

---

# HOSPITAL WORKS

## MEDIATION

**Brian Watson**  
**CEO of the Good Neighbor Hospital**

You are the 37-year-old CEO of the Good Neighbor Hospital, a reasonably large not-for-profit hospital that borders a low-income neighborhood on one side and a more upscale neighborhood on the other side. You came to Good Neighbor approximately a year ago from the CEO position in a smaller community hospital outside of Chicago. Unfortunately, despite your heroic efforts, that hospital was forced to “merge,” really to be bought out by a for-profit healthcare company. Anyone in the Chicago community would say that your hospital did not go down without a fight. You have boundless energy, and were committed to servicing the community, but were finally forced to admit that the hospital couldn’t pay its bills.

When you took over at the Good Neighbor Hospital, you replaced a CEO who had been forced out by the board for an ill-considered or poorly implemented strategy to increase revenues, which alienated the surrounding community. Your predecessor had strongly urged that the hospital establish a luxury service wing for maternity, cosmetic, and other elective surgery. He had hoped to attract higher paying patients (who could afford to pay over and above insurance reimbursements) for high-profit procedures, to increase its budget for the walk-in emergency room, clinic, and other neighborhood services. Unfortunately, the presence of the luxury service wing rankled the lower-income neighborhood adjacent to the hospital, which claimed that the new wing had increased traffic congestion and late-night ambulance noise. (The original ambulance path had been rerouted to accommodate the new wing.) Activists objected in the neighborhood paper to being second-class patients was not good enough for the new, well-decorated facility. Community relations suffered, as did the hospital’s bottom line (at least in the short term), as many people opted to go to a different hospital for non-emergency procedures and wealthier patients hesitated to come to a facility in what was perceived as a rough neighborhood.

Revenues suffered even more. The board ousted the CEO, on a relatively close vote. You were brought in to stop the bleeding before the hospital would be forced to close or become the target of an outside healthcare company. You relished the opportunity to fight the good fight again, and this time to win, because the Good Neighbor Hospital’s financial position and reputation for quality health care are still not nearly as bad as the situation you faced in Chicago. You are determined to turn things around at Good Neighbor, and you remain convinced it can be done.

As soon as you arrived at Good Neighbor, you made it a point to learn as much as possible about your immediate staff, the management people responsible for steering the ship under your direction. Not surprisingly, you were not impressed by what you found. It seemed like management’s offices all went dark promptly at 5:00 p.m. In the files, you found memoranda from various people promising that certain objectives would be met within the year, written a year ago. When you asked what progress had been made, the answer was invariably: Well, we’ve made some progress, but, well, things are very busy, etc. Yet you never saw anyone working nights or weekends to make sure that



goals were accomplished. Fundraising was lagging and grant applications for medical staff research were down.

As you explained to your lawyer, among the first people you decided to evaluate was P.D. Terrell, then the director of development and community relations. You learned that P.D. had been hired by your predecessor approximately a year ago, after an exhaustive and expensive search. At the time of his hire, P.D. was the development director for a smaller hospital in Memphis, Tennessee. However, he was born and raised in Cincinnati, where his mother still lives. P.D. is 50 and unmarried.

It only took you a few weeks to see that P.D. Terrell was not and never would be up to the job. Quite frankly, you couldn't figure out what he had been doing for the past six months to address the hospital's community relations problem. From your perspective, the community relations director needed to be proactive, to inform and involve the neighborhood in the project and its goals. Terrell should have been filling the local paper with articles and setting up community meetings to present the new wing as intended to benefit the hospital for the neighborhood. Instead, according to the staff, he spent months setting up his office, attending seminars, and coming up with a strategic fundraising plan.

The hospital didn't need another strategy document, it needed a go-getter who would get out there, meet people in the community, and talk to the local ministers and parent groups about the financial pressures on hospitals under managed care. It is a not-for-profit hospital and proud of it. But, if the hospital can't make ends meet, it'll fold or be taken over by a healthcare company that only cares about the bottom line, not the community. You had never heard of P.D. attending a night meeting. He lives on the other side of town, next to Mommy (who's at least 75). He drags around the office all afternoon, then bolts out the door at 5:01. You're told he was "Mr. Energy" during his interview with the board. You don't know what happened between Memphis and Cincinnati, but you'd call him "Mr. Iron-Poor-Tired-Blood."

The day after you met him, you told the board that P.D. wasn't right for this job. They asked you to work with him for a while because they had spent so much on the executive search process. Over the next few weeks, you started learning more, confirming your intuition. P.D. had simply done no outreach to the local neighborhood groups. He hadn't responded to the negative editorials against the hospital in the local paper. You took him to a lunch meeting with the district police chief (who's also a leader in some school reform efforts and an influential member of the community). He had done nothing to follow up. As far as you can tell, P.D.'s only visible move was to set up tours of the new facility, but he had them during the workday only. That means the working people can't come. Only the affluent (non-working) women or retirees on the fancy side of the tracks have taken the tours. You need someone sensitive to the needs of the entire community and will demonstrate that sensitivity. At least two of your board members began calling and writing to you complaining about P.D.'s attitude and performance.



After the last one of those calls, you walked in and fired him. You just told P.D. "it isn't working out, community relations are bad, and your fundraising development efforts have been insufficient and ineffective." When P.D. protested, referring to the situation handed to him by the predecessor CEO, you acknowledged that it may not be entirely his fault, but said that he didn't seem to be equipped with the energy or temperament it takes to build community relations. You then scrambled to find a replacement and were lucky enough to learn that Mary Mullins was ready to leave her job as director of a not-for-profit housing and community development organization in the Price Hill area. You know that the plaintiff's lawyer will make a big deal of the fact that Mary is only in her 30s. You would have preferred someone with more experience, but a bet on Mary is a well-placed bet. When you recommended her to the board, you explained: She has a phenomenal reputation in this city, a tremendously likable presence, approachable and easy, but with more energy and common sense than most three people put together. Mary is the type who would stay up all night to help her kids on a school project and then report to work chipper the next day. It's the tireless Mom image, and I think it will work here.

When you fired P.D. Terrell, his last words to you were: "You'll be talking to my lawyer, and you won't be able to get rid of me, like it or not." You've heard this kind of threat before, but you sensed that P.D. meant it. You suspect that he may have been in touch with a lawyer even before he was fired. You immediately called your college roommate, a senior partner in a large law firm in Cincinnati. Your roommate went into corporate law but assured you she was "the best and the brightest" of the firm's litigation talent would be assigned to this matter. A few days later, he called you back to say that M.J. Lewis, a senior litigation associate specializing in employment defense, would represent the hospital. "You're in good hands," he said. "M.J. may not be on the partnership letterhead yet, but it's just a matter of time. M.J. is known by all here to be a top-notch litigator."

A few days later, you met with M.J. and explained that the Good Neighbor Hospital had been threatened with a suit by P.D. Terrell. You conveyed all the relevant facts to M.J., who then explained the need to ask about any other terminations that had taken place. When you protested that these were unrelated to P.D., M.J. explained that P.D.'s counsel would be looking to establish a pattern of replacing more senior employees with younger employees.

You acknowledged that there had been a great deal of turnover since you arrived. You explained to M.J.: They were just too used to the old ways; I needed people who would share my vision. If I thought I could work with a member of the staff, I set up a private meeting and gave him or her six months to "transition." I did the same thing with the hospital's accountant. If I thought they simply didn't have the ability to perform well (based both upon previous evaluations and my own intuition), I gave them a modest severance based upon seniority and suggested they start looking. Frankly, I knew that P.D. couldn't do the job. This was confirmed by the feedback I got about him within the first few weeks, and I couldn't afford to wait to let him go. His position was just too critical to the hospital's viability. In addition, because I was coming in from the outside, it was even more important to me that this position be filled by a Cincinnati local, known to and respected by the community. P.D. was part of a



very small top management team, of which I was a member. When my predecessor left, he left a local boy vacancy. Since I'm not local either, I needed someone on the team who was.

When you heard from the lawyer that he had indeed been contacted by the plaintiff's counsel and that P.D. (through the lawyer) had demanded \$2 million in settlement, you were livid. You know (and the plaintiff surely knows) that type of sum would put the hospital into the red. If P.D.'s salary plus benefits were \$100,000 per year, then he was overpaid. He certainly didn't have enough service time to warrant any significant severance. (In your former position, severance was calculated at two weeks' pay per year of service for top management.)

When your lawyer suggested mediation to get the plaintiff off of this ridiculous number, you asked if he knew any mediators who could work miracles. When the lawyer said he would do some checking on mediators, he again asked if you would be amenable to a mediation process. You took a deep breath and calmed down enough to say: Okay, let's try to mediate it. I had some very good luck with the mediation of a difficult case in my last position. If we are going to mediate, I think we should do it early so that I can keep your fees down. At a minimum, the mediation will give us information about the case that would be a lot more expensive to get through discovery. Besides, I think this guy is all puff and he'll settle for short dollars, which is all this is worth.

In your mind, the plaintiff's ridiculous claims are a way to get very high-priced unemployment insurance for the rest of his life. P.D. is a guy who failed in an admittedly difficult job and was hit by a CEO who saw that failure quickly and clearly and acted in Good Neighbor Hospital's best interest. Now, P.D. is claiming breach of his employment contract, age discrimination—everyone fired past the age of 40 seems to grab at that one—and gender discrimination because he was replaced by a woman. It's just lucky for P.D. that he wasn't replaced by a 55-year-old man. Then, he'd have nothing to sue about. Much as you'd like to try one of these cases before a jury someday, you know this might not be in the hospital's best interest.

Your lawyer called to say that he and the plaintiff's counsel had agreed upon a mediator, someone who was highly regarded by other lawyers in the firm who had mediated with him before.

Your lawyer has told you that the hospital's exposure is low at this point because the plaintiff has only lost 3 months' pay (less than \$30,000) and there's no evidence of the plaintiff trying to work. He doesn't think the plaintiff would get much for future losses, not more than a year or two at most. You haven't discussed total defense costs, but you know they will be high.

Of course, any settlement would require approval by the board. At this point, you would only agree to settle for a de minimis amount of "nuisance value." Thus, you haven't yet spoken about the issue with the board. You are adamant that you did nothing wrong. You wouldn't have cared if the plaintiff were 103 if he could get the job done.



At the end of the day, you recognize that no matter how much you would like to stand on principle, this has to be seen as a business decision for the hospital. Right now, you don't see any exposure. You don't see how anyone could question your motives. Thus, you aren't interested in paying serious money. Of course, you are always open to persuasion and want to act in the hospital's best interest. The mediation is scheduled to begin shortly.