



AAA Mediation.org™

## Arthur E. Peabody, Jr., Esq.

Alexandria, Virginia

### Primary Areas of Expertise

Healthcare  
Contacts  
Wage and Hour  
Discrimination  
Employment

**Current Employer-Title** Hooper, Lundy & Bookman, P.C. - Of Counsel  
Arthur E. Peabody, Jr. PLLC - Principal

**Professional Summary** Career trial lawyer, experienced litigator of complex civil cases  
Former career United States Department of Justice executive and career lawyer (34 years)  
Litigated, mediated, and arbitrated a wide range of civil disputes , e.g., contract, healthcare, discrimination, employment, wage and hour, and consumer issues  
Authority in reimbursement for hospitals, nursing homes, and rehabilitation facilities  
Over 25 years of experience in federal health care regulatory requirements  
AAA mediator and arbitrator since 2016; voluntary mediator D.C. federal courts since 2006  
Ombudsman, Federal healthcare bankruptcy cases  
Former Chair and elected member, Alexandria City School Board  
Member, Board of Trustees, Alexandria Symphony Orchestra

**Profession** Attorney

**Work History** Of Counsel, Hooper, Lundy & Bookman, P.C., 2019-Present; Principal, Arthur E. Peabody, Jr. PLLC, 2016-Present; Assistant General Counsel for Medicare, Blue Cross Blue Shield Association, 2004-2016; Assistant U.S. Attorney, Eastern District of Virginia, 1994-2004; Chief, Deputy Chief, Trial Attorney, Special Litigation Section, Civil Rights Division, Senior Executive Service, U.S. Department of Justice, 1973-1994.

**Experience** Career trial lawyer, U.S. Department of Justice, Civil Rights Division and U.S. Attorney's Office, Eastern District of Virginia; litigated high profile, novel, cutting edge, precedent setting civil rights cases; negotiated settlements with high level state officials, including sessions mediated by federal judges and magistrate judges; litigated wide variety of civil cases as Assistant U.S. Attorney, including jury trials; negotiated myriad settlements; highly experienced civil litigator.

AAA mediator and arbitrator since 2016; volunteer mediator in the District of Columbia Circuit's Court Mediation Program since 1996, mediated over 35 major cases in court administered program, including healthcare, employment (Title VII), wage and hour, tort, and police misconduct cases. As AAA mediator and arbitrator arbitrated or mediated major provider payer disputes, healthcare contract disputes, discrimination cases, and other civil matters, including consumer cases.

Appeared regularly before the Provider Reimbursement Review Board to litigate Medicare provider reimbursement disputes between providers and the Department of Health and Human Services, Center for Medicare and Medicaid Services.

During tenure at Department of Justice, received awards from three (3) Attorneys General and

numerous commendations from agency officials; appeared in 34 different federal districts courts.

## **Mediator Experience**

Career trial lawyer, negotiator, mediator, and participant in arbitration; volunteer mediator in the District of Columbia Circuit Courts Mediation Program since 1996; mediated 23 cases of which 15 settled (65% success rate); mediated a wide variety of civil cases, including healthcare, employment, and tort cases; experience ranges across nearly all aspects of healthcare law with emphasis on payment and reimbursement, compliance, and federal healthcare regulations and programs; have analyzed hundreds of patient claims and individual patient records; resolved Part A and Part B Medicare disputes and claims brought pursuant to the Federal Employee Health Benefits program (FEHB); mediated class action case involving multiple violations of a long-standing consent decree designed to improve medical and dental services to class members resulting in a voluntary remedial plan; successfully mediated cases resulting in access and use by physically disabled individuals to facilities and services, e.g., ramps, accessible bathrooms; successfully mediated cases addressing requirements of children with special needs; resolved a variety of employment discrimination cases through mediation, including a class action employment discrimination case resulting in \$1 million of payments to class members; successfully mediated a series of attorneys' fees disputes resulting in reasonable fees and voluntary contributions to charitable organizations by counsel; successfully mediated damage claims arising from allegations of police brutality following a high-speed chase of victim by law enforcement authorities.

Responsible for payment and reimbursement appeals settled by negotiation, e.g., nursing home chain Medicare overpayments valued at \$3.5 million recalculated and written off; denial of reimbursement for services of medical residents resolved by payments to teaching hospitals ranging from \$1.5 to \$3 million; disputed classification of hospital as a Medicare "sole community hospital" resulted in increased reimbursement of \$500,000 annually; alleged erroneous calculation of South Florida hospitals' wage index dispute settled by re-running over 3 million claims that produced a \$6,900,000 total payment to hospitals; reconsideration of denial of exemption from Medicare routine cost limits produced a payment of over \$2 million; reversed precedent for the calculation of the hospital disproportionate hospital payment (DSH) affecting hospitals nationwide, single case worth up to \$34 million; handled cases resolving physician claims for services under Medicare, Part B.

Achieved complex agreements through mediation and negotiation with state officials to improve care and treatment of disabled persons pursuant to the Civil Rights of Institutionalized Persons Act, the Americans with Disabilities Act, the Individuals with Disabilities Education Act, and Section 504 of the Rehabilitation Act of 1974; personally negotiated settlements with Governors, Attorneys General, and high-level state officials and served as advocate in mediations conducted by federal judges; settlements afforded broad remedial relief requiring the improvement and expansion of medical and social services for persons with disabilities, establishment and expansion of community programs, construction of new buildings and renovations to other facilities; worked with medical and financial experts and independent monitors.

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

Payment and reimbursement issues, including denial of claims and issues arising under the federal Medicaid and Medicare programs and claims brought pursuant to the Federal Employee Health Benefits program (FEHB); access and other accommodations pursuant to the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973; discrimination claims pursuant to the Title VII of the Civil Rights Act of 1964; damage claims brought pursuant to the Federal Tort Claims Act; cases brought alleging denial of federally protected rights under the Constitution; resolved medical care payment and reimbursement issues, including beneficiary claims denied on the grounds of "unnecessary services," or "experimental treatment," and other administrative/procedural grounds; Medicare Part A and Part B payment and reimbursement cases; issues of access by disabled citizens to programs and services, including cases requiring substantial building renovations and other accommodations; cases requiring analysis of Managed Care Organizations' (MCO) contractual provisions for payment, including adequacy of provider network, referral/assignment to physicians/dentists, and other contractual requirements mandated by the Medicaid program and federal law; employment discrimination, including race, sex, age, disability, retaliation, and harassment/hostile work environment; and negligence resulting in physical injury.

## **Mediator Style & Process Preferences**

Based on my experiences as a mediator, participant in arbitration, and trial lawyer with many years of experience both litigating and resolving cases, I believe that most disputes can be resolved more quickly, less expensively, and with more satisfaction to the parties when settled without protracted, expensive litigation. I have found that the settlements reached through alternative dispute resolution are highly effective in affording relief due to the investment of the parties in the resolution, serve to

repair and maintain long-standing relationships, and permit the parties to agree to creative remedies that courts are unable to grant. ADR can be used effectively to permit the parties to tailor a solution to meet their needs.

In the various in-depth training sessions that I have attended, I have become familiar with the approaches to mediation that dispute resolution professionals have adopted. Some are strict adherents of a facilitative approach (assists the parties without offering opinions or recommendations); others are inclined to be evaluative during mediation (active participant who points out strengths and weaknesses and likely outcome in court); yet others adhere to a transformative model (values empowerment of the parties and consideration of the parties' interests, values, and points of view). My approach is practical and, when the circumstances arise, elements of all three can be used to permit the parties to tailor a solution to meet their needs. For example, asking questions to develop the facts and the parties differing views of the facts facilitates the mediation. Suggesting to a plaintiff that their expectation of a huge damage recovery is entirely unrealistic and reminding the defendant of significant adverse precedent, common features of many mediations, fall within the bounds of the evaluative approach. Addressing the benefits of the parties' need to maintain their professional relationship may be part of transformative mediation. However described, the ultimate role of the mediator is to utilize all available techniques to enable the parties to resolve their case, i.e., to "get the deal done."

Beyond approach, the role of the mediator is critical to the success of the process. A neutral needs to be "neutral" and understand that the parties will make all the decisions. Patience and perseverance is essential because the parties may maintain deeply felt views, especially at the initial stages of the process. The goal is to instill an element of trust and encourage the parties to get to the root of the problem, identify and determine their real interests, and how their goals can be achieved or approximated. The mediator must be a good listener, alert to the implications of the parties' statements and be able to assess their significance as keys to approaches that might foster a resolution of the dispute. The neutral's flexibility and creativity can also assist the process. In my practice, I have been especially successful in assisting the parties in devising novel remedies that include core features that both parties can readily agree to. These elements contribute to advancing an overall settlement.

A neutral must be also able to be both alternatively restrained and forceful as appropriate. A neutral must be prepared to act, show initiative, and strike the correct tone all throughout the mediation, especially if mediation appears to be at impasse. Meaningful intervention requires an understanding of the parties' interests, knowledge of both the facts and relevant law, and good judgment.

The one expectation that a mediator has of any parties entering into mediation is that all parties take reasonable steps to be fully prepared, to be open, share concerns and bring a sense of realism to the process.

**Technology Proficiency** Electronic discovery, information security and privacy.

**Education** Northeastern University, B.A. with honors, 1969  
Cornell Law School, J.D., 1972

**Professional Licenses** Admitted to the Bar: District of Columbia, 1985; Commonwealth of Virginia, 2002.

**Professional Associations** American Bar Association  
Health Law Section, Chair, Dispute Resolution and Conflict Management (DR) Taskforce  
Dispute Resolution Section  
American Health Lawyers Association  
Health Financial Management Association (HFMA)  
College of Healthcare Executives  
American Hospital Association, Society for Healthcare Risk Management  
American Association of Healthcare Administration Management  
  
District of Columbia Bar  
Virginia State Bar  
  
Alexandria Bar Association

Alexandria Symphony Orchestra Board of Trustees

Former member and Chair, Alexandria City School Board, 2006-2012

## **Recent Publications & Speaking Engagements**

Books, Book Chapters, and Articles

Author, A Collaborative Approach to Medicare Bad Debt Reimbursement, Journal of AHIMA, August 2023

Co-author, Bioinformatics, Medical Informatics, and the Law, Chapter 12 - Privacy and Security Challenges in Bioinformatics, Edward Elgar Publishing, January 2022

Co-author, Legal Challenges in Precision Medicine: What Duties Arising from Genetic and Genomic Testing Does a Physician Owe to Patients, Frontiers in Medicine, July 2021

Health Care IT, The Lawyer's Essential Guide to Health Care Information Technology and the Law, American Bar Association (2013), Editor, Author of five (5) chapters

Contracts in the Digital Age, ABA Health Law Section and BNA (2011) (supplements 2012 – 2016; new edition 2017; supplement 2018, Book Chapter Author

Author, Resolution encouraging use of dispute resolution in health care enacted by the ABA House of Delegates, February 2016

HITECH, The First Federal Data Breach Notification Law (with L. Thomson) and, The Aftermath of Data Breaches; Potential Liability and Damages (with R. Abbott), Data Breach and Encryption Handbook, American Bar Association (2011), Book Chapter Author

CMS' Medicare "Must Bill" Policy Upheld – the End of a Long Road for Providers, ABA Health Law Section, Health eSource, December 2015, Author

Medicare Bad Debts: A Fatally Flawed Policy in Need of Review, BNA Medicare Reports, 22 MCR 544, May 6, 2011; reprinted, The BNA Books Monitor, Vol. 3, No. 2, June 2011.

Programs and Presentations

ABA Health Law Section, Speaker, The No Surprises Act, Physician Legal Conference, (scheduled September 2023; Speaker, ABA Health Law Section Emerging Issues Conference, Precision Medicine: the Role of Genetic Testing, April, 2022; The No Surprises Act, Webinar, December 2021, Speaker; National Mediation Week, Reducing Racial Disparities in Health Care; 2020; Co-Chair and Speaker; ABA Health Law Section, 2020 Washington Health Law Summit, Ethical Principles in Entering or Leaving Government; Chair and Speaker

ABA Section of Dispute Resolution, Dispute Resolution and Technology, 2019; Chair; Dispute Resolution from All Perspectives; 2018, Speaker; Mediation in Medicare, Chair and Speaker, 2017; Non-Traditional Uses of Mediation in Health Care, Co-chair and Moderator, 2016

Health Finance Management Association, Challenges of Medicare Reimbursement for Hospitals, HFMA Western Symposium, 2019; Virginia/DC Chapter, 2016, 2018; Philadelphia Chapter, 2017

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

Greater Washington, D.C. metropolitan area

## **Mediation Rate**

\$350 Per Hour

## **Languages**

English

## **Citizenship**

United States of America

**Locale**

Alexandria, VA

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.