

## Capacity building through Mediation in EAP context

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### Rationale of the presentation

- To alert role-players in the EAP fraternity about the potential value of mediation
- To create awareness amongst role-players in the mediation field about the challenges of the EAP and the potential role that mediation may play in the EAP context

### Defining mediation

- Mediation is a voluntary, multi-faceted, and confidential process in which a mutually-selected, impartial mediator helps people involved in controversies to reach an outcome of their own making, which may include the resolution of issues and the preservation of vital relationships.
- Mediation has the broadest application and the greatest potential for resolving disputes and reconciling conflicts.

### Core characteristics of mediation

- Process
- Voluntary
- Multi-faceted
- Confidential
- Mutually selected impartial mediator
- Helps people
- In controversies
- Reach an outcome of their own making
- Resolution of issues
- Preservation of vital relationships

### Mediation above litigation

- Mediation costs less
- Less time consuming
- Most cases settle during mediation
- Mediation is less stressful
- Mediation provides a neutral perspective
- Experienced family mediators are available
- Parties remain in control over decisions
- Easier process

### Mediation as a working process

- Setting the agenda
- Role of the mediator
- Focusing on interests
  - People
  - Interests
  - Options
- Exploring and finding common grounds
- Generating options
- Separate/side meetings
- Closure and agreements

### Mediation as a working process

- Setting the agenda
  - Parties to agree to reach an agreement
  - Each party a turn to present his/her case

### Mediation as a working process

- Setting the agenda
- Role of the mediator
  - Impartial role
  - Not the presiding officer
  - Facilitator
  - No opinion on who is right and who is wrong

### Mediation as a working process

- Setting the agenda
- Role of the mediator
- Focusing on interests
  - People: identify different role-players
  - Interests: recognise interest of different role-players/parties
  - Options: Important to obtain input from all regarding different options (brainstorming session)

### Mediation as a working process

- Setting the agenda
- Role of the mediator
- Focusing on interests
  - People
  - Interests
  - Options
- Exploring and finding common grounds
  - Search for common grounds
  - Recognise differences

### Mediation as a working process

- Setting the agenda
- Role of the mediator
- Focusing on interests
  - People
  - Interests
  - Options
- Exploring and finding common grounds
- Generating options
  - Get parties to bring options to the table
  - All options to be noted
  - Facilitate process in a balanced impartial manner

### Mediation as a working process

- Setting the agenda
- Role of the mediator
- Focusing on interests
  - People
  - Interests
  - Options
- Exploring and finding common grounds
- Generating options
- Separate/side meetings
  - Meet with each party separate (be equal in terms of time)
  - Get permission to share information

## Mediation as a working process

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## Cont.

- Closure and agreements
  - Allow different options to be discussed
  - Facilitate process in terms of pros and cons – especially if not raised by the other party
  - Summarise to strengthen positives
  - Show potential pitfalls of each
  - Illuminate options based on input/comments by parties
  - Allow parties to conclude



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## EAP and Mediation



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## The reality needs to be taken into account

- The EAP has two clients
  - Individual employees: experiencing personal issues which may affect their social functioning and productivity
  - Corporate clients: experiencing 'personal' issues, which may affect their profits and service rendering



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## Differences..... a reality

- Common to these two groups of clients, is the fact that people/employees are involved in projects and processes
- When people are involved, difference in opinion becomes a reality
- Difference in opinion may result in conflicting situations
- Which may become counter-productive if not dealt with constructively



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## Options in dealing with such differences....

- Litigation – we are living in a society where everybody sees the court as the only solution to a problem
- Mediation/alternative dispute resolution (ADR) however should be acknowledged for its potential added value and benefits in comparison



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### You may ask.....

**'Should the EAP be involved in matters which may require mediation?'**

### EAP

- Different role-players
- Different viewpoints
- Different beneficiaries

### Core technologies/functions of the EAP

Core technologies provide room for networking and potential disputes

### Core technologies or functions (EAPA-SA Standards 2015)

- Training and development
- Marketing
- Case management/Clinical intervention
- Consultation to work organization
- Stakeholder management (Networking)
- Monitoring and evaluation

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- Training and development
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- Stakeholder management (Networking)
- Monitoring and evaluation
- TWO TO ADD?**
  - Research
  - Mediation

## EAP Standards

- Most, if not all of the core technologies require networking and as such carry the potential for disputes to occur

## EAP Standards

### Categories of EAP standards

- Programme design
- Implementation
- Management and Administration
- Clinical services
- Non-clinical services
- Proactive services
- Stakeholder management
- Monitoring and evaluation

## Potential difference in opinion

- Each of these standards carries the potential for a difference in opinion
- Some less critical than others

## Programme design

- Organisational profiling
- Policy - **contents**
- Advisory Committee - **composition**
- Service delivery systems and Costing models
  - Fee-for-service
  - Retainer fee/capitated model
  - **Which is the best model given circumstances?**

## Implementation

- Operational guidelines
- Implementation plan

## Management and administration

- Staffing
- EAP professional consultation or supervision
- Professional development
- Professional liability insurance
- Ethics - **what is ethical behavior? What is unethical for one may be perfectly acceptable to another!**
- Confidentiality - **ways to enhance confidentiality**
- Record keeping – **format and access**

### Clinical services

- Critical incident management
- Crisis intervention
- Case assessment
- Referral
- Short term intervention
- Case monitoring and evaluation
- Aftercare and reintegration

**Question is:** does counselling become the option in the absence of knowledge and skill about mediation and the role of mediation?



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### Clinical Services cont.

How many of our employees are confronted with any one or more of the following issues? How are they assisted? Litigation?

Unrealistic and unnecessary legal costs aggravating the situation?

- Maintenance issues
- Divorce
- Care of minor children (custody of children)
- Debt issues
- Neighbourhood issues
- Supervisory issues, which may land up into disciplinary proceedings if not mediated



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### Clinical services cont.

- All of the earlier matters and many more can be dealt with through mediation;
- If the EAP can offer such mediation – issues may be addressed much earlier, quicker and with lesser negative impact on the psycho-social functioning and the productivity of the challenged employee



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### Non-clinical services

- Organizational consultation
- EAP management and supervisory training
- Marketing
- **Mediation – a next category of non-clinical services?**



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### Proactive services

Proactive services are dependent on:

- effective networking and communication
- Sufficient information shared amongst different role-players
- Different role-players – especially those employees at risk- may challenge certain solutions to identified problems



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### Stakeholder management

- Internal organizational activities
- External community organizations and resources
- Professional organizations
- External agencies

**Role of the EAP as mediator?**



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## Monitoring and Evaluation

- Strategies for monitoring and evaluation

## Additional EAP related issues to be mediated

## Contracting

- Legal process
- Role players (procurement often in lead)
- Becoming more sophisticated
- Details to be specified
- Set fees
- Set product
- Monitoring and evaluation
- **Mediation a tool to be applied during the contracting process**

## Programme design: Service delivery models and costing models

- Identification of resources
- Assessment procedures and of individual client
- Referral system and procedures
- Therapeutic approach
- Intervention process
- **Mediation**
- Monitoring
- Evaluation

## Management and admin: Ethics

- Unethical behaviour potential conflict risk
- **Mediation to be considered**

## Management and admin: Confidentiality and disclosure of information

### Confidentiality

- To be reflected in all documentation
- Protect privacy of the client
- **Mediation to be considered if reporting policy had been compromised**

### Management and Admin: disclosure of information

- Disclosure of information limited to:
- Written permission by the employee
  - Without permission – feedback limited to confirmation of the following:
    - Report for and attendance of sessions
    - Co-operation or lack thereof
    - Progress or lack of progress
  - **Deviation may require mediation**

### Management and admin: Confidentiality and disclosure of information cont.

- Written permission limited to:
- Signature of the person whose info will be released
  - Specific info to be released
  - Purpose for release
  - Date consent takes effect
  - Date of expiry

**Deviation may require mediation**

### Clinical services: case assessment

- Assessments should include:
- the client's statement of the problem;
  - the precipitating event/s;
  - past history of the problem;
  - mental status;
  - relevant family history;
  - level of risk to self or others;

### Clinical services: case assessment cont.

- effect on job performance;
- corroborating data;
- initial impression;
- available support systems;
- recommendations.

### Clinical services: Referral

- EAP professional must explain to the client the reasons for the referral as well as any costs the client may incur;
- progress and outcome of referrals should be followed up by EAP staff;
- EAP should clarify referral procedures with outside resources to which clients are referred.
- **Mediation versus counselling to be considered**

### Clinical services: Aftercare and reintegration

- Policy should indicate reintegration to take place
- Procedures regarding reintegration and aftercare should be stipulated in the operational guidelines
- Follow-up with referring supervisor crucial
- EAP professional to validate impact of intervention
- **Mediation between the Supervisor and the employee towards consensus about the road ahead**

### Non-clinical services: Organisational consultation

- Pro-active role of the EAP
- EAP functional in total company
- Consultation prior to decision with potential major impact, i.e. retrenchment, restructuring, early retirement in order to prevent labour action
- **EAP mediation between Management and affected workforce to prevent labour unrest**

### Non-clinical services: EAP management and supervisory training

- EAP training
- Supervisory training
- Supervisor in key role re troubled employee
- Curriculum
  - EAP concept
  - Change attitude from dismiss to assist
  - Programme procedure
- **Mediation during motivation/constructive confrontation**

### Non-clinical services: Marketing

- Marketing crucial to enhance the EAP
- All role-players should feel comfortable in utilizing the EAP
- Misconceptions to be identified and addressed
- Corporate image of the company
- **Buy-in to ensure funding – external mediation**

### Non-clinical services: **Mediation to be added....**

- Different role-players
- Accommodating contrasting views
- Re different EAP standards

### Proactive services:

#### **Mediation as proactive intervention to be added**

- Actions or programmes should be aimed at different target groups and respond to trends;
- Risk profiling should form the basis of preventative interventions
- Name few examples of existing programmes
  - Violence in the workplace
  - HIV and AIDS in the workplace
  - Anger management
  - Change management

### Stakeholder management: Internal organizational activities

- Proper representation, starting with the advisory committee
- Utilize existing expertise in the company, i.e. finances, marketing department, training department
- **Role of mediation**

### Stakeholder management: External community organizations and resources

- To ensure total scope of services to employees and dependents
- Listing and updating of resources, i.e. hospitals, clinics
- Best product for best price
- **Role of mediation**

### Stakeholder management: Professional organizations

- To ensure own professional growth
- Care for the care-giver
- Professional development activities
- EAPA-SA and chapters
- **Role of mediation**

### Stakeholder management: External agencies

- Courts,
- legal representatives, legal aid
- SAPS
- Financial institutions
- **Role of mediation during debt review and counselling**

### Monitoring and Evaluation

- Expectations regarding monitoring and evaluation
- Processes involved
- Consensus in terms of procedures
- Outcome evaluation
- **Mediation applied to address difference in opinions on processes and outcomes**

### Conclusions

- Research on mediation in EAP context limited
- Mediation as alternative to litigation to be explored
- Mediation should be considered in context to EAP core technologies and standards

**Mediation as an alternative intervention to counselling to be promoted**

### References

- <https://socialjustice.co.za/learn-about-mediation/#1517734533315-7842#67-edda>

Workplace Enrichment Consultants (WEC)



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