174&section=26)

Integration of case-based learning provides the students with the chance to actively participate in solving real-world ethical issues. Using both past experience or simulations can be used to allow students to determine how ethical principles play out in a practical setting.

- **Role-plays and Scenarios:** Students may engage in simulated mediation practices, role-playing both parties and the mediator. These tasks may expose the users to ethical questions (for example, how to remain neutral in situations with great power imbalance or how to assure confidentiality in situations where public safety is in danger).
- **Case Study Discussions:** Case studies can be grouped for analysis, inviting students to reflect on issues of what is ethically right, legally permissible, and what they would do in the same situations. Experiences of peer discussions contribute to the development of ethical arguments and the development of the view on intricate cases.<sup>6</sup>

3. Mediators have to engage in reflective practice to develop their understanding of ethical deliberation. This phenomenon encourages the student to think about what they did, how they chose to do it, and how they felt afterwards a mediation.

- **Supervision by Experienced Mediators:** Mentors of experience should be given the role of providing technical and ethically guided advice on students' mediations work to students. This supervision allows students to investigate ethical issues and to receive insights into the experience of professional mediators.
- **Self-Reflection and Journaling:** Encouraging students' to form reflective journals should allow them to describe their own mediation experience, difficulties and ethical dilemmas in order to their own self-awareness and their mediation process with ethical implications can be deepened.<sup>7</sup>

4. Mediator education for cross-cultural competence, therefore, is an essential component of mediation in order to effectively mobilize and apply ethical principles in diverse cultural contexts.

- **Understanding Diverse Ethical Norms:** It is also important that students are exposed to practice the ways in which the cultures manage mediation and conflict resolution. Ethical values such as impartiality and confidentiality may differ across

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<sup>6</sup> *Clinical Legal Education Through mediation- Available-at- <https://www.researchgate.net/publication/346341098>*

<sup>7</sup> *Importance of Self Reflection in Mediation- Available-at- <https://adr-ontario.ca/reflection/>*

jurisdictions or cultures, and so it is crucial to equip mediators with a capacity for flexibility and sensitivity to such differences.<sup>8</sup>

- **Adapting Ethical Principles:** Training should focus on how mediators can balance the core ethical principles with the cultural norms of the parties involved, maintaining fairness without imposing one's own cultural or ethical standards.<sup>9</sup>

5. As mediation increasingly takes place online, mediator training should include the ethical challenges specific to virtual mediation environments.

- **Confidentiality in the Digital Age:** Mediators should be trained to understand the importance of digital platforms' security and confidentiality measures. They should ensure that all parties are aware of how their data is protected and take steps to minimize the risk of data breaches.<sup>10</sup>
- **Ensuring Informed Consent in Virtual Settings:** In virtual mediations, it is paramount to guarantee the understanding of the whole process by all participants, of their rights and of their capacity to interrupt at absolutely any moment. Mediators need to be trained to verify comprehension and receive informed consent within an online context.<sup>11</sup>

#### IV. Evaluation and Continuous Improvement of Ethics Training.

The education of mediators to be effective, there needs to be some mechanism in place for assessing and also ensuring continued improvement of ethics training. Ethical competence is not a fixed condition but rather a fluid capacity that must be adjusted continuously as mediators face new challenges and contexts.

A central issue of this process is the continuous evaluation of ethical competence during training. Continuous assessment enables the development through the mediating-training process of a deeper comprehension of ethical principles, as well as an improvement of decision-making abilities. One of the effective strategies includes peer/supervisor feedback, in which both the positive and negative criticism from the superiors and peers helps the trainees to identify the correct and specific points for improvement in the ethical reasoning, as well as application. Other, in particular, also practical simulations, for example,

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<sup>8</sup> *Mediation Ethics: Ensuring Fairness and Neutrality in Conflict Resolution-* Available-at-  
<https://themediationgroupinc.com/mediation-ethics/>

<sup>9</sup> *Ethical Dilemmas in Conflict mediation-Available-at-*  
<https://psico-smart.com/en/blogs/blog-ethical-dilemmas-in-conflict-mediation-11291>

<sup>10</sup> *Mediators ethics Guidelines-Available-at-* <https://www.jamsadr.com/mediators-ethics/>

<sup>11</sup> *Ethical Guidelines for Mediators- Available-at-*  
<https://lawcouncil.au/publicassets/a44d140e-0994-ea11-9434-005056be13b5/Ethical%20Guidelines%20forf>

role-playing and live simulations, offer the potential for examination of how trainees cope in naturalistic decision-making situations with ethical issues.<sup>12</sup> These techniques guarantee that ethical principles are not just abstract but implemented concretely in practice.

Perhaps the most important is the requirement for ongoing professional development after certification. Mediators need to be kept informed of the changing ethical expectations, new societal concerns and the development of mediation practice. Workshops and seminars conducted by professionals can keep professionals up to date with innovations, for example, the impact of technology to confidentiality, or with ethical dilemmas related to cross-cultural mediation. Ethical refresher courses should and are imperative too, and provide mediators the chance to review basic principles and stay sharp on the perils of the ethical slip. In doing so, through both evaluative and developmental processes, mediator education is able to take on the challenges of contemporary mediation, where, as a condition of entry, mediators are trained to retain ethical integrity in practice.<sup>13</sup>

## **V. Global vs. Indian Approaches to Ethics in Mediator Education**

Ethical frameworks for mediator education vary widely across the world and in the Indian context, due to variation in institutional settings, ethnocentric pressures and extent of professionalism of the practice of mediation. Although countries such as the United States of America, United Kingdom and Australia have been able to implement mechanisms with the experience in ethics, training and application of mediation, India's strategy is still in the process of evolution.

Globally countries with established mediation systems have established standards of codes of conduct and regulatory oversight. For instance, the United States is based on the Model Standards of Conduct for Mediators, a document that clearly sets out principles, like neutrality, confidentiality, and informed consent. Mediators are asked to have extensive training, often provided by accredited organizations, to guarantee best practice of the principles in these situations. Likewise in the United Kingdom, the Civil Mediation Council provides complete regulations for ethical responsibility, and mediator training consists of practical tutorial experience with mediation in the field after careful consideration of the ethics of both hypothetical issues, and those arising in real life. The issue of cultural competence is a key aspect of the Australian population because Australia is a multicultural

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<sup>12</sup> *Mediator Training Curriculum-Available-at-*  
<https://rm.coe.int/basic-mediator-training-curriculum-en/1680ac4905>

<sup>13</sup> *Essentials qualifications and Training for Mediators -Available-at-*  
<https://www.mplegalfirm.in/2023/07/essential-qualifications-and-training.html>

society. Mediators are taught to tailor ethical approaches to the cultural and social context of the interacting parties.<sup>14</sup>

In contrast, the terrain of Indian mediation is formed by both ancient mediation practice and modern mediation practice. While Commercial Courts Act, 2015, and related legislation seek to promote mediation, a comparable national level framework is currently lacking so as to create ethical training. Mediator education in India is fragmented and ethical content (confidentiality, neutrality, reciprocity, and respect) is rarely delivered uniformly within faculties. In addition, India's cultural heterogeneity and community mediated dispute resolution processes frequently affect the ethical issue. For example mediators within rural environments may wear on the way facilitators immersed in local worldways, keeping the strictures of neutrality and confidentiality more difficult to obey. Despite these differences, there are shared priorities. Both from a global and Indian viewpoint, the importance of a culture sensitivity and identification of a local adaptation of ethical principles to the local environment is highlighted. Nevertheless, India poses a unique challenge of how to address the power disequilibrium based on hierarchy, while ensuring the confidentiality, voluntariness, and community participation in community-based projects. In order to fill these gaps, India could benefit by implementing a national ethical framework for mediators, using standards from across the world but retaining room for cultural and regional adaptation. Standardized training and modes of ongoing professional development will also bolster the ethical foundation of mediation in India and more closely approximate India's standards to those accepted internationally.<sup>15</sup>

## **Conclusion**

Ethical frameworks within clinical mediator education are imperative to maintain the legitimacy, credibility, and utility of mediation as a conflict resolution process. Through the instilling of core values of confidentiality (implied), neutrality (formal) and informed consent (consent) at the level of the mediator's training, potential mediators will be better prepared to manage very emotionally charged and complex disagreements. An evidence-based, ethics-grounded curriculum, inclusive of learning-by-doing, in the form of case-studies, simulations and reflective exercise, results in the development not only of ethical awareness but of decision making capacity appropriate to everyday situations. Also, the consideration of

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<sup>14</sup>*Ethical Standards for Mediators- Available-at-*  
<https://expert-evidence.com/ethical-standards-for-mediators/>

<sup>15</sup>*Essential Qualification and Training for mediators in india - Available-at-*  
<https://www.mplegalfirm.in/2023/07/essential-qualifications-and-training.html>

cross-cultural differences and the virtual mediation-related issues raise the issue of adaptive and inclusive ethical education.

To both comply with ethical considerations and provide some consistency, an internationally based ethical mediation education can also be a model to which regional and cultural differences can be tailored. Ethical competence in the current practice of mediation is deeply embedded in a process of continual evaluation and participation in vocational formation. By virtue of the focus on ethical education, mediators can teach trust, and encourage the creation of outcomes which are fair and equitable, and make mediation an established and a fair way of resolving disputes. At the end of the day this integration reaffirms the mediator's adherence to neutrality and impartiality, and the ethical primacy of neutrality and impartiality is in all mediation processes at every step.