The Four Ways to Assure Mediator Quality

(and why none of them work)

Michael Moffitt

Dean

University of Oregon School of Law

An Initial Thought Exercise

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I ❤ Mediation

Mechanisms for Assuring Quality

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Public
(Government)

Private
(Consumers)

Mechanisms for Assuring Quality

	Front-End (Preventive)	Back-End (After the fact)
Public (Government)		
Private (Consumers)		

Mechanisms for Assuring Quality

	Front-End (Preventive)	Back-End (After the fact)
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Private (Consumers)		

Mechanisms for Assuring Quality

Some examples…	Front-End (Preventive)	Back-End (After the fact)
Public (Government)	Physician license	License removal
Private (Consumers)	Hospital rankings	Malpractice lawsuits

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What About Mediation?

	Front-End (Preventive)	Back-End (After the fact)
Public (Government)		
Private (Consumers)		

Front-End Public

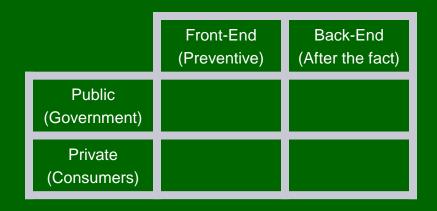|	Front-End (Preventive)	Back-End (After the fact)
Public (Government)		
Private (Consumers)		

The Idea: Licensure, Barriers to Market Entry

Opportunities: Education, Experience, Training, Ethical Standards, etc.

BUT…
    Lack of Monopoly
    The "Schmediation" Problem

Back-End Public

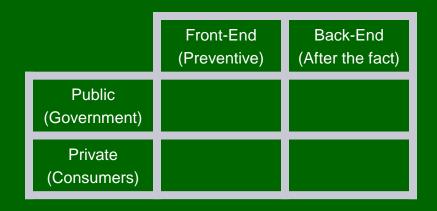|	Front-End (Preventive)	Back-End (After the fact)
Public (Government)		
Private (Consumers)		

The Idea: Sanctions for Misconduct

Opportunities: Punish misbehavior,
    Protect the consumers

BUT...
    No Useful Standards / Codes

Front-End Private

	Front-End (Preventive)	Back-End (After the fact)
Public (Government)		
Private (Consumers)		

The Idea: The Market, Reputations

Opportunities: Trusting consumers' judgments

BUT…

Reputational Markets are Flawed

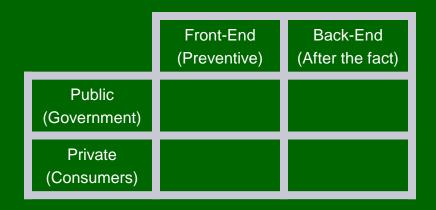(Solo practice, bad proxies, confidentiality)

Back-End Private

	Front-End (Preventive)	Back-End (After the fact)
Public (Government)		
Private (Consumers)		

The Idea: Private Liability

Opportunities: Compensate victims,
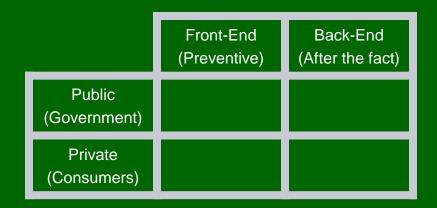   Educate providers and consumers

BUT...

Back-End Private

	Front-End (Preventive)	Back-End (After the fact)
Public (Government)		
Private (Consumers)		

The Idea: Private Liability

Opportunities: Compensate victims, Educate providers and consumers

BUT…

Breach of duty	Causation
Damages	Immunity

Something *WILL* Change

	Front-End (Preventive)	Back-End (After the fact)
Public (Government)		
Private (Consumers)		

Front-End Public
 Licensure? Source-point restrictions?
Back-End Public
 Complaint mechanisms with teeth?
Front-End Private
 Ways to publicize reputational information?
Back-End Private
 The "bad" case setting precedent?

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