

PART ONE

UNDERSTANDING  
DISPUTES, CONFLICT  
RESOLUTION, AND  
MEDIATION

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# APPROACHES FOR MANAGING AND RESOLVING DISPUTES AND CONFLICTS

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DISPUTES OR CONFLICTS occur in all human relationships, societies, and cultures. From the beginning of recorded history, there is evidence of disputes between children, spouses, neighbors, coworkers, superiors and subordinates, organizations, communities, people and their governments, ethnic and racial groups, and nations. Because of the pervasive presence of conflict and the emotional, physical, and other costs that are often associated with it, people have always sought ways to peacefully handle their differences. In seeking to manage and resolve conflicts, they have tried to develop procedures that are effective and efficient, satisfy their interests, build or change relationships for the better, minimize suffering, and control unnecessary expenditures of emotional and physical energy or tangible resources.

In most situations, the involved parties have a range of approaches and procedures at their disposal to respond to or resolve their disputes; however, procedures available to them vary considerably in the way conflicts are addressed and settled. This chapter begins with an analysis of a specific interpersonal and organizational conflict and explores some of the procedural options available to the involved parties for managing and resolving their differences. Mediation, one of the options, is examined in depth.

## **The Whittamore-Singson Dispute**

Singson and Whittamore are in conflict. It all started three years ago when Dr. Richard Singson, director of the Fairview Medical Clinic, one of the few medical service providers in a small rural town, was seeking

two physicians to fill open positions on his staff. After several months of extensive and difficult recruiting, he hired two doctors, Andrew and Janelle Whittamore, to fill the positions of pediatrician and gynecologist, respectively. The fact that the doctors were married was not a problem at the time they were hired.

Fairview likes to keep its doctors and generally pays them well for their services. The clinic is also concerned about maintaining its patient load and income. It requires every doctor who joins the medical practice to sign a five-year contract detailing what he or she is to be paid and conditions that will apply should the contract be broken by either party. One of these conditions is a covenant not to compete, or a no-competition clause, stating that should a doctor choose to leave the clinic prior to the expiration of the agreement, he or she will not be allowed to open a competing practice in that town or county during the time remaining on the contract. Violation of the clause will result in an undefined financial penalty. The clause is designed to prevent a staff doctor from building up his or her reputation and clients at the clinic, leaving before the term of the contract has expired, starting a new and competitive practice in the community, and taking patients with him or her.

When Janelle and Andrew joined the Fairview staff, they each signed the contract and initialed all the clauses, including the one related to noncompetition with the clinic during the term of the contract. Both doctors performed well in their jobs and were respected by their colleagues and patients. Unfortunately, their personal life did not fare so well.

The Whittamores' marriage went into a steady decline almost as soon as they began working at Fairview. Their arguments increased, and the tension between them mounted to the point that they decided to divorce. Because they both wanted to continue to co-parent and be near their two young children, they agreed that they would like to continue living in the same town.

Every physician at the clinic has a specialty, and all rely on consultations with colleagues, so some interaction at work between the estranged couple was inevitable. Over time, however, their mutual hostility grew to such an extent that they had difficulty being in the same room while performing their duties. Ultimately, the Whittamores decided that one of them should leave the clinic—for their own good, that of the clinic, and for other staff who became increasingly uncomfortable with the tensions between the couple. Because they believed that Andrew, as a pediatrician, would have an easier time finding patients outside the clinic, they agreed that he was the one who should leave.

Andrew explained his situation to Singson and noted that because he would be departing for the benefit of the clinic, he expected that no penalty would be assessed for breaking the contract two years early, and that the no-competition clause would not be invoked.

Singson was surprised and upset that his finely tuned staff was going to lose one of its most respected members. Furthermore, he was shocked by Whittamore's announcement that he planned to stay in town and open a new medical practice. Singson visualized the long-range impact of Whittamore's decision: the pediatrician would leave and set up a competing practice, taking many of his patients with him. The clinic would lose revenue from the doctor's fees, incur the cost of recruiting a new doctor, and (if the no-competition clause was not enforced) establish a bad precedent for managing its doctors. Singson responded that the no-competition clause would be enforced if Whittamore wanted to practice within the county, and that the clinic would impose a penalty for breach of contract. He intimated that the penalty could be as much as 100 percent of the revenues that Whittamore might earn in the two years remaining on his contract.

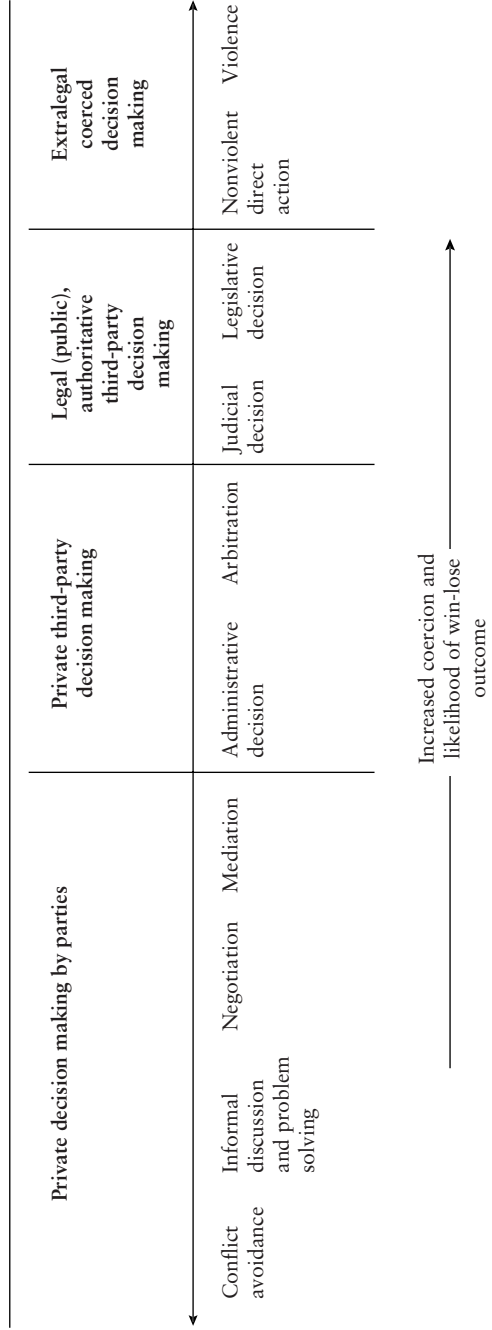
Whittamore was irate at Singson's response, and considered it to be unreasonable and irresponsible. If that was the way the game was to be played, he threatened, he would leave and set up a competing practice, and Singson could take him to court to try to get his money. Singson responded that if necessary, and if he was pushed into a corner, he would get an injunction against the new practice and would demand the full amount due to the clinic. Whittamore stormed out of Singson's office mumbling that he was going to "get that son of a gun."

This conflict has multiple components: the Whittamores' relationship with each other, their relationship to other staff members at the clinic, potential conflicts between Andrew Whittamore's patients and the clinic, the relationship between Andrew Whittamore and Richard Singson and probably the clinic's board of directors, and the legal status and enforceability of the no-competition clause in the contract. For ease of analysis, we will examine only one of these components: the conflict between Richard Singson and Andrew Whittamore and the various means of resolution available to them.

## **Conflict Management and Resolution Approaches and Procedures**

People involved in a conflict often have a range of possible approaches and procedures to choose from to resolve their differences. Figure 1.1 illustrates some of these possibilities.

Figure 1.1. Continuum of Conflict Management and Resolution Approaches and Procedures.



Approaches and procedures for the resolution of disputes vary regarding who participates, how collaborative or adversarial the process is, the degree of coercion that may be used by or on disputants, the level of formality of procedures, the degree of privacy afforded to parties, types and qualities of outcomes, and the roles and influence of third parties if they are present and used.

At the left end of the continuum in Figure 1.1 are informal, collaborative, and private approaches and procedures that involve only the disputants or a third-party process assistant (a mediator) who does not have authority to make or impose a decision on those involved. At the other end of the continuum, one or more parties rely on coercion and often public action to force the opposing party, either nonviolently or violently, into submission. In between are a variety of third-party approaches that provide decision-making assistance, which we will examine in more detail later in the chapter.

Disagreements and problems can arise in almost any relationship. The majority of disagreements are usually handled informally. Initially, people may avoid each other because they dislike the discomfort that frequently accompanies conflict, do not consider the contested issues to be that important, lack the power to force a change, do not believe the situation can be improved, or are not yet ready to take an action to settle their differences.

When avoidance is no longer possible or tensions become so strong that the parties cannot let the disagreement continue, they usually resort to informal problem-solving discussions to resolve their differences. This is probably where the majority of disagreements in daily life are settled. Either they are resolved, more or less to the satisfaction of the people involved, or the issues are dropped for lack of interest or inability to push them through to a conclusion.

In the Whittamore-Singson case, the Whittamores avoided dealing with their potential conflict with the medical clinic until it was clear that their dispute was so serious that Andrew was going to have to leave. At that point, Andrew initiated informal discussions with Singson, but they failed to reach an acceptable conclusion. Clearly, their problem had escalated from a problem that each of them faced into a dispute. Gulliver (1979, p. 75) notes that a disagreement becomes a dispute “only when the two parties are unable and/or unwilling to resolve their disagreement; that is, when one or both are not prepared to accept the status quo (should that any longer be a possibility) or to accede to the demand or denial of demand by the other. A dispute is precipitated by a crisis in the relationship.”

People involved in differences that have reached this level have a variety of ways to resolve them. They can pursue more formal and structured means to voluntarily reach an agreement, resort to third-party decision makers, or try to leverage or coerce each other to reach a settlement.

Other than informal conversations, the most common way that disputing parties reach a mutually acceptable agreement on issues that divide them is through negotiation (Fisher and Ury, 1991; Fisher and Ury, with Patton, 2011; Shell, 1999; Thompson, 2001; Moore and Woodrow, 2010).

*Negotiation* is a structured communication and bargaining process that is commonly used to conduct transactions and reach agreements on issues where serious differences do not exist, or to resolve a dispute or conflict. In negotiations, parties who have perceived or actual competing or conflicting needs or interests voluntarily engage in a temporary relationship to discuss issues in question and develop and reach mutually acceptable agreements. During negotiations, participants educate each other about their needs and interests, make mutually acceptable exchanges that satisfy them and address less tangible issues such as concerns about trust, respect, or the form their relationship will take in the future. Negotiation is clearly an option for Whittamore and Singson, although the degree of emotional and substantive polarization will make the process difficult.

If negotiations are hard to initiate and start, or have begun and reached an impasse, parties may need to use another dispute resolution process that involves assistance from a third party who is not directly involved in the conflict. One common form of third-party assistance is mediation.

*Mediation* is a conflict resolution process in which a mutually acceptable third party, who has no authority to make binding decisions for disputants, intervenes in a conflict or dispute to assist involved parties to improve their relationships, enhance communications, and use effective problem-solving and negotiation procedures to reach voluntary and mutually acceptable understandings or agreements on contested issues. The procedure is an extension of the negotiations. Mediation is commonly initiated when disputing parties on their own are not able to start productive talks or have begun discussions and reached an impasse.

Specifically, mediation and mediators help disputing parties to (a) open or improve communications between or among them, (b) establish or build more respectful and productive working relationships, (c) better identify, understand, and consider each other's needs, interests, and



concerns, (d) propose and implement more effective problem-solving or negotiation procedures, and (e) recognize or build mutually acceptable agreements.

Mediators are generally individuals or groups who are independent, or in some cases somewhat autonomous, of disputing parties. They generally do not have specific substantive needs they want met by an agreement between or among disputants. They also commonly do not have predetermined, biased, or fixed opinions or views regarding how a dispute should be resolved, and are able to look at all parties' issues, needs, interests, problems, and relationships in a more objective, impartial, or "multipartial" manner than can the participants themselves. In addition, except on rare occasions and in some specific types of mediation that will be described later on, mediators do not have the power, authority, or permission to make binding decisions for those seeking to resolve their differences.

Whittamore and Singson might well consider mediation if they cannot negotiate a settlement of their issues on their own. We will return to this process later on, once we have explored and assessed other procedural options for their usefulness in helping Whittamore and Singson settle their differences.

Beyond negotiation and mediation, there are a number of approaches and procedures that decrease the control that people involved in a dispute have over the resolution process and outcome, increase the involvement of external third-party advisers or decision makers, and rely increasingly on adversarial procedures and win-lose outcomes. In general, these approaches and procedures can be divided into private and public, and legal and extralegal processes.

*Administrative or managerial approaches and procedures* are often available to disputants to resolve their differences if a conflict is between employees or members of an organization or, occasionally, between an organization and members of the public (Kolb and Sheppard, 1985; Morril, 1995; Gerzon, 2006). In these kinds of processes, a third party who has some decision-making authority concerning issues in dispute and the disputants, and who has a degree of distance from the conflict but is not necessarily neutral or impartial, may if necessary make a command decision on the topics in question. The procedures may be conducted in private, if the dispute arises within a private company or government agency, division, or work team and either the organization or participants want to keep the proceedings confidential. They may also be conducted in public, if the dispute is over a policy, law, regulation, or issue of concern to broader members of the public. In this latter case,

the intervention may be conducted by a private sector, governmental, or nonprofit administrator. A managerial or administrative dispute resolution process generally attempts to balance the needs of the entire system with the interests of individuals or concerned groups.

In the Whittamore-Singson dispute, both parties might choose to forward their dispute to the board of directors of the Fairview Medical Clinic for a third-party decision. If both parties trust the integrity and judgment of these decision makers, the dispute might end there. However, Whittamore is not sure that he would get a fair hearing from the board.

*Arbitration* is an umbrella term that encompasses a range of voluntary and private dispute resolution procedures that involve the assistance of a third party to make decisions for disputants about how a conflict will be resolved when the parties cannot reach an agreement on their own. Arbitration is a private process in that the proceedings, and often the outcome, are not open to public scrutiny. People often select arbitration because of its private nature, and also because it is generally more informal, less expensive, and faster than a judicial proceeding.

Arbitration procedures begin with disputing parties jointly deciding to voluntarily submit their dispute to a mutually acceptable individual or panel of intermediaries to make a decision for them on how their differences should be resolved. Together, disputants generally select third parties who are independent of and not beholden to or subject to undue influence by any of the involved parties; are knowledgeable about the topics to be addressed and resolved and the relevant laws, rules, and regulations that may pertain to them; and are trusted and perceived to be objective and unbiased toward either the issues in question or the involved parties.

Once the intermediary or intermediaries have been selected, parties often discuss and decide with them the procedures that will be used to conduct the arbitration hearing. Discussion commonly includes how relevant information will be gathered and shared among the disputants and the third party prior to the decision-making meeting, the duration of the process, and sequencing for presentation of the parties' cases and rebuttals. They also decide if the outcome of the process will be a nonbinding recommendation by the intermediary on how the dispute should be settled (nonbinding arbitration) or a binding decision (binding arbitration), which parties agree to abide by prior to beginning the process.

Several variations of the arbitration process just described include *med-arb* and *mediation-then-arbitration*. In med-arb, disputants agree

to use mediation as the procedure of first resort to resolve their dispute. If they fail to reach an agreement using the mediation process, however, they agree to submit all remaining contested issues to arbitration, which is conducted by the same person or panel that initially served as the mediator. Some disputants prefer this procedure over using a mediation process alone because, depending on agreements made by disputants prior to beginning the process, it guarantees they will get either a non-binding recommendation by a trusted and authoritative third party that they can use to decide how to proceed, or a binding decision and outcome. A potential downside of this procedure is that parties may be reluctant to reveal information in mediation needed to make a voluntary agreement, if they believe that the same information may be used against them and result in an unfavorable decision by the arbitrator should they fail to reach an agreement. Mediation-then-arbitration involves the combination and sequential use of two dispute resolution procedures—mediation and arbitration—with a different third party for each process. Disputants first agree to try mediation to reach a voluntary settlement of their differences. However, if they fail to do so, they agree to submit all remaining contested issues to arbitration conducted by a different individual or panel from those who provided mediation assistance. This two-part procedure generally promotes more open and frank discussions by parties during the mediation process—and likely greater revelation of information about disputants' views, flexibility, and weaknesses—than might be the case if they believe that information shared during mediation might be used against them in a later arbitration process conducted by the same intermediary. Whittamore and Singson have both heard of arbitration but are reluctant to turn their problem over to a third party before they are sure that they cannot resolve it themselves. Neither wants to risk an unfavorable recommendation or decision. In addition, Singson fears an external decision that might erode the clinic's prerogative to control the terms and process for contracting with employees.

A *judicial approach* is another possibility for dispute resolution. It involves the use of an institutionalized and broadly supported dispute resolution mechanism and process, and the intervention of a recognized authority with the power and right to make a binding decision to resolve disputes. This approach shifts the resolution process from the private to the public domain, in that cases are heard in public, disputing parties no longer have significant control over the process to resolve their differences or the outcome, and, depending on the case, the government may be a party.

In the judicial approach, disputants usually hire lawyers to act as their advocates, although in some cases parties may represent themselves in *pro se* proceedings. Hearings are adversarial in nature with cases argued by each party before an impartial and neutral third party—a judge, or in some cases and countries, a jury. Decision makers in their deliberations and rulings take into consideration not only disputants' arguments in favor of their case but also broader societal values, standards, laws, regulations, and, as appropriate, precedents. Judges or juries generally use applicable laws, legal statutes, regulations, contracts, or common practices to guide their decision making and decisions. Outcomes of judicial proceedings are commonly win-lose in nature, with one party designated as the winner and the other the loser, or in some cases, one being guilty and the other innocent. Because the third party is socially sanctioned to make a decision, the results of the process are binding and enforceable.

Although in this approach disputants may have significantly less control over both the resolution process and the potential outcome of their dispute, they may also gain and potentially win as a result of forceful advocacy of their point of view. They may also be satisfied by a decision by an authoritative decision maker that reflects socially sanctioned laws or norms, or a ruling that determines and designates who is right or wrong, or guilty or innocent.

Whittamore and Singson have both considered using a judicial approach to resolve their dispute. Singson is willing, if necessary, to seek a court injunction that would enforce the no-competition clause in the contract and prohibit Whittamore from establishing a competitive private practice. Similarly, Whittamore is willing, if necessary, to go to court to challenge and test the legality of the no-competition clause. However, both see downsides and risks to using this procedure. First, it may take a long time and be expensive to get a decision. Neither of them wants to incur either delays or high costs. In addition, the potential outcome of a legal case is not entirely clear and is highly unpredictable. Each of them perceives that their cases have merits and strengths as well as weaknesses that would be tested and have to stand up in a court of law for them to prevail. Finally, a win-lose outcome could be highly detrimental to the satisfaction of many of their underlying interests.

A *legislative approach* to dispute resolution is another public means of solving a conflict that uses voting to secure a decision on a law, rule, or regulation that will have an impact on disputants' relationships, interests, and perceived or actual benefits. This procedure is generally employed to resolve larger disputes and public issues that are of concern and affect

a wider population. However, a legislative decision may also have significant utility for and impacts on individuals or smaller groups.

In this approach, a decision and outcome of a conflict is determined by voting, another potentially win-lose process. (The exception is when compromise is reached by parties drafting and ultimately passing a bill that shares costs, benefits, and risks in a mutually acceptable way.) In this procedure, an individual has only as much influence on the final outcome as he or she, and those who share his or her beliefs, can bring to bear on those who vote on the proposed legislation. In addition, the outcome of legislation may not resolve fundamental differences and may be less than satisfactory for all concerned because of compromises that had to be made to pass it.

Whittamore has considered using this approach to resolve his dispute. He believes there should be a law against no-competition clauses, and some of his patients agree with him. One patient has suggested a campaign to pass a bill prohibiting this type of contract. But Whittamore also realizes that a legislative approach to this problem might take a long time—time he does not have at his disposal. Also a change in the law might not cover contracts entered into before the new law was passed.

*An extralegal approach and related procedures* are final methods for resolving conflicts. Approaches and procedures examined so far are either private means initiated by parties on their own or with the assistance of a third party to negotiate a settlement, or third-party decision making that is either privately or publicly sanctioned. This last set of processes are extralegal in that they are generally conducted outside of legal or institutional structures or procedures for dispute resolution, and often rely on methods that are not socially mandated or necessarily broadly accepted. They commonly involve the use of stronger means to persuade or coerce an opposing party to accept, comply with, or submit to the outcome desired by the party with adequate power and influence to enforce their view. In general, there are two types of extralegal approaches: nonviolent action and violence.

Nonviolent action involves a person or group committing acts or abstaining from acts so that an opponent is either persuaded or forced to behave in a desired manner (Gregg, 2012; King, 2010; Ackerman and DuVall, 2000; Schell, 2003; Bondurant, 1988; Sharp, 1973; Alinsky, 1969 and 1971). These methods of conflict resolution and change do not involve physical coercion or violence and may also be designed to minimize psychological harm as well. Nonviolent action works best when the parties are interdependent and must rely on each other for their well-being or to get what they want. When this is the case, one of the parties

may force the other to change attitudes or behaviors and make concessions by refusing to cooperate or by committing undesirable acts.

Nonviolent action often involves civil disobedience—violation of widely accepted social norms or laws—to raise an opponent's consciousness or bring into public view practices that the nonviolent activist considers to be unjust or unfair. Nonviolent action can be conducted by an individual or a group and may be either public or private.

Whittamore has contemplated nonviolent action on both the personal and group levels to resolve his dispute. On the individual level, he considered fasting or occupying Singson's office until the director agrees to bargain in good faith and give him a fair settlement. He has also considered opening a private practice, challenging the terms of the contract, and forcing the clinic to either take legal action or drop the case. If he has to go to court, he could exploit the publicity and place the clinic in a dilemma: dismiss a widely respected doctor and earn the wrath of the community and bad publicity, or reach a negotiated settlement favorable to Whittamore and avoid the bad press.

One of his patients also suggested organizing a demonstration, picket line, or vigil by Whittamore's patients and supporters outside the clinic or a boycott of its medical services to embarrass Singson and the organization and persuade or force them to agree to a favorable settlement with the departing doctor. If these tactics are unsuccessful, another patient supporter suggested a group sit-in at the clinic. Whittamore is unsure of the likely effects of these approaches, as well as of the costs. Although he would like to be in a position to force a favorable settlement, he does not want to damage his relations with members of the community or, for that matter, with Singson and other clinic staff upon whom his future practice may depend.

The last approach to dispute resolution is physical coercion or violence. This approach assumes that if the risks and costs to a person's property or the person him- or herself are high enough, the person will be forced to make concessions. For physical coercion to work, the initiating party must possess enough power to actually damage the other party, be able to convince the other side that it has the power, and be willing to use it.

Although Whittamore and Singson are very angry with each other, they have not come to blows. Both are physically fit and could conceivably harm each other, but neither feels he could force the issue with a private fight. Whittamore, in the heat of anger, mumbled that he ought to sabotage some of the clinic's valuable equipment, but such an action would go against some of his deeply held values and would also hurt patients. Singson, in a moment of rage and fantasy, also considered

violence and wondered what Whittamore's reaction would be if the tires on his car were slashed, or if he were to be assaulted by thugs Singson could hire. He too, however, has decided against physical violence to Whittamore's property or person as too risky, costly, and unpredictable, as well as probably irrational and ineffective.

So the question remains: Which of the approaches presented in Figure 1.1 will Whittamore and Singson choose to resolve their dispute?

Whittamore wants to stay in town to be near his children. He also wants to practice medicine. Establishing a new practice will be expensive, thus he wants to minimize the costs of resolving his dispute with the clinic. He hopes for a quick decision so that he may leave the clinic as soon as possible to avoid more negative interactions with Janelle and to minimize any harm to his personal relationships with other staff members.

A positive ongoing relationship with the clinic and its staff is important because the clinic has the only laboratory and high-tech medical equipment in town. Whittamore also needs to establish a private practice quickly so that he can generate income.

Judicial and legislative approaches seem unfeasible at this point because of the cost and the length of time they will take to achieve the desired change. Nonviolent action is still a possibility if the clinic does not yield. Physical violence was a fleeting fantasy. Singson too, is trying to decide what action he will take.

He wants to keep management control over the contract process; seeks to solve the problem himself and not rely on outside agents; and wants to minimize costs such as legal fees, patient attrition, bad publicity, and damage to his and the clinic's reputation. He wants to find an amicable solution but feels that his feelings toward and interactions with Whittamore have resulted in an impasse.

In general, Whittamore and Singson's conflict is ripe for negotiation. The two parties are

- The primary and critical people involved in the dispute who could potentially engage in a joint problem-solving process
- Interdependent and must rely on the cooperation of one another to meet their goals or satisfy their interests
- Able to identify and agree on the major issues in dispute
- In a situation where their interests are not necessarily or entirely incompatible
- Able to influence one another and undertake or prevent actions that can either harm or reward each other

- Pressured by deadlines and time constraints and share a motivation for early settlement
- Aware that their Best Alternatives to a Negotiated Agreement, or BATNAs, such as using an arbitrator, going to court, or using legislative action, are probably not as viable, efficient, or desirable as a bargain that they might reach themselves (Fisher and Ury, 1991; Fisher and Ury, with Patton, 2011)
- Influenced by external constraints—such as the unpredictability of a judicial decision, potentially angry patients or staff, costs of establishing a new practice, and expenses of recruiting a new physician—that encourage them to reach a negotiated settlement

These conditions are critical for successful negotiation. However, there are a range of tensions and problems between Singson and Whitamore that will make unassisted talks very difficult. First, their strained relationship will make reopening discussions very hard. Second, how they feel about each other is likely to limit the possibility of civil communications. Third, they are locked into what appear to be mutually exclusive positions, and to date have not figured out how to retreat from them and find solutions that will meet and satisfy their individual and joint interests. Finally, the process they are using for negotiation and their preferred outcomes—positional bargaining and advocacy of mutually exclusive hard positions that they have refused to relinquish, rather than jointly developing mutually acceptable solutions that meet their individual and joint interests—appears to be a major barrier to reaching agreement. To overcome these problems, they will probably need the help of a third party and a collaborative dispute resolution process, in this case a mediator and mediation, to help them address and resolve their differences. A mediator may be called into negotiations when

- Parties are having difficulty contacting each other, convening a meeting, or starting talks
- Disputants cannot reach agreement on an acceptable forum or structure for negotiations
- Parties' emotions or expression of negative feelings about the situation or toward each other are intense and are preventing a focused or calm discussion or agreement
- There is a significant lack of trust and respect between or among disputants that is hindering productive talks



- Communication between parties is poor in quantity or quality, and they cannot improve it on their own
- Misperceptions or stereotypes are hindering productive exchanges
- Repetitive negative behaviors by one or more disputants are creating barriers to effective communication or problem solving
- There are serious disagreements between or among parties over data—what information is important, how it is collected, and how it is evaluated
- There are multiple issues in dispute, and disputants disagree about whether or how each should be addressed or resolved
- Disputants are stuck in bargaining over positions, each of their preferred solutions, and are unable to identify each other's interests and develop mutually acceptable interest-based solutions
- There is only one contested issue and parties cannot find a way to divide it into multiple smaller ones, each of which could potentially be addressed and solved, or to find other issues or items of value to trade
- There are multiple issues in dispute and disputants are trying to resolve them one at a time, rather than linking issues and exchanges or developing a package agreement in which costs and benefits are shared in a mutually acceptable manner
- There are perceived or actual incompatible interests that parties are having difficulty reconciling
- Perceived or actual beliefs or differences over values divide disputants
- Parties do not have an effective negotiating process, are using the wrong one, or are not using a potentially viable procedure to its best advantage
- Disputants are reluctant to settle because they fear creating or not creating a precedent for settlement of similar disputes in the future
- Parties are feeling pressure not to settle from circumstances or parties beyond those in negotiations
- Disputants are reluctant to commit to an agreement because of potential unknowns, risks, or potential changed circumstances in the future
- Parties lack trust in each other and are concerned that the settlement will not be implemented as agreed

Because Whittamore and Singson's situation and relationship have many of the characteristics and problems listed above, they have decided to use mediated negotiations to try to resolve their differences. For the moment, let us leave this case and take a more detailed look at the process they have selected to resolve their conflict, which is the focus of Chapter 2. We will return to the Whittamore-Singson dispute in later chapters as we explore how the mediation process works.