
**STRONG MEDICINE
NEGOTIATION**

[SEE COMMENTS ON ALTERING FOR MEDIATION]

Teaching Note

This two-party simulation was based on a real case, mediated to resolution many years ago. I confess that I do not recall the final terms of the settlement. My additional confession is that, while I believe I wrote it for use in class or a CLE about that time, I don't remember how it was taught. Reviewing and editing the simulation made me realize how difficult the case was. It offered perfect examples of the ways two parties hold and articulate sincere and completely different perceptions and narratives about the causes of the dispute and the players in it. As is often true in a messy partnership dispute (including but not limited to medical practice businesses), both parties are strongly motivated to settle privately at the same time as they completely distrust, disdain, and demonize the other.

[Please note that I have chosen not to make the roles gender neutral. In the real case, the claimant physician was female, and the partnership doctors were male, as was the partner she accused of *quid pro quo* harassment. The impacts of gender, gendered roles, and dynamics were strong. I thought these would be lost if the characters' genders were made ambiguous in the simulation. Readers are welcome to create a new, gender-neutral, or gender-ambiguous version.]

In a nutshell, the dispute is between a female radiologist, Dr. Tanner, and Strong Docs Partners, chaired by Dr. Sanders. Dr. Tanner had been a physician partner at Strong Doc Partners for a year before her four-year contract was terminated. It is undisputed that Strong Doc's partnership contract provided for the immediate removal of any partner physician upon 2/3 vote of the other (12) physician partners. The 10 physician partners who voted to terminate Dr. Tanner alleged that she had disrupted the culture of their practice by rudeness to staff and physician peers. They also claimed Dr. Tanner had failed to fulfill rotating on-call duty obligations.

Dr. Tanner maintains that the male partners (all but 2) were motivated by gender discrimination, and that she had been subject to sexual harassment. She denies ever being any more or less "rude" than male physicians who resented her high standards and demand for top-quality practice. She made it clear before entering the practice that her parenting obligations came first. She had provided the practice with a schedule of availability for more than the required number of on-call hours.

According to Dr. Tanner, the other reason the partnership voted her out is that she complained about *quid pro quo* sexual harassment by its most senior physician, Dr. Lindman. Recently divorced and 10 years her senior, Dr. Lindman asked Dr. Tanner to have dinner to talk about the practice and "fitting in." When Dr. Tanner had dinner with him once, she was uncomfortable with Dr. Lindman's steering the



conversation toward his dating exploits and her relationship with her husband. She declined a second dinner invitation. Shortly after that, Dr. Lindman came into her office, closed the door, confessed his attraction to her, and asked her to come with him to a medical conference as a cover story for her husband. Dr. Tanner ordered him out of her office. Shortly after that, the other physicians began criticizing her “staff management.” When she reported Dr. Lindman’s behavior (and retaliation) to the chairman Dr. Sanders, all hell broke loose. Dr. Lindman called her a liar, denied everything, and demanded her ouster.

Dr. Tanner claims to have been emotionally scarred, and unable to find full-time work as a radiologist with any nearby practice. (She recently obtained a part-time position 60 miles away from her home, difficult given her family obligations.) She claims Dr. Lindman and his partners have been spreading ugly rumors about her in the local medical community.

The money demands and capacity to pay are pretty rich. On its face, there are large gaps between what the parties think is reasonable. Still, both have the theoretical ability to meet the other’s demands – Strong Docs have resources to pay, and Dr. Tanner is unlikely to starve if she comes down on the dollars.

Note that the attorneys’ role information does not include explicit discussion of their clients’ professional, business, or personal interests. When teaching with it, I suggest emphasizing the importance of thinking about those interests, even if not stated. These are key elements for reaching settlement terms other than the dollars. For Dr. Tanner and, frankly, for Strong Docs, confidentiality and non-disparagement provisions are important for their respective financial futures. In real life, and in this simulation, a good deal of time and effort went into working out those terms.

The fate of Dr. Lindman is yet another question: Dr. Tanner is likely to want him expelled from the practice and/or exposed. Strong Docs stated position will likely be to rally around Dr. Lindman (though this case was written before the “Me too” movement), maintaining her harassment allegations are entirely fabricated. However, the practice may at least want to consider investigating Dr. Lindman, given Dr. Tanner’s allegations that other female employees have experienced his unwelcome attention. Addressing that issue may go a long way toward settlement with Dr. Tanner.

The attorneys’ roles state that their clients want them to negotiate for a low or as high a number as possible. Both clients have promised to respect your settlement recommendation, provided you can explain why it makes sense.

Note: if this simulation were presented as a mediation, with attorney and client roles, it would raise the mediation practice topic of whether it’s effective or



desirable to try to expose opposing parties to the other's "truth." Might there be some value within the process to enabling the parties and lawyers to hear the other side's narrative, even if each will perceive the other as "just plain lying?" My mediator answer remains that this may have value, even if it risks raising the temperature in the room. However, based on 30+ years of experience as a mediator, I see tremendous risk and little chance of shaking the parties' strong narratives, or their disdain and rejection of the other's.

I have not offered a mediation version of this case in this simulation set because, in my view, doing it well would require more fully developed client roles. While efficient, it would not be sufficient to copy the attorneys' information into the clients' roles, shifting it to the first person. All readers are invited to develop these in a mediation version.

I acknowledge there would be no harm in distributing this negotiation simulation's attorney's roles to students in the class. You could ask them to assume client and attorney roles, and consider how the client would feel, what would matter and to imagine more details about their business, professional and personal goals. The attorney-client pairs would meet to discuss and to prepare for mediation. You might set it up with an initial phone or Zoom call with a mediator to provide an overview of the issues and the clients, and for the mediator to consider process choices. Then let the mediation proceed.