



AAA Mediation.org™

**FN-2084030 MN-2084030 LN-2084030,  
Esq.**

**Los Angeles, California**



**Current Employer-Title** Law Offices of Michael Dundon Roth LLP - Partner

**Profession** Attorney, Arbitrator, Mediator, Hearing Officer

**Work History** Attorney, Law Offices of Michael Dundon Roth LLP, 1986-Present; Associate, McDermott & Trayner, 1983-1986; Associate, Memel, Jacobs, Pierno & Gersh, 1981-1983; Associate, Carr, Jordan, Coyne & Savits, 1979-1981; Legal Editor, Aspen Systems Publishing, 1977-1979.

**Experience** While most clients over 35 years in private practice were health care businesses, also provided legal services on matters applicable to businesses in general and not limited to those in health care. In this regard, practice focused on governance and operations; statutory and regulatory compliance; contracting; joint ventures and transactions; and business disputes. Examples of these legal services included:

- Assisting clients to organize or reorganize their businesses which included, inter alia, preparing and filing organizational documents such as articles of incorporation/organization and bylaws/operating agreements (and amendments) and obtaining business licenses and tax numbers;
- Preparing partnership, shareholders, stock purchase, and recruitment agreements;
- Preparing and negotiating contracts and various other documents related to the ongoing operations of their business such as vendor contracts, independent services agreements, naming rights/spokesperson agreements, CEO agreements, settlement agreements, lien agreements, joint venture agreements, services agreements, and letters of intent;
- Advising and representing clients on employment issues including employment agreements, wage and benefit matters, workplace harassment and discrimination complaints/compliance, employee theft and embezzlement matters, EEOC complaints, and wrongful discharge claims;
- Property law issues such as purchase and sale agreements, leases and subleases, zoning issues, and easements;
- Intellectual property issues such as advising clients on selecting names for new businesses, filing applications to obtain copyrights and trademarks, responding to third-party infringement claims, preventing third-parties from infringing on clients' intellectual property rights, and preparing releases for use of photographs and personal names/likeness information;
- Purchasing and selling their businesses;

- Advising clients on purchasing and leasing hardware and software systems/licenses and maintenance from third-party vendors;
- Assisting clients in financial submissions which included responding annually to auditor's requests for information, assisting clients in submitting forms/paperwork to obtain SBA and other loans, and submitting filings with state franchise tax board in California;
- Assisting clients on tax-exemption matters which included preparing/filing federal/state applications for public charity tax-exempt status, advising clients on maintaining their tax-exempt status, and serving as borrower's counsel on tax exempt bond financings/ giving opinion of borrower's legal counsel;
- Assisting clients on matters related to insurance which included obtaining the right types/amounts of insurance; reviewing and advising on coverage, and submitting claims; and,
- Representing clients in business disputes with third parties, including construction disputes and various breach of contract matters involving, among others, third party consultant and vendors.

## Mediator Experience

Has mediated over four dozen cases since becoming a mediator about two years ago, the heaviest concentration involving health care providers, payors, facilities, and businesses. Representative mediated cases include:

Ambulatory surgery center ("ASC") claimed that a governmental third party payor ("Payor") underpaid it by over \$1.2 Million for a specified surgical procedure which it had furnished to the Payor's enrollees over an extended period pursuant to a written agreement between the parties ("Agreement"). Contract terms in dispute included provisions which specified an exact amount to be paid for each Procedure and also stated that the ASC would be paid no more than what was permissible under Federal law. Primary issues included whether: the Payor breached the Agreement when it sought to recoup prior payments it had made to the ASC based upon its adopting a new reimbursement rate for the Procedure to be retroactively applied; the Payor was equitably estopped from recouping these prior payments; and applicable law required the Payor to recoup the prior payments.

Claim by a tertiary care hospital ("Hospital") that it was entitled to be paid approximately \$300,000 by a third party payor ("Payor") as a contracted in-plan provider for obstetric/neonatal intensive care unit ("OB/NICU") services which it had furnished to one of the Payor's enrollees. Primary issue was whether the patient: went out-of-plan when she (and her infant) obtained the OB/NICU services because she was enrolled in a payor-designated PPO that did not have a contract with the Hospital, versus stayed in-plan when she obtained the services because the Hospital was a participating facility in a network ("Network") with whom the Payor had contracted to obtain discount rates from the Network's facilities.

An ER-based physician group ("ER Group") claim that a capitated physician group ("Payor Group") was obligated to pay over \$280,000 to the ER Group for ER services which it had previously furnished to enrollees of the Payor Group and for whom the Payor Group was the responsible payor. The ER Group was not contracted with the Payor Group. Issues included determining: the reasonable and customary value of the prior services furnished by the ER Group under California Health & Safety Code 1371.4(b) and 28 CCR 1300.71(a)(3)(B); and, a contract rate which the Payor Group would pay to the ER Group for future ER services.

A physician ("Physician") sought to recover over \$200,000 against a billing agency ("Agency") based upon a claim that the Agency had breached its contract with physician and violated its duty of good faith and fair dealing by not properly/timely billing for services which Physician had rendered to patients. The Agency sought to obtain payment from the Physician for its unpaid fees. Issues included: whether the Agency: committed systemic billing errors; failed to pursue denials, underpaid accounts, and appeals; and, double billed for the same services.

A contract claim by a provider of therapy services sought to obtain payment of over \$700,000 from a skilled nursing facility ("SNF") for services that the therapy provider furnished to the SNF's patients. Issues included: which contract claims were waived; whether the claimant failed to mitigate its damages; and, which contract between the parties applied to the provided services.

Insured claimed that her defendant-insurance broker was negligent when he made representations on which she relied to purchase health insurance, which provided costly and unnecessary coverage for her and her son. At issue was whether: the broker breached the standard of care owed to client; alternative coverage was available in the marketplace at the time when plaintiff first purchased the

policy at issue; and, preexisting conditions of plaintiff's son would have precluded the purchase of alternative coverage.

## **Representative Issues Handled as a Mediator**

Representative issues in mediated cases include the following:

- Fair market value of health care goods and services;
- Reasonable and customary value of non-contracted ER services;
- Retroactive application of recalculated ambulatory surgery center reimbursement rate by a governmental third party payor-contractor;
- Whether claims related to health plan members and whether services constituted "emergency" care;
- Whether contract claims were waived or barred by statute of limitations;
- Whether a physician billing and collection company performed in accordance with contract requirements and applicable standard of care;
- Whether patient care services were medically necessary and provided at the appropriate level of care;
- Whether contract forged and, also, whether signature(s) forged;
- Whether current licensee of health facility is successor corporation to former licensee;
- Whether insurance broker breached standard of care to insured relative to advising insured to purchase a health insurance policy which insured claimed was costly and provided unnecessary coverage;
- Whether partner fraudulently covered up business losses and use the partnership's properties and assets to secure personal loan;
- Who was at fault in an automobile accident and related calculation of damages;
- Whether manufacturer is excused from paying the fee due to placement service's breach of agreement by failing to provide professional reference checks and other types of authenticated documentation respecting the referred individual;
- Whether seller of business fraudulently misrepresented the amount of inventory which would be on-hand at the close of escrow; whether merchandise had been converted by seller for his personal use; and, seller's counter claim that no specific amount of inventory had been included in purchase price; and
- Whether claims were governed by written or subsequent oral contract; whether respondent breached contract in performing consulting services related to move of manufacturing equipment from seller to buyer.

## **Mediator Style & Process Preferences**

My mediation philosophy is to try making a personal connection with the parties and their counsel at the outset with the goal of lessening tension in order to foster a more positive environment conducive to settlement. I do this by always beginning mediations with all parties and their counsel in a joint meeting with me. At this meeting, I, typically, will ask counsel whether there is any particular process upon which they have agreed or wish to discuss; my goal here is to obtain "buy-in" on the process by all involved. More often than not the parties wish to caucus.

In the caucuses, I listen attentively to the parties, help them to build a cooperative relationship, and use patient/gentle assertive tenacity to move them toward resolving their dispute. Although I start with a facilitative methodology, I will, typically, shift into the mode of evaluative mediation in order to creatively help the parties bridge gaps between them. From time to time, I will meet with counsel for one or more of the parties outside the presence of their client(s) in order to obtain or impart information which is better done with counsel alone. Rarely, if ever, do I meet with a party without their counsel, because I see that as largely unproductive, if not harmful to the process, for various reasons.

In a number of cases I will make a mediator's proposal when I believe that settlement might otherwise not be reached. And once in awhile, I will convene the parties for a "closing" meeting at which I will summarize their respective positions - showing how close they are to settlement; this frequently leads to settlement.

I ask parties to submit a mediation brief about one and one-half to five days in advance of the first mediation session (depending upon the size and complexity of the case), which as concisely as possible discusses each party's position on each significant issue in dispute and to include supporting argument and authority. I prefer that documents, which are significant to a party's position, should be attached to the brief.

In summary, the keys to being a successful mediator, in my view, are: (i) developing good working

relationships with the parties and their counsel; (ii) reviewing the parties' briefs closely and being prepared in advance for the mediation; and (iii) helping the parties to compromise on their demands without their losing face, and helping them to see how they are coming out better by resolving their dispute versus continuing on with litigation, and (iv) having the flexibility to adapt to the twists and turns which are unique to each mediation and to the personalities involved in each mediation.

## **Education**

Boston College Law School (JD-1977); University of Massachusetts (BA, Political Science, magna cum laude, National Honor Society of Phi Kappa Phi-1974).

## **Professional Licenses**

Admitted to the Bar: Texas (1986), California (1984), District of Columbia (1978), Massachusetts, (1977).

## **Professional Associations**

AAA Healthcare Dispute Resolution Advisory Council (2014-2019); Litigation Counsel of American (Fellow) (limited to one-half percent of American lawyers); Southern California Mediation Association; American Health Law Association (Fellow; Chair of Dispute Resolution Service Council, 2016 -2020; Dispute Resolution Service Review Board, 2020-present; Past Board of Directors; Past Board Audit Committee Member; Chair of Hearing Officers Ethics Committee, 2012-present); California Society for Health Care Attorneys (California Health Law News, Past Editor); American Bar Association (Medicine and Law Committee, Past Chair, Past Vice-Chair; Young Lawyers Division, Health Care Law Committee, Past Chair).

## **Recent Publications & Speaking Engagements**

Speaking Engagements:

Healthcare Arbitration and Mediation: What You Need to Know from Claimant, Respondent and Neutral, Annual Meeting of the American Health Lawyers Association, June, 2018; AAA Advanced Healthcare Mediation Training, October, 2015 (San Francisco), and March, 2016 (New York City); Achieving Excellence: Transforming Peer Review Through Mediation, Annual Meeting of the American Health Lawyers Association, July, 2015; Identifying and Resolving the New Disputes in Accountable Care Using ADR, Annual Meeting of the American Health Lawyers Association, July, 2014; Nuts and Bolts of Delivering Managed Care and Accountable Care, American Arbitration Association Webinar, June, 2014; Peer Review Hearing Office Course, American Health Lawyers Association, May, 2014; Mediating Medical Staff Peer Review and Disputes in Healthcare Settings Focused on Value and Quality (ACOs), California Academy of Attorneys for Health Care Professionals, February 2013; Hot Button Issues for Neutrals and Advocates, American Health Lawyers Association Webinar, December 2011; "Peer Review Hearings - The Role of the Hearing Officer," California Society for Healthcare Attorneys, November 2007; "Medical Staff Peer Review," California Society for Healthcare Attorneys, November 2005; "Managed Care Organization Credentialing and Deselection," American Health Lawyers Association, December 1998; chair, "California Health Law Update," American Health Lawyers Association, January 1997; "Economic Credentialing," American Health Lawyers Association, November 1992; "Responding to Emerging Liabilities of HMOs and PPOs," American Bar Association, February 1992; partial list, additional speaking events available upon request.

Publications:

"Reinventing Resolution of Peer Review Disputes through Mediation", AHLA Connections Magazine (published by AHLA), November, 2015; "Identifying and Resolving Disputes in New Accountable Care Settings", AHLA Connections Magazine (published by AHLA), December, 2013; "Exclusive Provider Organizations: A Legal Perspective," CONTRACT HEALTHCARE, November 1988; "Utilization Review Employed by Managed Care Programs: A Legal Perspective," MEDICAL INTERFACE, Medicom International, Inc., January 1988; "Problems of Physician Referral Services," AMERICAN MEDICAL NEWS, American Medical Association, October -November 1987; "Utilization Review: Lowering Costs and Liability," CALIFORNIA HEALTH LAW NEWS, California Society for Healthcare Attorneys, December 1986; "Are Nurses Practicing Medicine in the ICU?", DIMENSIONS OF CRITICAL CARE NURSING, J.B. Lippincott Company; July/August 1984; "Dilemma of Tarasoff: Must Physicians Protect the Public or Their Patient?", LAW, MEDICINE AND HEALTH CARE, American Society of Law and Medicine, Fall 1982; partial list, additional publications available upon request.

## **Locations Where Parties Will Not be Charged for Travel Expenses**

Los Angeles County and Orange County in California.

<b>Mediation Rate</b>	\$3,200 Per Day
<b>Languages</b>	English
<b>Citizenship</b>	United States of America
<b>Locale</b>	Los Angeles, CA

The AAA's Rules provide the AAA with the authority to administer a mediation including, mediator appointment, general oversight and billing. Accordingly, mediations that proceed without AAA administration are not considered AAA mediations, even when the parties select an mediator who is on the AAA's Roster.

The information contained in this resume has been supplied solely by the individual mediator and may, or may not, be a complete recitation of their experience. The AAA assumes no responsibility for the content, completeness, accuracy, or reliability of the information contained in a mediator's resume. If you have any questions about a mediator's experience or background, you are encouraged to contact your case manager.

Mediators on the AAA Roster are not employees or agents of the AAA.