

APA Resource Document

Resource Document on Emotional Support Animals

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Prepared by the Council on Psychiatry and Law, Council on Quality Care, Council on Children, Adolescents and Their Families, and the Ethics Committee

Renee Binder, MD; Tanuja Gandhi, MD; Meera Menon, MD; Alexandra Audu, MD; Ariana Nesbit, MD; Kathryn K. Ridout, MD; Jorien Campbell, MD; Stephanie Garayalde, MD; Charles C Dike, MD

INTRODUCTION

Psychiatrists may be asked to write a letter supporting a patient's request for an emotional support animal (ESA). Laws about ESAs vary across federal, state, and local jurisdictions. As this is an evolving area of law, it is essential for psychiatrists to stay up to date with laws in their jurisdiction. This resource document provides an overview of the clinical, ethical, and legal considerations that a psychiatrist should consider when asked to write an ESA letter for a patient.

In this document, pertinent issues related to ESAs are described under four sections:

1. Relevant Federal and State Laws
2. Clinical Considerations
3. Ethical Considerations
4. Liability-Related Considerations

I. RELEVANT FEDERAL AND STATE LAWS

Key Points

- ESAs are different from service animals and other disability-related assistance animals.
- ESAs are defined and protected by a patchwork of federal, state, and local laws.
- Psychiatrists considering writing letters of support for ESAs should be familiar with relevant federal, state, and local laws.

Definitions and Terminology

Terminology describing different categories of therapeutically used animals varies across federal and state laws and in the scientific literature. A service animal, therapy animal, psychiatric service animal, and an ESA are not the same thing, and the terminology is often confusing.

Service animals are protected by the Americans with Disabilities Act (ADA). A service dog is defined as, "a dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability." Under Title II and Title III of the ADA, service animals are limited to dogs. However, there are separate provisions for the use of miniature horses by persons with disabilities^{1,2}. For the purposes of this resource document, a service animal (including a psychiatric service animal) is defined as a dog or less commonly, a miniature horse, individually trained to do work or perform tasks that relieve symptoms of its handler's disability.

In contrast to service animals, an ESA is an animal of any species that is not trained to perform a specific task, but rather through companionship alleviates a person's psychiatric disability³. One example of an ESA is a cat whose existence and companionship encourages its owner with depression to get out of bed.

The definitions of terms for commonly used categories of therapeutically used animals are described in Table 1 (copied from reference 3) and a comparative description of other categories of commonly used therapeutic animals is summarized in Figure 1.

Table 1 Definition of Terms for Categories of Therapeutically Used Animals

Term	Definition
Disability-related assistance animal	A broad term that encompasses all animals that are utilized with therapeutic intent for persons with a legally recognized disability.
Service animal	As defined by the ADA, a dog or miniature horse that has been individually trained to perform specific tasks that mitigate a person's disability.
Psychiatric service animal	As defined by the ADA, a subset of service animal that has been individually trained to perform specific tasks, which do not include the provision of "emotional support," that mitigate a person's disability from psychiatric illness.
Emotional support animal	An animal of any species, which does not qualify as a service animal under the ADA, that a medical provider has certified can mitigate a person's psychiatric disability through companionship rather than by any specifically trained task(s).
Therapy animal	Any species of animal utilized by a trained handler, either through the animal's presence or a guided interaction as a part of a structured animal-assisted therapy, to provide therapeutic benefit for persons with illness and suffering.
Pet	An animal kept for companionship or pleasure that is not clinically certified for therapeutic use in any illness or disability and that is not afforded any special accommodations under the law.

ADA: Americans with Disabilities Act.

Figure 1 Description of Categories of Commonly Used Therapeutic Animals

Term	Species	Who is helped?	Training required?	Performs specific task?	Mitigates an individual's disability?	Regulations
Service Animal	Dogs or miniature horses only	Individual owner with the disability	Individually trained to assist one person	Yes - related to the owner's disability	Yes - any disability under the ADA	ADA
Psychiatric Service Animal	Dogs or miniature horses only	Individual owner with the psychiatric disability	Individually trained to assist one person	Yes - related to the owner's psychiatric disability	Yes - disability from psychiatric illness	ADA
Emotional Support Animal	Any	Individual owner with the psychiatric disability	No	No - provides emotional comfort, well-being, support,	Yes - disability from psychiatric illness	FHA, ACAA, state & local laws

				or companionship		
Therapy Animal	Any	Various (can be used in large group settings or individual psychotherapy)	Animal and handler trained in obedience and socialization	No - provides emotional comfort, well-being, support, or companionship	No - used to mitigate suffering/illness, but not legal disability	State and local laws
Pet	Any	Owner	No	No - provides comfort and companionship to owner	No	None

Federal Laws

Unlike service animals, ESAs are not protected under the ADA. However, they are regulated by various federal, state, and local laws. As laws often change, it is essential for clinicians to confirm that they are following the most current version of federal, state, and local laws when evaluating a patient for eligibility to have an ESA.

Federal laws related to ESAs are:

1. Americans with Disabilities Act (ADA)
2. Fair Housing Act (FHA)
3. Air Carrier Access Act (ACAA)
4. Individuals with Disabilities Education Act (IDEA)

Americans with Disabilities Act

The ADA was enacted to prevent discrimination based on disability. It explicitly states that “dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.” But, if the dog is trained to perform a task related to a person’s disability, it is a service animal under the ADA⁴. Some commonly encountered questions from clinicians include:

- Q: A new patient brought a dog to his initial appointment. Our clinic allows service animals but not ESAs. Under the ADA, am I or my staff allowed to ask if it is a service animal?
A: Under the ADA, there are limits on what can be asked. You may ask:
 - Is the animal a service animal that is required because of a disability?
 - What work or task is the animal trained to perform?
- Q: My patient’s dog growled at me and urinated in the waiting room. Do I still need to allow the animal in the office?
A: No. *Even* if the dog were a service animal, there are provisions in the ADA that a service animal may be excluded from the premises if the animal is not housebroken *or* if the animal is out of control and the animal’s handler does not take effective action⁵.

Fair Housing Act

The FHA prohibits discrimination in housing settings, including discrimination based on disability. Unlike the ADA, the FHA does include some allowances for ESAs in addition to service animals. The FHA categorizes both service animals and ESAs as “assistance animals.” It states, “assistance animals are not pets. They are animals that do work, perform tasks, assist, and/or provide therapeutic emotional support for individuals with disabilities⁶.” Further, it clarifies that “an animal that does not qualify as a service animal or other type of assistance animal is a pet for purposes of the FHA and may be treated as a pet for purposes of the lease and the housing provider’s rules and policies.”

According to the U.S. Department of Housing and Urban Development (HUD), an individual with a disability may request to have an assistance animal in their home, with appropriate documentation as a reasonable accommodation to the housing provider’s pet policy⁷. Housing providers are not entitled to know an individual’s diagnosis and cannot ask for medical records but can require individuals to provide reasonable supporting documentation from a physician, psychiatrist, or a licensed healthcare professional “general to the condition but specific as to the individual with a disability and the assistance or therapeutic emotional support provided by the animal.” Therefore, psychiatrists may be asked to write letters of support for patients for housing purposes under the FHA. The guiding document highlights that “housing providers may not require a healthcare professional to use a specific form (including the guiding document), to provide notarized statements, to make statements under penalty of perjury, or to provide an individual’s diagnosis or other detailed information about a person’s physical or mental impairments.”

The FHA provides the following examples as reasonable accommodation requests for an assistance animal⁷:

- A person with a disability requesting to live with an assistance animal on a property with a no-pets policy.
- A request to waive a pet deposit fee for an assistance animal.

Air Carrier Access Act

The ACAA prohibits commercial airlines from discriminating against individuals based on their disability. Prior to 2021, ESAs were allowed on airplanes with a letter from a licensed mental health professional. However, per the “Traveling by Air with Service Animals” final rule⁸ issued by the Department of Transportation to amend the ACAA, as of January 2021, airlines are no longer required to accommodate ESAs and are allowed to recognize them as pets. Although the ACAA does not prohibit airlines from accommodating ESAs, most major commercial airlines have since banned ESAs from air transportation. As a result, psychiatrists are unlikely to be asked for letters of support for ESAs for the purposes of airplane transportation.

Of note, service animals are still protected under the ACAA, and the revised rules identify only dogs as service animals. Patients who seek to fly with a psychiatric service animal may be asked to complete Department of Transportation paperwork depending on the policies of their airline carrier⁹.

Individuals with Disabilities Education Act (IDEA)

The Individuals with Disabilities Education Act (IDEA) ensures that all individuals with a disability are entitled to “Free Appropriate Public Education” that is individualized to them. IDEA applies to primary and secondary school education. This includes the use of a service animal but does not automatically include the use of an ESA due to the definitions of the ADA. However, if a student may benefit from instruction with the presence of an ESA, this may become a part of their Individualized Education Plan³. Table 2 is from reference 3 and summarizes the mandates and rights under each set of regulations.

Table 2 Summary of the Mandates or Laws Applicable to Therapeutically Used Animals and the Rights Under Each Law

	Disability-Related Assistance Animals			
	Service Animals ^a	Emotional Support Animals	Therapy Animals	Pets
Animal species	Dogs and miniature horses only	Any	Any	Any
Main applicable mandates and laws	ADA ^b	FHA, ACAA, state and local laws	State and local laws, institutional regulations	State and local laws and codes
Owner has a right to:				
Bring animal into all public establishments	Yes ^c	No	No	No
Live with animal, even if “no pet” policy in place	Yes	Yes	No	No
Bring animal on airline flights	Yes	Yes ^c	No	No
Permitted in medical settings	Yes ^c	No	Yes ^c	No
Requires training for specific disability-related tasks	Yes	No	Maybe ^d	No
Used by single individual for support	Yes	Yes	No	Maybe ^d
Primary function is emotional support	No	Yes	Maybe ^d	No
Owner may be asked to disclose related disability	No	Yes	Yes	No
Requires gentle temperament, behavior	Yes	Yes	Yes	No

^a Includes psychiatric service animals.

^b According to the ADA definition; the FHA and ACAA imply broader definitions.

^c Statutes and regulations impose some restrictions on access.

^d May apply but is not required.

ADA: Americans with Disabilities Act.

FHA: Fair Housing Act.

ACAA: Air Carrier Access Act.

State Laws

As described earlier, as with federal laws there is also variability in state laws with regards to ESAs. When assessing a patient’s eligibility for an ESA, one must be aware of evolving state legislation. Some recent developments are as follows:

In **California**, effective January 1, 2022, per Assembly Bill No. 468, a healthcare practitioner must have an established “client/provider” relationship with their patient at least 30 days prior to providing a letter addressing the individual’s need for an emotional support dog. The clinician must be licensed in the State of California and have performed a clinical evaluation specific to the individual’s need for an ESA. Of note, violation of this statute places the healthcare practitioner at risk of civil penalties and discipline from the practitioner’s licensing board¹⁰.

In **Florida**, effective as of July 1, 2020, Florida Statute 760.27 prevents discrimination in housing against individuals with disabilities or disability-related needs for an ESA. It outlines the information a housing provider is able to request from an individual when addressing their request for an ESA. It prevents the use of letters from purely online letter writers. It states that even if the licensed practitioner is a telehealth provider or an out-of-state practitioner, at least one in-person appointment must have occurred at some point¹¹.

Example of Local Laws

In addition to state and federal laws, there are some local laws that may regulate ESAs. In New York City, certain categories of animals are prohibited under the Public Health Code and can be excluded by housing providers. If the ESA causes damages, they can be excluded, and tenants may have to pay for damages (including wear and tear) caused by the ESA. Further, ESAs may be allowed to come with individuals to their workplace based on the discretion of the employer¹².

II. CLINICAL CONSIDERATIONS

Key Points:

- Although there are reasons to believe that pet ownership may help alleviate impairing psychiatric symptoms, there is limited research to support the use of ESAs.
- ESA evaluations can be considered disability evaluations. Psychiatrists must first determine whether the patient has a psychiatric disability, then determine whether the ESA will alleviate the psychiatric symptoms causing the disability.
- Psychiatrists writing ESA certification letters should consult their state laws to determine what information must be included, while at the same time striving to protect patient confidentiality.

Although some patients may be interested in obtaining an ESA, there is not a strong evidence-base regarding the clinical benefits of ESAs for psychiatric symptoms or disorders¹³. One preprint of a pre/post study of 11 subjects with serious mental illness reported significant reductions in loneliness, depression, and anxiety symptoms 12 months after living with an ESA; the study did not control for other psychiatric treatments received by the patients during the study period¹⁴. There is a study currently underway about the use of ESAs for veterans with post-traumatic stress disorder (PTSD)¹⁵; however, the results have not been published yet. There are more studies examining the role of service animals and therapy animals. To date, there is mixed evidence regarding the benefits of service animals or therapy animals for psychiatric conditions including PTSD^{16,17}, anxiety^{18,19}, dementia²⁰, autism spectrum disorders^{21,22} and schizophrenia^{23,24}. In addition, most of these studies are small, underpowered, and do not utilize the gold standard of a randomized controlled trial design.

Given the lack of data regarding ESAs for psychiatric symptoms or disorders, inferences from the effects of pet ownership can be made. There is evidence that pet ownership can reduce risk from cardiovascular disease²⁵ and is associated with improved physical and psychological well-being²⁶. Proposed mechanisms underlying these associations include pets providing elements of social support known to be positive for human health²⁷ and pets facilitating social interactions with others²⁸⁻³⁰. Others propose that there is no direct association between pet ownership and benefits to human health, but rather that co-factors such as personality traits, age, economic status, and health status impact an individual's decision to own a pet and these co-factors produce an apparent link between pets and health²⁹. Qualitative reports regarding pet ownership suggest that pets can contribute to the management of mental health symptoms^{31,3}. However, negative aspects of pet ownership can also occur, including the practical and emotional burden of pet ownership, and the psychological impact of pet loss^{31,3}.

There are few formal training opportunities available for ESA certification, and many of those advertised online are sponsored or produced by "lay animal enthusiasts and organizations, which can lead to bias³."

This is problematic given that, in a study by Boness et al (2017), 35.7% of mental health providers reported that they did not feel qualified to make an ESA determination³². However, several authors have recently proposed practice guidelines^{14,33}.

The two required components of an ESA evaluation are to 1) determine whether the patient has a chronic mental impairment due to a psychiatric condition as defined by the Diagnostic and Statistical Manual of Mental Disorders, Version 5 (DSM-5-TR) that substantially limits his/her functioning in one or more life areas (i.e., a disability); and 2) determine whether the ESA will alleviate these specific impairments^{13,3}. Psychiatrists should also consider the practical and mental abilities of the patient to care for the animal^{14,33}, and the ability of the animal to serve in an ESA role^{13,3}. As Younggren et al. elaborate, “Disability does not mean the individual has an attachment to the ESA, feels happier in proximity to the ESA, or just wants to accompany the animal, which is usually their pet. It means that the person requires the presence of the animal to function or remain psychologically stable”³³. The American Academy of Psychiatry and the Law (AAPL) Practice Resource for the Forensic Evaluation of Psychiatric Disability indicates that the psychiatrist conducting a disability evaluation must link the chronic mental impairments to a mental disorder. The AAPL Practice Resource additionally states that such an evaluation includes not only a psychiatric interview, but also a review of records and collateral information, and a consideration of explanations for the reported disability other than a mental disorder. AAPL guidelines additionally include an assessment for malingering³⁴.

Guidelines differ regarding the role a psychiatrist should have in assessing the specific animal for its potential to be an effective ESA. Younggren et al. assert that the psychiatrist should consider whether the animal has the appropriate temperament, disposition, and possible training needed to serve as an ESA³³. For example, is the dog going to be able to provide its calming effects on the owner when taken into a strange place, such as a crowded airport, or is it going to become so scared that it becomes aggressive, thereby worsening the patient’s anxiety? Younggren et al. emphasize the importance of obtaining collateral information from a certification program (e.g., Canine Good Citizen Test), an animal behaviorist, or veterinarian in helping to understand the animal’s temperament³³. They add that the psychiatrist should directly assess the interaction of the patient with the pet to determine whether the pet is in fact able to ameliorate the patient’s mental health impairments³³. In contrast, Hoy-Gerlach et al. (2019) state that the psychiatrist does not need to meet the animal or witness the patient-animal interactions¹⁴. They explain that it is acceptable for the psychiatrist to rely on the patient’s self-report, in a similar manner to how mental health providers evaluate standard interventions such as the use of coping strategies or a mindfulness practice¹⁴. Given that psychiatrists are not trained to assess an animal’s temperament, evaluating a specific animal’s suitability as an ESA is outside psychiatrists’ area of expertise and should not be a component of the evaluation.

Psychiatrists writing ESA certification letters should be aware that state laws may require that specific information be included and that this varies by jurisdiction. In general, the minimally necessary clinical information should be included in these letters to protect patient confidentiality. However, it is important for the psychiatrist writing the letter to specify that the animal is expected to alleviate the impairing psychiatric symptoms. Hoy-Gerlach et al. (2019) suggest that the psychiatrist review this letter every six months and update it as necessary with the goal of ensuring that the ESA is providing therapeutic benefits on an ongoing basis based on self-report and clinical observations¹⁴.

III. ETHICAL CONSIDERATIONS

Key Points:

- Given the limited evidence supporting ESAs, it is ethically permissible to decline to write ESA certification letters for patients.
- In considering whether to write a letter for an ESA, psychiatrists should carefully weigh the risks and benefits of an ESA. This analysis should take into consideration the psychiatrist's secondary ethical obligations to public health.
- Psychiatrists should be aware of the potential ethical concerns regarding role conflict.

Psychiatrists contemplating writing an ESA letter should be aware of several ethical considerations. It is unethical and illegal to engage in disability fraud by writing ESA letters simply to allow patients to bring pets to non-pet-friendly venues, to avoid fees associated with having a pet, and/or to override restrictions on breeds and species. In other words, although a psychiatrist may receive requests to bend the rules, psychiatrists have a duty to protect our integrity and avoiding writing anything known to be untrue⁴¹. Misusing ESA certifications as legal loopholes additionally “negatively impacts the public’s perception of the disabled”³⁵ undermining justice for those patients who genuinely require an animal’s support. Even when a patient has a genuine psychiatric disability, given the limited evidence supporting the use of an ESA, it is ethically permissible to decline to write an ESA letter.

When considering whether to write an ESA letter, the psychiatrist can think of an ESA as an experimental treatment to target mental health symptoms causing functional impairment. Like any experimental treatment, the psychiatrist should carefully weigh the relevant risks and benefits of an ESA for the individual patient, considering the paucity of evidence that supports the use of ESAs. For example, is the potential risk of financial strain associated with caring for a pet outweighed by the potential for the pet to relieve the patient’s symptoms of depression? Unlike most conventional treatments, an ESA directly impacts not only the patient him/herself, but also those around the patient. Therefore, although a treating psychiatrist’s primary obligation is to his/her patient, psychiatrists should also consider their secondary obligations to public health when weighing the risks and benefits of writing an ESA letter³.

Another ethical consideration is the role conflict that arises when a treating psychiatrist deviates from their traditional patient-advocate role to conduct an ESA evaluation³³. ESA evaluations are, at their core, disability evaluations; Boness et al. (2017) assert that they should be conducted in the same rigorous manner that other disability evaluations are, including an assessment of malingering³². To eliminate the ethical concern about role conflict and to capitalize on their expertise in legal topics some authors argue that, if resources are available, it is ideal for trained forensic practitioners to conduct these evaluations^{33,3}. Although some authors disagree and state that writing an ESA evaluation is “not a stand-alone administrative task like a disability determination, but rather an active intervention based on a clinical rationale¹⁴,” ethical psychiatrists should nevertheless be thoughtful about the way that they conduct an ESA certification, ensuring that they understand the requirements. In addition, as with any forensic evaluation, the psychiatrist should assess their own biases and strive for objectivity. If the psychiatrist performing the evaluation is the patient’s treating psychiatrist, they should also consider the potential effects that an assessment that does not support the patient’s wishes may have on the therapeutic relationship³³. It is also important for the psychiatrist to be aware of the potential harms associated with allowing a patient to manipulate the psychiatrist into writing a letter. Although the psychiatrist may feel as though this is a supportive gesture, if the patient knows that the doctor does not

believe what he or she is writing, the psychiatrist's credibility is undermined, and the patient may lose trust in his provider ⁴¹.

III. LIABILITY RELATED CONSIDERATIONS

Key Points

- Although, to our knowledge, psychiatrists have not been held liable for inappropriate ESA letters, the potential for liability is real.
- To avoid liability, ESA letter writers should have a clinical (or forensic) relationship with those seeking accommodation and clearly state the negative effect(s) of the patients' identified disability that the ESA would alleviate.
- Psychiatrists should write ESA letters only in states in which they have a license to practice, and only after an adequate professional evaluation.
- Dog owners may have liability for dog bites.

In May 2019, the California Board of Behavioral Sciences, Department of Consumer Affairs ordered the revocation of the license to practice of Carla Jeanne Black¹, a Licensed Marriage and Family Therapist, for practicing out of state without a license to do so, and for not doing a "proper assessment" before issuing an ESA letter³⁶. However, the revocation was stayed for a period of 3 years contingent on her complying with 19 different imposed conditions of probation, including education, being under formal supervision and payment of the cost of her investigation.

In this case, a landlord had complained to the Board three years earlier after a tenant presented a letter from Black that recommended an ESA. Investigation revealed several problematic findings including the statement on her website that she specialized in ESAs and their letters. Investigators learned that she was providing telehealth evaluations which lasted from 10 minutes to an hour to individuals desiring ESAs across the country, including in states where she did not have a license to practice. Armed with this evidence, the Board took its action.

Similarly, in *Riverbrook v Abimbola Fabode (2020)*, the Michigan Court of Appeals accused the district and circuit courts of avoiding their gatekeeper role by not allowing a deeper examination of the reliability and admissibility of the ESA letter written (on a letterhead bearing a canine bust) by Anne Venet, a "Limited Licensed Professional Counselor³⁷". Venet had diagnosed Fabode with a "Differential Illness under the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) that substantially limits one or more major life activities," but did not state what "Differential Illness" it was and what major life activity was impaired as a result. At the district court hearing, Venet testified in support of her letter, explaining that she determined Fabode's need for an ESA after a brief phone call. The district court declined to permit questioning of Venet by Riverbrook (a property owner that leased space for Fabode's mobile home) about the credibility of the determination that Fabode was disabled and needed a dog as a therapeutic aid. The district court's ruling (declining to permit questioning of the therapist) was affirmed by the circuit court. However, on appeal, the Court of Appeals vacated the ruling and remanded the case back to the district court for further proceedings, including granting Riverbrook the opportunity to question Venet's ESA recommendation.

In yet another case decided by the Indiana Court of Appeals, *Furbee v Wilson (2020)*, a tenant submitted a letter for an ESA from Monique Snelson², a Licensed Marriage and Family Therapy Associate (LMFTA),

that left many questions unanswered³⁸. The landlord subsequently asked the tenant to sign a consent form for the landlord to seek the following information from the LMFTA:

1. The nature of the mental or physical impairment that is disabling, including a reference to the DSM-5-TR description of the condition and a statement of what major life activity this disability interferes with.
2. Was a physical examination conducted of your patient?
3. Did you interview the patient in person?
4. How many sessions did you have with the patient and approximately how long was each session?
5. A statement from you indicating that you conducted an examination of the patient appropriate for the diagnosis of the mental impairment in question under the professional guidelines applicable to a Licensed Clinical Social Worker and as described in the DSM 5-TR.
6. Please provide a photocopy of your license.

The trial court ruled in favor of the tenant stating that the landlord's questions "exceeded the reasonable inquiry to which [it was] entitled." The appeals court reversed and ordered the trial court to enter summary judgment (court decision without going to trial) for the landlord. The Court of Appeals found that even if some of the landlord's questions about the number of sessions the tenant had with Snelson and how long each session lasted were overbroad, the question about the tenant's disability and the link between the disability and need for an ESA were not.

Interestingly, the question regarding the amount of information necessary to make a decision to approve ESA requests was the central issue in another case quoted in Furbee, *Bhogaita v. Altamonte Heights Condominium Ass'n*³⁹. In that case that began in 2008, Ajit Bhogaita, a US Airforce veteran diagnosed with PTSD by his psychiatrist, was denied a requested ESA accommodation to allow his dog to live in his residence despite three different supportive letters from his psychiatrist over several months. The psychiatrist explained the therapeutic relationship between Bhogaita and his dog, and that his condition (PTSD) limited his ability to work directly with other people such that without the emotional support of his dog, his social interactions would be overwhelming. In 2011, Bhogaita filed suit in the United States District Court for the Middle District of Florida, claiming that the Altamonte Heights Condominium Association, Inc (AHCA)'s denial of his request for a reasonable accommodation violated federal and Florida fair housing laws. The court granted in part Bhogaita's motion for summary judgment, finding that AHCA had constructively denied Bhogaita's request for a reasonable accommodation by using requests for extraneous information to delay. On appeal, the Eleventh Circuit affirmed the district court's ruling, holding that the FHA prevents housing providers from avoiding a finding of constructive denial of a reasonable accommodation request by using requests for "extraneous information" as evidence that they are still undertaking meaningful review. The court found that the psychiatrist's letters, which were provided to the condominium association before it requested additional information, contained all the information it needed to make a determination, therefore the AHCA's request for additional information "exceeded that essential for [its] critical inquiries^{38,39}". Notably, the psychiatrist's opinion was not the subject of inquiry in this case, unlike the cases discussed earlier.

While there is case law regarding claims of discrimination against individuals who are being denied the companionship of their ESAs in their dwellings and other locations, there is no evidence that psychiatrists have been implicated. Indeed, a review of available literature, including of a compilation of lawsuits involving emotional support or service animals covering the period from 1931 to 2019 prepared

by the Michigan State University Animal Legal and Historical Center⁴⁰ did not include lawsuits against physicians, including psychiatrists. There were ESA support letters written by a pediatric neurologist, cardiologists, primary care physicians and psychiatrists, among others. They were all written in the context of an established therapeutic relationship with the patient, identified a qualifying disability and the link between the disability and impairment of a major life activity, and the effect of the recommended ESA in alleviating their patients' symptoms.

This topic appears to be an evolving area of the law especially as it relates to potential liability of a physician who writes a letter recommending an ESA.

Dog Bites

Some states impose strict liability for dog bites on the dog owner. This means that the owner is always liable for the damage the dog causes if their animal bites someone in public or attacks while the victim is legally on the owner's property. Other states require dog bite victims to prove negligence. In these states, the dog might receive "one free bite" before the law imposes liability on the owner. The dog bite laws in many states don't apply in certain circumstances, such as when the injured person provoked the dog or was trespassing.

ESA v Service Animal

For purposes of potential liability, as described in an earlier section, it is noteworthy that ESAs are not considered service animals under Title II and Title III of the ADA¹. Service animals and their owners have some protection under the ADA. As defined earlier in this document, a service animal is defined as "any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability." A service animal would likely have a well-documented history of training and good behavior. Moreover, most service animals wear a vest that warns bystanders not to bother the animal. The warning helps the animal owner prove justification for bites or other injuries if the service animal was provoked. If an injury occurs because the victim bothered the service animal despite the warning, the owner can argue that they are not at fault for the victim's injury.

However, a service animal can be excluded from any ADA Title II or III public service or accommodation if any of the following situations exist:

1. The animal is out of control and the handler cannot get the animal under control; or
2. The animal is not housebroken.

Unlike the owners of service animals, the owners of ESAs are not protected by the ADA. Although ESAs generally do not require any kind of training, to distinguish ESAs from pets, some state courts have required training³.

Liability of ESA Letter Writer for Dog Bites

Liability analysis changes for different kinds of animals based on the particular circumstances, including the type of animal and the situation leading up to an attack by the animal. However, the liability analysis when damages are sustained as a result of an ESA appears to be the same as it would be when injuries result from a domestic pet with no special therapeutic designation. In other words, if a dog bites an

individual – even if that dog is an ESA – the owner would typically be held responsible, provided that the victim did not provoke the animal in some way. Homeowners and renters’ insurance policies typically cover dog bite liability, which could encourage litigation due to guarantees of financial compensation following successful litigation. However, it is important to note that in the United States, individuals can sue for virtually anything, even if the suit is meritless. Therefore, physicians writing an ESA letter should be alert to the possibility of being sued. For example, instead of designating a particular animal the physician has never met as an ESA, it would be more appropriate to make a broader statement such as, “I recommend this patient have an ESA to reduce distress and impairment associated with his mental health disability.” Physicians do not have the training to designate a particular animal as an ESA.

In a review of the literature, there seem to be no cases upholding an award against a provider who has written an ESA letter for an animal that went on to attack someone. In summary, lawsuits involving clinicians who recommend an ESA appear to be an evolving area of the law. It is currently unclear if criteria for holding letter writers accountable are clearly delineated across the country. In the California case described earlier, it is notable that the board did not determine what the standard for a proper assessment should be.

California law AB 468 has tried to clarify this thus:

The new law prohibits health care practitioners from providing documentation relating to an individual’s need for an emotional support dog unless the health care practitioner (1) holds a valid, active, license to provide professional services within the scope of the license in the jurisdiction where the documentation is provided; (2) establishes a client-provider relationship with the individual for at least 30 days prior to providing the documentation, (3) completes a clinical evaluation of the individual regarding the need for an emotional support dog, and (4) provides notice to the individual that knowingly and fraudulently representing oneself to be the owner or trainer of any canine licensed as, to be qualified as, or identified as, a guide, signal, or service dog is a misdemeanor. Violating these requirements may subject the health care practitioner to discipline from the licensing board.

The California law identifies important general rules; that a physician should practice with a valid license and only in states they are licensed to practice, that there should be an existing physician-patient relationship before an ESA is written, clinical justification for the recommendation of ESA should be stated, and the patient should be warned of the potential for liability. It would also be important that the physician state the major life activity impaired by the patient’s psychiatric disability and offer a professional opinion that an ESA would alleviate the impairment. Although not explicitly stated by the law, a forensic evaluation in lieu of a physician-patient relationship would seem appropriate.

Laws across the states will adapt as society’s relationship with animals continue to evolve and as ESA’s therapeutic role becomes clearer. Unfortunately, unclear rules have led some to take advantage of the system. As far as we are aware, psychiatrists have not faced lawsuits involving ESAs. However, they should remain alert to the potential of being sued if they deviate from established standards of professional practice.

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