

## Injuring the orthodontic spectator

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I always said that while I was in practice, I sometimes felt like I was participating in a spectator sport. In my office we had a number of single-chair operatories as opposed to an open bay, and invariably the patient's mom would accompany the patient to the treatment room. Occasionally, it also involved a sibling or two being present. Sometimes the room got crowded. I swear I could have made a fortune selling peanuts and popcorn to the bystanders as they watched me minister to the patient. There are a lot of plusses and minuses to this practice.

On the plus side, it allows a parent to see the intricacies associated with many of the procedures; she gets to see our professionalism first hand; she does not have to wonder what we did or didn't do; she gets to helicopter over junior to her heart's content; and we have a chance to bond as we make small talk while wires are being bent and inserted. On the downside, however, it's a real pain in the you-know-what; observers may see more than we'd like them to see. And if you are in an open bay situation, there are real crowding concerns, HIPAA concerns, trip and fall concerns, bumping into people and crashing instrument concerns ... well, you get my drift.

There was this one time, junior was scheduled to have his braces off and his mom accompanied him into the operatory. She stood at the foot of the chair watching as we popped the brackets off, flexed the bands off, removed the hardware, scraped off most of the composite, and then went to work with a white stone in a high-speed handpiece to remove the last composite remnants and polish the teeth. As fate would have it, junior was one of those kids whose oral hygiene was not so great; his gingival and interdental papillae were hypertrophied, and the bottom line was that he bled a little during the debonding procedure; okay, more than a little. Well, the patient's mom and I are having this nice little back and forth while I'm working, and at one point I had to concentrate a little more on junior so I wasn't paying

attention to her and next thing I hear is—CRASH! I turn and she is face down on the floor, bleeding profusely from a split chin. Just another day in the arena, right?

So, we bring her around, put her in the chair that junior just occupied, call her husband, all the while staunching the bleeding the best we could. During my residency days, I stitched up a lot of chins and was sorely tempted, but being older and wiser, I figured it was best handled by the emergency room docs.

The point of this story is, did I owe this patient's mother a duty of care to protect her, and was I liable for negligence in that I should have warned her, told her that the chairside environment was not a safe place, yada, yada, yada? That's what *Sacks v Thomas Jefferson University Hosp*, 684 F. Supp. 858 (E.D. Pa. 1988) was all about. In *Sacks*, a mother accompanied her daughter to the emergency room after the daughter had suffered a facial trauma. While holding her daughter's head as the ER doc was sewing up the laceration, she said she might be feeling a little faint, and on attempting to leave the room—SPLAT—she passed out and severely injured her face and mouth from the resulting fall. She filed suit against the hospital claiming it owed her a duty of care that it did not meet.

The Trial Court noted that the "plaintiff's complaint must be dismissed because a hospital owes no duty to a 'nonpatient' observing treatment of a patient in an emergency room setting. Because the hospital had not undertaken to render services to Mrs. Sacks ... it can not be held liable for injuries which it did not cause." A duty owed is an obligation, imposed or implied by law, requiring one person to conform to or within a certain standard of conduct with regard to a second person. Analyzing the facts of the *Sacks* case and applying existing law, the court stated:

At no time did the hospital agree to, or undertake to, accept the plaintiff as a patient, nor was a physician-patient relationship ever established. Only the plaintiff's daughter was admitted to the defendant's emergency room. Mrs. Sacks voluntarily entered the treatment room to witness the suturing that had been sought by her for her daughter. By doing so, she accepted the risk that she would witness events or conditions inherent in the medical treatment which

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could upset her. She was not required to be present nor was she required to hold her daughter's head. Indeed, she abandoned her daughter to leave the room when she felt faint.

The plaintiff argued (1) that it was totally foreseeable to the hospital that she could faint while exposed to the treatment of her daughter and (2) that she said she was feeling faint during the procedure and therefore the hospital was liable for her injuries because "one who negligently creates a dangerous condition can not escape liability for the natural and probable consequences thereof." The law, however, holds that a defendant is not required to point out dangers which are commonly known or obvious. In finding that the hospital owed no duty at all to the plaintiff, the court stated:

Mrs. Sacks obviously appreciated the reason for bringing her child to the emergency room, the nature of the suturing treatment sought to be obtained, including the fact that procedure would entail blood, broken skin and the use of stitching instruments, all of which she might find very unpleasant. She stayed in the treatment room and proceeded to hold her daughter's head because of her parental responsibility to her child and not because of a servant relationship with the hospital. At no time was the parent under the direction and control of the defendant.

Parents have a duty to obtain medical attention for their children when the need arises. However, this only creates a duty of care on the part of the hospital not to injure the child and in no way imposes a special duty of care on the part of the hospital to protect the child's parents from encountering the unpleasantness of their children's injuries or the unpleasantness

necessarily inherent in a medical emergency response to those injuries.

#### COMMENTARY

Look, we all do what we do because at some level we believe it suits our purposes or it is in our best interest to do whatever it is. If you believe it is in your best interest to have a laissez-faire attitude and encourage an open door policy, than have at it. If you believe that the risks outweigh the rewards, than find a way to "close the door." My garage has a sign with big red lettering saying that the insurance company prohibits anyone other than employees beyond a certain point. I know it's a bunch of "#&@%" but it serves its purpose; it keeps me out of the bay where they are working on cars. Even if I were a helicopter car owner and was in love with my ride, I would have to stay out in the waiting room where I belong. But, heaven forbid we should make mom unhappy because of operatory ostracism and suffer the consequences of negative postings on social media platforms.

The bottom line for me is that I treat this like any other business decision. I make a risk-benefit analysis. What are the risks (all of the downsides) when balanced against all of the benefits to be received? I can't do this for you. Only you can do this for you. If the plusses outweigh the negatives, go for it. If the minuses outweigh the positives, then don't do it; or if you do, be prepared to pay the consequences whatever they may be. Often, the consequences are not financial, they are personal and psychological. The last thing you ever want to happen is to hate having to go to the office because of bad choices you made.

Peanuts, popcorn, soda anyone?