

LETS Mediate



OCTOBER 2023 ISSUE # 11

THE IMPORTANCE OF
CONFIDENTIALITY

TAKING MEDIATION
FROM PRINCIPLE
TO PRACTICE

AGM
FEEDBACK





UPDATE

FROM THE EDITOR

Dear MiMM Members,

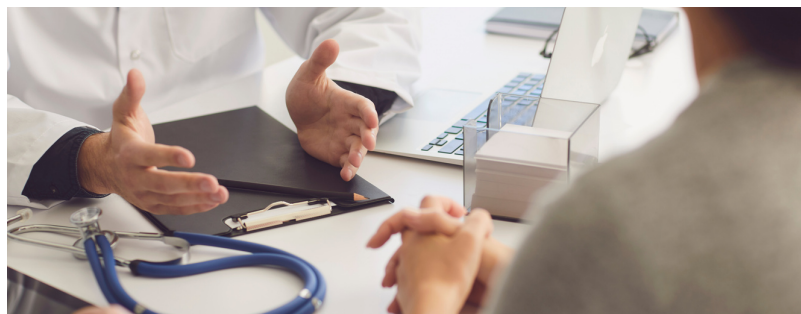
We are thrilled to introduce you to the **all-new, revamped and improved MiMM Newsletter!** It is with immense pleasure and pride that we bring this exciting upgrade to your inbox. We believe that this new format is truly head-and-shoulders above its predecessor, and it's a testament to how far MiMM has come and where our dedicated Executive Committee (Exco) is leading us.

In this rapidly evolving world, staying relevant, professional, and present is essential, and we are committed to providing you with a newsletter that reflects these values. Our mission has always been to promote mediation and support our valued members, and this newsletter is a vital tool in achieving that goal.

I want to extend a heartfelt thank you to our new board member, Sasha Wait, who has taken the helm of our improved social media campaign and is the creative force behind this fantastic new-look newsletter. Sasha's dedication and expertise have been instrumental in creating this masterpiece that embodies everything MiMM stands for – professionalism, relevance, and the promotion of mediation and our members.

The Annual General Meeting (AGM) held recently was a resounding success, thanks to your active participation. For more details about the AGM, I encourage you to read the Letter from our Chair, which provides insights into our achievements and future plans.

We are delighted to welcome two exceptional individuals to the MiMM-Exco team: Dr. Retief Strauss and Mrs. Sasha Wait. Sasha's influence is evident throughout this newsletter, and you will find more information about both of these remarkable additions in the following sections. Dr. Straus has also contributed a thought-provoking article for publication, which I am certain you will find insightful and engaging.



In our ongoing efforts to actively promote mediation and create opportunities for our members, we are pleased to report that our Social Media Campaign is well underway. Additionally, the introduction of the MiMM-SAMA mediation project is progressing smoothly.

SAMA has initiated their marketing campaign with teasers that have been warmly received by the market, indicating promising prospects for our collaboration.



"...ALL-NEW, REVAMPED AND IMPROVED MIMM NEWSLETTER!"

We would like to invite you to also contribute to our new, improved newsletter. You can imagine that a newsletter of this standard will be distributed much wider than just our membership.

You thus have a golden opportunity to contribute to marketing mediation in general, but also yourself as a mediator. Write an article, tell us about an interesting or difficult mediation you conducted, advertise your mediation practice and/or your services. Your input will not only benefit our community but also help raise your own profile in the mediation world.

As we navigate the future together, I encourage you to explore this newsletter and engage with its contents. It is designed with you in mind, and your feedback is invaluable to us.

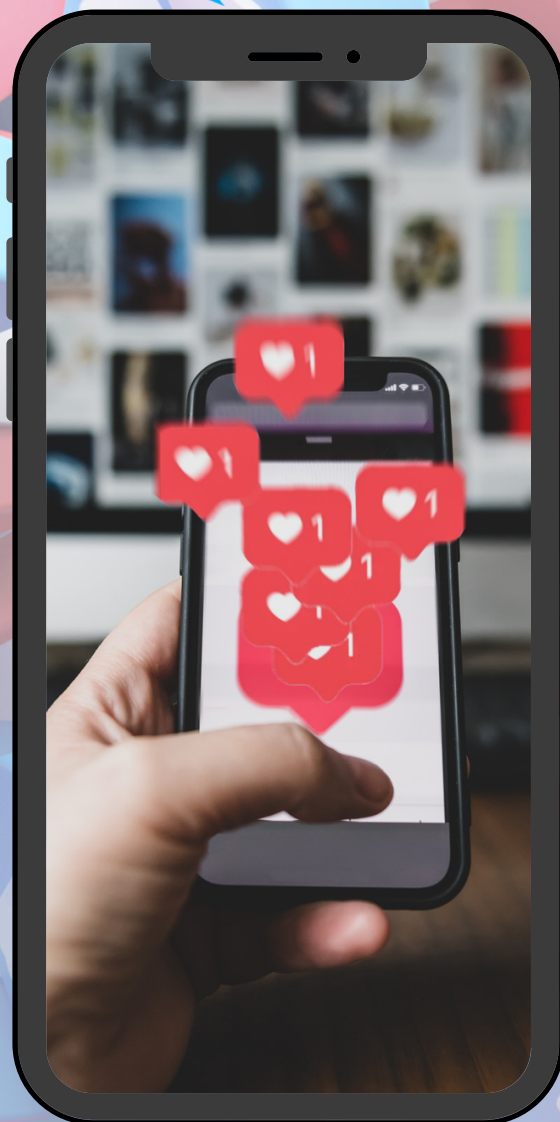
Thank you for being part of the MiMM community, and here's to a bright future ahead.

Warm regards,



*Susan
Verhoef*

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Page 13 explains how

NEXT ONLINE

ASK THE EXPERT

02 October, 2023 | 6:00pm



**ALAN
NELSON**
EXPERT



**PATRICK
SCOTT**
EXPERT

JOIN US

Have burning questions or fascinating mediation topics you're dying to learn more about? Simply email your questions and topics to [us](mailto:us@mimmediation.org), and engage with our experts to get some insight.



Info@mimmediation.org

Zoom links and future dates will be sent on the MIMM Members WhatsApp group.

Letter From the Chair

DR SHAMAL RAMESAR

AGM



Dear MiMM members,

I am pleased to present the annual report for Mediation in Motion Mediators (MiMM) for the period of July 2022 to August 2023. It is with great pride that I share the remarkable progress and achievements that our organization has made in the field of mediation for the period just mentioned.

Our commitment to fostering peaceful solutions and promoting harmonious relationships has been unwavering, and this report reflects the dedicated efforts of our team.

Regarding the SAQA accreditation initiative, substantial progress has been achieved towards the final submission by members of the EXCO, under the guidance of Adv. Ettian Raubenheimer. As mentioned in previous reports, the required policies have been meticulously drafted for this purpose. These encompass a wide range of areas including continuous professional development, recognition of prior learning, professional designations, transformation, a code of conduct, organizational constitutional alignment, disciplinary procedures, human resources, and finance. Our forthcoming actions entail ensuring the harmonization and adherence of these policies to SAQA's stipulations. Subsequently, the focus will shift to assembling the requisite documentation for the final submission.

The South African Medical Association (SAMA) Project is gaining remarkable momentum under the leadership of Dr. Trevor Frankish. The protocol for a pilot project has been accepted by the board of SAMA and will comprise a streamlined workflow process and a trial phase dedicated towards implementing mediation for medico-legal disputes of their members.

“Our commitment to fostering peaceful solutions and promoting harmonious relationships has been unwavering”



An encouraging commitment has been received from SAMA, pledging to advise its expansive membership of over 12,000 to incorporate the pre-mediation clause into their admission forms. Once this procedural integration is finalized, Mediation in Motion Mediators (NPO) can anticipate a consistent flow of mediations originating from SAMA. The implementation phase has already kicked off and a refresher course has been scheduled for interested members who want to serve on this panel.

In response to the gradual adoption of Rule 41A, a parallel project led by Adv. Alan Nelson SC and guided by Adv. Patrick Scott has been initiated to identify promoters of mediation for specific Magistrates courts throughout the country. This endeavour aims to increase the number of cases referred to mediation. Progress in this area is noteworthy, with the EXCO committing to mediate the initial cases on a pro-bono basis, demonstrating our goodwill and underscoring our dedication to the merits of mediation. This effort is also poised to generate a steady influx of work for our members.

Elevating awareness about the benefits and advantages of mediation remains a paramount concern.

Although our online presence through social media platforms and local media channels has slightly dwindled in recent months, the EXCO is resolute in intensifying these efforts going forward. We have successfully launched a community chat (WhatsApp) group wherein regular exchanges about mediation matters take place. We have also successfully launched the monthly “Ask the Expert” campaign, where members are guided on the latest trends in mediation globally and have their questions or concerns addressed. We are also kept informed on the latest trends and advances in mediation by our quarterly newsletter under the leadership of Mrs. Susan Verhoef and Adv. Patrick Scott.



LETTER FROM THE CHAIR

In an ever-evolving world of technology and digital platforms, the EXCO recognizes the importance of staying current and we are therefore entering into discussions around the effectiveness and useability of our current website and seeking advice on the best mechanisms and platforms to serve our needs and purposes. Our financial health remains strong, under the guidance of Mr. Mark Agar (CA). We have also successfully registered our organization as an NPO and with SARS as well.



The EXCO offers a special thanks for the support of our dedicated members who continue to pay their annual subscription fees. We have always maintained transparency in our financial operations and allocated resources judiciously to maximize our impact.

As we look ahead, MiMM is committed to continuous improvement. We remain committed towards strengthening alliances with government entities, non-governmental organizations (NGOs), and other stakeholders therefore reinforcing our collective endeavours to propagate mediation's merits. With the dedication of our team and the support of our stakeholders, we are confident in our ability to make a lasting difference in resolving conflicts and fostering peaceful coexistence.

In closing, I want to express my gratitude to our dedicated EXCO, our partners, and all those who have supported MiMM's mission in the last year. Your unwavering commitment is the driving force behind our success thus far. Together, we will continue to create positive ripples of change in the world of mediation.

Best wishes,

Handwritten signature of Dr. Shamal Ramesar

Dr. Shamal Ramesar
Chairman,
Mediation in Motion Mediators (NPO)

MEET THE NEW EXCO MEMBERS

Dr. Retief Strauss



I have been a Specialist Anesthetist in Private Practice in South Africa for the last 25 years. After completing my undergraduate medical training in Bloemfontein at the University of the Free State, I did some locums in general medical practice and then did my compulsory military service. My specialist training then followed, also at the University of the Free State.

Over the years, I have been exposed to medico-legal matters, conflicts, disputes, and inquests in our practice.

Apart from the time and productivity lost during these matters, we also witnessed the emotional trauma accompanying them.

This has led me to investigate alternative methods of dispute resolution, and led me to Mediation in Motion eventually, where I did my Medical Negligence and Health Sector Mediation Training in 2022 through UCT.

I hold memberships of the Health Professions Council of SA, the South African Society of Anaesthesiologists, the South African Medical Society, Mediation in Motion, the South African Medico-Legal Association, and the Medical Protection Society.

I am a firm believer in facilitative mediation as the preferred method of dispute resolution.

For this reason, I am a passionate member of Mediation in Motion and am committed to actively encourage, advertise and practice Mediation in the Medico-legal space.

Mrs. Sasha Ann Wait

I've spent the last nine years in industry and I am a registered Industrial Psychologist with the HPCSA based in South Africa. During this time, I have established my own practice that specializes in business process management, international standards (ISO), and marketing, all while drawing upon my foundational knowledge in psychology. Recently, there was a deliberate shift in my practice to move away from medico-legal and focus on mediation, particularly in the realm of medical disputes.

This transition into mediation has profoundly transformed my perspective on dispute resolution. I now perceive mediation as the path toward healing and restoration. My motivation comes from the old saying that goes, "blessed are the peace-makers."

In my capacity within the EXCO, I will take on the responsibility of advising and implementing an engaging brand strategy for MIMM. Our objective is to attract mediators to join our organization while simultaneously educating the general population about the value of mediation. Our brand will epitomize professionalism, demonstrate its relevance, and open up opportunities for our members.



The Importance of Confidentiality

(The truth and nothing but the truth)

Jim worked as a joiner for Kraft Kitchens, a small company that did kitchen refurbishments. He worked in a small team, together with Jack, Iain and Colin, their foreman. Jack had a propensity for surreptitiously enjoying the odd tipple on the job, making sure to never get caught by Colin. However, one day Colin saw Jack slip off behind a shed and followed him. He saw him take a bottle out of his bag and take a few hearty slurps. Jack did not know that Colin was watching. Having suspected that this had been happening for some time, Colin decided that it was time to confront Jack. He mentioned his intention of doing so in the presence of Jim and Iain.

Not wanting to come across as a draconian boss, Colin had a word with Jack, in the presence of Iain, telling him that Jim had advised him that Jack was drinking on the job. Colin went on to say that Jack should “watch his back” as Jim was “on his case”. Iain couldn’t believe what he was hearing and later told Jim that he needed to speak to Jack but, out of a fear of repercussions, he never told Jim what Colin had said.



Jack’s relationship with Jim immediately soured. Jack would not talk to him and tried to avoid him at work. This impacted on both of their performance at work and Lloyd, the owner of the business, realised that something was amiss. He spoke to both Jim and Jack but could not get to the bottom of it. In desperation, he asked the parties if they were prepared to mediate and, after receiving a positive response, referred the matter to me for mediation.

The mediation commenced with private sessions. Jim confided to me that he suspected that Colin had informed Jack that he had complained about his drinking on the job. Jim believed that this was why Jack would not talk to him and why their friendship had collapsed. Jim said that he had asked Iain whether this was so, but Iain had denied it. Jim wanted to know the truth.

In a private session with Jack, I asked why the relationship between the two of them had broken down. He responded by saying that Jim was difficult to work with and very critical of Jack’s work. He said nothing about the drinking incident.

In the opening session of the mediation, Jim spoke first. He mentioned the history of the parties' working relationship and then pertinently asked Jack whether Colin had said that Jim had complained about him drinking on the job. Jack fudged the answer, not wanting to drop Colin and create further tensions at work. The answer did not wash with Jim. I held private sessions with the parties and Jim confided to me that he knew that Jack was not telling the truth. He said that, unless Jack told him the correct version of what had happened, the matter would not be resolved. Jim went further and said that he wanted the truth as he wanted to raise a grievance against Colin. Time for me to intervene.

"Jim," I said, "you can't do that." The mediation is confidential. "But I want to raise a grievance." "You absolutely cannot," was my reply. It took a few minutes of discussion and eventually, Jim was persuaded, or so I hoped. Time to now talk to Jack.

Jack confided that Colin had told him that Jim had reported him for drinking on the job and that he should watch his back as Jim was on his case. Jack suspected that, in order to deflect the blame, Colin had used Jim as a scapegoat. But Jack said that he could not share that information with Jim as he was concerned that Jim would raise a grievance against Colin and sour the situation at work even more.

I explained to Jack that, unless he told Jim the truth the matter was unlikely to be resolved. And I repeated what I had told the parties at the pre-mediation meetings, that the mediation was confidential. "But what guarantee do I have that Jim will keep the information confidential," said Jack. I said that Jack would just have to trust him. With a measure of trepidation, Jack agreed to share the information with Jim.

What followed was confirmation of what mediation is about. The parties were brought into a joint session and Jack told Jim that he would tell him the truth. He said that he trusted Jim not to breach confidentiality. When Jim heard the truth, he said that that was confirmation of what he had believed all along. Suddenly the tension in the room was broken and the relationship between the parties was restored. What had brought this about. Two important elements of mediation - confidentiality and trust!

Patrick



Patrick Scott has a Master's degree in Mediation and Conflict Resolution from the University of Strathclyde in Glasgow, serves on the Board of Mediation in Motion Mediators and practises as a mediator in Scotland and South Africa (remotely).





MEDIATION IN MOTION MEDIATORS

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TAKING MEDIATION FROM PRINCIPLE TO PRACTICE IN HEALTHCARE

One of the biggest challenges that doctors face when confronted with disputes or conflict, is convincing their medical insurer to consider Mediation as the primary means of resolution.

The Medical Protection Society (MPS) is the single biggest Medical Malpractice Insurer worldwide and in South Africa. They represent more than 30,000 healthcare professionals in South Africa.[1]

MPS is based in London in the UK, and they have an appointed panel of legal advisers in South Africa, who would manage individual complaints and cases on behalf of the MPS.

When a doctor insured with the MPS becomes aware of the possibility of litigation or a summons arriving, MPS mandates that one contacts them immediately.

The standard instruction then is to wait for feedback from the locally appointed legal counsel and not make any contact with the patient at all.

The MPS-appointed lawyers will then contact the complainant's legal counsel and the whole process is taken out of the hands of the medical professional, who now follows instructions from his legal counsel.

Poor communication is the underlying problem in many, if not most, of the cases that the MPS deals with.

An article from Beckman et al in 1994 showed that 70% of litigation in the medical field is directly related to poor communication.[2]

The question that arises inevitably is why the MPS is reluctant to employ Mediation as a means of conflict resolution.

Their official position is that they support the concept and efficiency of the Mediation process however they currently do not offer such a service.

Dr Tony Behrman, medico-legal business consultant at Medical Protection Society, wrote a column on the beauty of mediation to ease the trauma of medical negligence litigation in December 2019 already, which discusses the advantages of Mediation. [3]

Anyone reading this column would think that the MPS is fully supportive of Mediation, which unfortunately is not the case.

One of the reasons why the MPS is reluctant to allow doctors to engage with patients or aggrieved parties, is that they are concerned about doctors unwittingly exposing themselves medico-legally by sharing too much information or admitting guilt in an environment where this could be used against them in a court of law.

- Facilitative Mediation respects all the parties involved by having an impartial mediator, is without prejudice, confidential, and non-binding until full agreement is reached.

I have concluded that the only way to take Mediation from principle to practice in the medico-legal arena is for us as doctors to put increasing pressure on the MPS and by informing our patients about the benefits of early Mediation to both parties.

The Medical Protection Society is not an insurance company. All the benefits of membership of MPS are discretionary as set out in the Memorandum and Articles of Association. MPS prides itself on the fact that they are a member-owned society.[4]

- As a result, The MPS has set up The MPS Foundation, a global not-for-profit research initiative that invites its members to do research in areas that could shape the future of patient safety and the well-being of healthcare professionals and teams.[5]



TAKING MEDIATION FROM PRINCIPLE TO PRACTICE IN HEALTHCARE

I have thus applied for a research grant from The MPS Foundation to initiate the process of “taking Mediation from principle to practice”.

The first part of the study will be to determine the level of inclusion of Mediation as a primary means of medico-legal conflict resolution in the consent forms currently in use amongst specialist anaesthetic practices in South Africa. Once completed, we will lobby for the inclusion of a Mediation clause as an addition to existing consent forms in this sector.

Access to available Mediation Organizations will also be established.

The reason for starting with anaesthetic practices is that I am an anesthesiologist in private practice myself, and have access to databases of anaesthetic providers, which makes it the logical group to start with. Anaesthetists have contact with patients throughout the whole spectrum of surgical disciplines and targeting this group will hopefully have a ripple effect throughout many other medical specialties.

A consent form might seem like an unlikely technique to employ to raise awareness around Mediation, but one needs to remember that doctors are expected by the Health Professions Council of South Africa to discuss the consent form with their patients and allow questions to be asked.

Even though this is a small start, my hope is that it will raise awareness amongst medical specialists and their patients about Mediation, and thus increase pressure on the MPS to start considering Mediation more seriously.

The best way to get The Medical Protection Society on board with Mediation is for us as doctors to encourage our patients to consider Mediation first, put pressure on the MPS and then prove to them the benefits of Mediation to all the parties involved, including themselves.



Dr Petrus Strauss



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MEDIATION REFRESHER COURSES

An advanced Medical Mediation Training Course was held at the Nelson Wine Estate in Paarl on the weekend of 18th to 20th August 2023. The purpose of the course was to advise delegates of the new SAMA project (that is due to start in October 2023), to ensure that attendees all adopted a uniform approach in mediating SAMA matters and to update attendees on amendments to the High and Lower Court Rules and other matters of interest.

It was a weekend well spent with many delegates bringing wives and partners along to enjoy the peace and tranquillity of the Nelson Wine and Equestrian Estate in the foothills of the Paarl Mountains.

On Friday evening after the customary introductions, Dr Trevor Frankish, who is the MiMM Exco member responsible for driving the SAMA project, spent time explaining to delegates exactly how the SAMA project arose and what would be required of participating mediators. The evening ended with a light meal after which delegates retired to their rooms to prepare for the next day.

Saturday 19th August was a gruelling day in which attendees spent mediating three very different and interesting role plays based on the kinds of cases that will be encountered as part of the SAMA project. These were all real-life cases that had been mediated by our chairperson Dr Shamal Ramesar.

The first involved a dispute between a patient and a medical practitioner, the second a dispute between two practitioners and the third was a conflict situation between a hospital and medical practitioners. Later that afternoon delegates were given feedback on the mediations by the three expert coaches Dr Johan Walters, myself and my son Daniel. Lisha Nelson ended the evening with a lovely wine tasting and a braai.

Feedback from Dr Ramesar on the outcome of the real-life cases, planned for Saturday evening had to stand over until Sunday morning due to load shedding. It was however definitely worth waiting for! In his customary eloquent and highly competent manner, Dr Ramesar demonstrated to all of us just how important it had been for him in the quest for solutions to first identify and then to deal with the dignity violations of the parties in each of the real-life scenarios that he had mediated.



The rest of Sunday was spent dealing with various important topics. These included:

- The new High and Lower Court Rules
- Managing pre-mediation meetings
- Overcoming resistance to mediation
- Managing the dynamics between lead and co-mediators
- Objectivity and impartiality of medical mediators
- Issues of wrongfulness, negligence, causality and the quantum of damages
- Making use of independent experts
- Dealing with medical insurers and their attorneys
- Drafting settlement agreements

The training session was closed off with a useful question and answer session with attendees being given the opportunity to raise any questions that they had regarding the mediation of medical disputes and the SAMA project.

All were in agreement that the Advanced Course was very useful, and they are all eagerly awaiting the introduction of the SAMA project.

A need was also identified for similar training since many delegates could not attend the first course due to other commitments.

MIM Training has scheduled another Advanced Medical Mediation Training Course on the Nelson Wine Estate from 27 to 29 October 2023 and an online course is being planned for 24 to 26 November.

These courses are exclusively for people who have already qualified as mediators and wish to upgrade their skills for purposes of the SAMA project or to do other medical mediations.

The costs of the courses are R3 500 per delegate. Delegates that attend the Contact Training will receive a 20% discount on their accommodation on the farm and partners can stay free.

For the In-person Contact Training:

Contact Carmen on 073 631 5503

For Online Training:

Contact Gratia on 072 687 9404



BY ADV. ALAN NELSON

FOUNDER MEMBER AND VICE
CHAIRPERSON OF MEDIATION
IN MOTION MEDIATORS NPO.

