

Contents

- 1 Introduction** 3
- 2 Sources of Liability** 7
 - 2.1 Forms of Legal Complaints 7
 - 2.1.1 Tort Law 7
 - 2.1.2 Fraud 13
 - 2.1.3 Contract Law 14
 - 2.2 Legal Initiatives 15
 - 2.2.1 Federal Regulations 16
 - 2.2.2 State Regulations 19
 - 2.2.3 Criminal Complaints 20
 - 2.2.4 Organizational Requirements 22
 - 2.3 Private Practice 23
 - 2.3.1 Partnerships 24
 - 2.3.2 Billing 24
 - 2.4 Industry/Technology 25
 - 2.5 Reproductive Technology 26
 - 2.6 Research 26
 - 2.6.1 Human Subjects 27
 - 2.6.2 Gene Transfer 28
 - 2.6.3 Clinical Testing on Research Samples 29
 - 2.6.4 Institutional Review Boards..... 29
 - 2.6.5 Epidemiology 30
 - 2.7 Trainees..... 30
- 3 Duty as an Element of a Lawsuit: Obligations and Responsibilites** 35
 - 3.1 Duty Element 35
 - 3.2 Establishing a Professional Relationship..... 36
 - 3.2.1 Abandonment 38
 - 3.3 Obligations and Duties 38
 - 3.3.1 Standard of Care 39
 - 3.3.2 Specialty Practitioners 40
 - 3.3.3 Good Practice 40
 - 3.3.4 Nongeneticists Providing Genetic Services 46

4	Duty as an Element of a Lawsuit: Sources of Standards	51
4.1	Test for a Standard	51
4.2	Sources for Standards	51
4.2.1	Scope of Practice	52
4.2.2	Code of Ethics	52
4.2.3	Professional Organizations	53
4.2.4	Professional Literature	53
4.2.5	Professional Guidelines	54
4.2.6	Credentials	54
4.2.7	Expert Testimony	56
5	Duty as an Element of a Lawsuit: Procedural Requirements	61
5.1	Medical Records	61
5.1.1	Chart Contents	62
5.1.2	Ownership	65
5.1.3	Storage of Medical Records	65
5.1.4	Shadow Charts	66
5.2	Failure to Follow Policies and Procedures	66
5.2.1	Informed Consent	67
5.2.2	Confidentiality	74
5.3	Improper Techniques	83
5.3.1	Nondirective	83
5.3.2	Nonjudgmental/Value Neutral	84
5.3.3	Transcultural Competency	85
5.3.4	Defenses for the Duty Element	86
6	Breach, Causation and Damages as Elements of a Lawsuit	89
6.1	Breach	89
6.1.1	Decision Makers	89
6.1.2	Defense to Breach Element	91
6.2	Causation	91
6.2.1	Remote Causation	92
6.2.2	Proximate Cause	92
6.2.3	Informed Consent Cases	93
6.2.4	Defense to the Causation Element	94
6.3	Damages	95
6.3.1	General Damages	95
6.3.2	Compensatory Damages	96
6.3.3	Noneconomic Damages	96
6.3.4	Punitive Damages	97
6.3.5	Assessing Damages	97
6.3.6	Defense to the Damage Element	97
7	Defenses to a Lawsuit	99
7.1	Helping Yourself	99
7.2	Affirmative Defenses to Malpractice Lawsuits	99
7.2.1	Statute of Limitations	100

7.2.2	Contributory Negligence	100
7.2.3	Comparative Negligence	100
7.2.4	Assumption of the Risks	100
7.2.5	Good Samaritan Statute	101
7.2.6	Indemnity or Release	101
7.3	Countersuits	101
7.3.1	Malicious Prosecution	101
7.3.2	Abuse of Process	102
7.3.3	Defamation	102
7.3.4	Negligence	102
7.3.5	Intentional Torts	103
8	Communication	107
8.1	Face-to-Face	107
8.2	Electronic Communication	108
8.2.1	Internet	108
8.3	Privacy	111
8.3.1	Transmission of Information	112
8.4	Managing Your Malpractice Exposure in Cyberspace	118
9	Conclusions: Lessons Learned	123
9.1	Defensive Practice	123
9.2	Advice from Experience	124
Appendix	127
A.1	Definition of Genetic Counseling	127
A.1.1	1975	127
A.1.2	2006	127
A.2	Scope of Practice	128
A.3	The Code of Ethics of the National Society of Genetic Counselors . . .	130
A.4	Suggested Readings	133
Notes	135
Glossary	145
Index	149

Lessons Learned

Risk Management Issues in Genetic Counseling

Schmerler, S.

2008, XVII, 152 p., Hardcover

ISBN: 978-0-387-72174-3