

A mother took her five-year-old child to a hospital emergency room for treatment. A doctor on the hospital staff molested the child while treating her. At the time, no one was in the treatment room except the doctor and the child; the mother had left the room to get a cup of coffee. Two weeks later, when the child told her mother what had occurred in the treatment room, the mother suffered severe emotional distress that caused her to become physically ill.

In an action against the doctor by the mother on her own behalf to recover for intentional infliction of emotional distress, is the mother likely to prevail?

- A. No, because the mother was contributorily negligent in leaving the child alone with the doctor during treatment.
- B. No, because the mother was neither the direct victim of the doctor's conduct nor a contemporaneous witness.
- C. Yes, because the doctor's conduct was outrageous.
- D. Yes, because the mother's distress was the natural and foreseeable consequence of the doctor's conduct.

## Explanation:

### Theories of recovery for

#### intentional or reckless infliction of emotional distress

- Direct** Defendant engaged in extreme & outrageous conduct *and*  
Defendant intentionally or recklessly caused plaintiff severe emotional distress
- Bystander** Defendant's extreme & outrageous conduct physically harmed plaintiff's close relative  
Defendant's conduct was intentional or reckless (ie, defendant knew plaintiff was present & closely related to injured person) *and*  
Plaintiff contemporaneously perceived defendant's conduct & suffered severe emotional distress

There are two theories of recovery for **intentional infliction of emotional distress** (IIED): (1) direct and (2) bystander. The **direct theory** applies when the plaintiff was the **direct victim** of the defendant's extreme and outrageous conduct. In contrast, the **bystander theory** applies when the plaintiff **witnessed** the defendant harming a close relative.

Here, the child—not the mother—was the direct victim of the doctor's abusive conduct (no direct liability to mother). And though the doctor's conduct was extreme and outrageous (**Choice C**), the mother did not witness the doctor molest her child (no bystander liability). Therefore, the mother's IIED claim will likely fail.

**(Choice A)** Contributory negligence (the failure to use the level of care a reasonable person would have used for his/her own protection) is an affirmative defense to claims for [negligence](#)—not intentional or reckless torts like IIED.

**(Choice D)** Although the doctor's conduct caused the mother's distress, she cannot recover under either theory for IIED since she was not the direct victim of, or a witness to, that conduct.

### Educational objective:

There are two theories of recovery for intentional infliction of emotional distress: (1) the direct theory—applies when the plaintiff was the direct victim of the defendant's conduct and (2) the bystander theory—applies when the plaintiff witnessed the defendant harming a close relative.

### References

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 46 cmt. m (Am. Law Inst. 2012) (intentional infliction of emotional distress).

Copyright © 2019 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.