

## ARTICLE

# Writing Letters to Help Patients with Service and Support Animals

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*When the function of a service, support, or assistance animal relates to a mental or emotional disability, a psychologist may be asked to write a letter for a patient seeking to live with the animal, usually a dog, or bring it onto an airplane or take it into a restaurant. Understanding the function of the dog will be important for the psychologist as there is no one-size-fits-all letter for all specialized dogs. This article analyzes the law and describes letters that helped patients and others that harmed them. The authors make recommendations about how to write such letters.*

*KEYWORDS* service animal, service dog, psychiatric service animal, emotional support animal, assistance animal, autism service dog, PTSD, animal–human bond

Psychiatric service and emotional support animals are increasingly used by individuals with mental and emotional conditions. These individuals want to live their lives to the fullest, which sometimes requires the assistance of a specialized animal. They may thus need to take these animals into restaurants and other businesses or to fly with them in airplanes. Bringing an animal with a specialized function or training into each of these environments involves satisfying criteria established by governmental agencies that determine when such animals may be present where pets are generally

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excluded. Psychologists and other mental health professionals are more and more being asked to write letters to support patients' arguments that their animals satisfy these governmental criteria.

Unfortunately, the criteria for housing, working environments, businesses, and transportation facilities are not uniform and, even within these broad categories, there are many variations on what exceptions must be made for animals with special functions whose masters have disabilities. Thus, what may satisfy a landlord may not satisfy the owner of a theater, what may satisfy an airline may not satisfy a restaurant at the airport. Although confusing, this variability is generally appropriate because an animal that provides emotional support to a tenant may be sufficiently calm and unobtrusive as to cause no problems when living in an apartment building but may not be adequately trained to remain quiet, almost invisible, in a restaurant. When the medical or mental health professional is asked to write a support letter regarding a patient's animal, the professional must realize that for many specialized animals there is no one-size-fits-all statement that can help the patient in every situation, except perhaps for service animals that satisfy the narrowest definition of that category of animal, in which case a letter will seldom be needed.

The mental health professional can help the patient by writing a letter assessing the benefits and value that the service or assistance animal provides the patient, but this type of professional cannot be expected to evaluate the training and function of the animal itself. If such an assessment is required for legal or other purposes, a qualified trainer or other specialist must be found. Nevertheless, the most important letter a patient may obtain regarding a service or assistance animal will often be from a medical or mental health professional. Such professionals should be familiar with what they can say under ethical constraints, what they need to say under the law to help the patient, and what they cannot say because of the limitations of the research and of their professional experience with the patient. It is our purpose to describe the various parameters that determine what is appropriate for a mental health professional to write on behalf of a patient.

It must be emphasized that writing a letter on behalf of a patient who, say, wants to live with an emotional support animal and occasionally fly with it but not to take it into restaurants or other places of public accommodation may not be the end of the issue for the professional who writes the letter. If the patient's living in an apartment with the animal leads to a legal dispute with a landlord or the attempt to bring the animal into an airplane is rebuffed and the passenger sues the airline, the letter will become part of the patient's evidence, and the professional may be called upon to justify statements made in the letter in a deposition or in open court. This can, in a worst case, lead to legal liability, so it is imperative that psychologists and other mental health professionals understand all the consequences of what they may say about a patient with a specialized animal.

It is appropriate to note that there is no national certification or registration system for service animals, though there are organizations that set standards for training and qualification of certain types of service animals. While documents from these organizations, such as Assistance Dogs International, may be helpful in understanding how and why a dog was trained, this information is not generally required for access rights of owners and users of service animals. An exception involves the Army and the Veterans Administration (VA), which have recognized training by organizations that are members of the International Guide Dog Foundation and Assistance Dogs International as a qualification for admission to Army and VA medical facilities, and for some military bases (See 77 Fed. Reg. 54368, September 5, 2012; OTSG/MEDCOM Policy Memo 12-005, January 30, 2012). These situations do not involve general access qualifications of the sort described here and will not be discussed further in this article.

#### FEDERAL LEGISLATION GUARANTEEING RIGHTS OF INDIVIDUALS WITH DISABILITIES

In passing the Americans with Disabilities Act (PL 101–336, hereinafter sometimes ADA), Congress noted that “discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services” (42 U.S.C. 12101(a)(3)). The Act includes specific subchapters regarding employment (42 U.S.C. 12111–12117), public services, primarily provided by state and local governments (42 U.S.C. 12131–12165), and public accommodations and services operated by private entities (42 U.S.C. 12181–12189). The discussion here will primarily refer to the third of these categories, public accommodations, although regulations issued in 2010 do provide specific mention of service animals with regard to state and local government services (75 Fed. Reg. 56164, September 15, 2010). The definition of “specified public transportation” in the ADA specifically excludes aircraft, as to which disability-related provisions are included in the Air Carrier Access Act (42 U.S.C. 12181(10)). The definition of “commercial facilities” specifically does not include “facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968” (42 U.S.C. 12181(2)).

These ADA statutory provisions do not mention service animals. Rather, the requirements relevant to service animals are elaborated in the Code of Federal Regulations in 28 CFR Parts 35 and 36, which will be discussed in greater detail in the sections below. Additional statutory authority for the issuance of these regulations comes from executive (5 U.S.C. 301) and U.S. Attorney General (28 U.S.C. 510) authority provisions.

As to air transportation, the Air Carrier Access Act (PL 99–435, hereinafter sometimes ACAA) provides that an air carrier may not discriminate against an individual who “has a physical or mental impairment that substantially limits one or more major life activities,” an individual who “has a record of such impairment,” or an individual who is “regarded as having such an impairment” (49 U.S.C. 41705). As with the ADA, the ACAA rules on service animals are provided in regulations issued by an implementing agency, in this case the Department of Transportation. The regulations in 14 CFR Part 382 regarding service animals will be discussed below. In addition to the regulations, the Department of Transportation has produced official guidance documents, published in the *Federal Register*, which are designed to allow practical application of the rules by airline personnel, particularly personnel at the gates whom the airlines delegate as responsible for determining whether a passenger has an animal qualified to fly in the cabin with the passenger.

Finally, as to housing, the Fair Housing Act (PL 90–284, amended numerous times) precludes discrimination against individuals with handicaps in housing accommodations (42 U.S.C. 3604). Regulations issued by the Department of Housing and Urban Development (HUD) elaborate on this requirement (with specific authority regarding assisted housing in various sections of 42 U.S.C. Chapter 8, subchapter 1) by requiring that certain types of housing providers not impose no-pets rules on “animals that are used to assist, support, or provide service to persons with disabilities” (24 CFR 5.303; see also 24 CFR 960.705). The HUD regulations are less specific as to general housing requirements (as opposed to HUD-assisted public housing) and, in such situations, there has been considerably more involvement of the courts, which has resulted in some variation among the states given that state and federal courts have not been entirely consistent in their interpretations of the requirements for landlords and condominium associations with regard to residents using specialized animals for medical or psychological reasons. While this inconsistency will be mentioned, there has been a recognizable trend toward accepting a broader range of “assistance animals” as requiring reasonable accommodation for non-publicly supported housing.

### Categories of Animals for Access Laws

Before the 1960s, guide dogs were the only animals that were trained to deal with a disability—blindness. Then came hearing dogs, mobility impairment dogs, seizure-alert dogs, recently hypoglycemia-alert and allergen-alert dogs, and more functions continue to be developed. In the last decade, dogs with specialized functions for those with mental conditions have begun to proliferate. Some basic definitions must be provided in order to distinguish the various types of specialized dogs that will be discussed here.

The three categories below move from the most restrictive (trained service animals) to the least restrictive (assistance animals that, under the relevant regulations and judicial decisions, need not be trained but must be under the owner's control). In all three cases, the owner of the animal (or user, since some service dogs remain under the ownership of service dog training organizations) must, for a professional's letter to do any good, have a mental or emotional condition, usually more specifically a condition listed in the latest edition of the *Diagnostic and Statistical Manual* (DSM; American Psychiatric Association, 2000). The psychologist's letter will, however, differ depending on the specificity of the animal's benefits to the patient. The more restrictive the category, the greater must be the correlation between what the animal can do and how this affects the patient's condition or symptoms of that condition.

Although the basic definitions refer to "animals," in most situations discussed, the animal will be a dog. Most rules lump medical and mental health professionals into a single category that includes psychiatrists, psychologists, psychiatric social workers, even specialized nurses as well as doctors whose treatments include psychoactive medications. Here, to simplify the discussion and to avoid using a long phrase—medical or mental health professional—over and over, we will generally use "psychologist" to refer to this broad category of professionals. Where a specific type of professional is described in a rule or legal case, this will be mentioned.

#### FIRST CATEGORY: DOGS TRAINED TO EXHIBIT SPECIFIC BEHAVIORS RELEVANT TO A PATIENT'S NEEDS

These are service dogs, which have the widest access of any category of specialized dogs and will be admitted to most businesses and all transportation facilities and housing accommodations (28 CFR 36.104, defining service animals for purpose of public accommodations; for discussions of service animals in transportation, see particularly 73 Fed. Reg. 27658, 27663, May 13, 2008; the broader category of animals relevant to housing access is discussed below). Most service dogs are highly trained, some taking as much as 2 years to be prepared for the end-user with the disability. This is true of guide dogs, mobility impairment dogs, autism service dogs, and others. Dogs that alert to oncoming seizures or allergens may receive less training but will still be trained at a level to satisfy most definitions of a service dog. Certain locations, such as petting zoos, intensive care units in hospitals, and some types of food production facilities, may appropriately exclude even service dogs for health or safety reasons. Living with a dog in an apartment or condominium does not generally require that the dog belong in this category, but a few courts have required this level of training and function for residential situations. Also, some transportation facilities, such as Amtrak, require that dogs be service dogs in order to ride on trains. Because regulations

issued by the Department of Justice (DOJ) under the ADA generally prohibit businesses from demanding documentary proof that an animal is a service animal, psychologists will not be asked to provide letters regarding such dogs as often as they may be regarding dogs in the following two categories (Department of Justice, Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, RIN 1190-AA44, 75 Fed. Reg. 56236, September 15, 2010; Nondiscrimination on the Basis of on the Basis of Disability in State and Local Government Services, RIN 1190-AA46, 75 Fed. Reg. 56164, September 15, 2010).

SECOND CATEGORY: DOGS THAT PROVIDE EMOTIONAL SUPPORT TO INDIVIDUALS WITH MENTAL OR EMOTIONAL CONDITIONS BUT HAVE ONLY OBEDIENCE TRAINING

Dogs that provide emotional support without specific training for a patient's condition are not usually defined as service dogs, though they are so defined under certain transportation-related rules. (“[T]he definition of a service animal includes: An animal that has been shown to have the innate ability to assist a person with a disability; or an emotional support animal” [73 Fed. Reg. 27658, May 13, 2008].) Under most definitions for this type of animal, the mental health condition must be recognized in the current version of the American Psychiatric Association's DSM. They must, according to regulations issued by the Department of Transportation, be necessary “as an accommodation for air travel and/or activity at the passenger's destination.” Such animals, usually but not always dogs, to be admitted to the cabins of commercial aircraft must nevertheless have an adequate level of obedience training so as not to be disruptive. This is the category of specialized animal most likely to generate requests for letters from psychologists and as to which letters the Department of Transportation has issued specific guidance (Department of Transportation, Nondiscrimination on the Basis of Disability in Air Travel, RINs 2105-AC97, 2105-AC29, 2105-AD41, 73 Fed. Reg. 27614, May 13, 2008; Nondiscrimination on the Basis of Disability in Air Travel; Draft Technical Assistance Manual, 77 Fed. Reg. 39800, July 5, 2012).

THIRD CATEGORY: DOGS THAT PROVIDE COMFORT TO PERSONS WITH MENTAL OR EMOTIONAL CONDITIONS AND ARE UNDER A MASTER'S CONTROL

Unfortunately, no single term is consistently applied to such animals, though we will use *assistance animal* here to describe an animal that can be characterized in this manner as well as including the animals described in the first two categories. (Regulations of the HUD refer to “animals that assist, support, or provide service to persons with disabilities” [24 CFR 5.303]. The preamble to regulations regarding such animals generally uses the term “assistance

animal” throughout [73 Fed. Reg. 63838, October 27, 2008].) An owner with such an animal is generally entitled to live with it in a residence. Under rules of the HUD, such animals must alleviate “at least one of the symptoms or effects” of the patient’s disability, or “affirmatively enhance a disabled [person’s] life by ameliorating the effects of the disability” (*Bronk v. Ineichen*, 1995). This is less stringent than the second category, where the animal must be necessary to the patient’s mental health or treatment, as *alleviating or ameliorating* an effect of a condition appears to not be *necessary* to the patient’s mental health. (It is not clear that courts always make such a distinction.) Such animals do not need to have even obedience training if they are under the master’s control and do not present a threat to other residents and are cleaned up after and kept away from areas in the residential environment where pets are not allowed (See HUD, Pet Ownership for the Elderly and Persons With Disabilities, RIN 2501-AD31, 73 Fed. Reg. 63834, October 27, 2008; Memorandum of Sara K. Pratt, Deputy Assistant Secretary for Enforcement and Programs, HUD, New ADA Regulations and Assistance Animals as Reasonable Accommodations under the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973, February 17, 2011).

Many laws refer to service, support, and assistance animals along with many variations on these terms (assistive, therapeutic) without, particularly in state laws, providing any definition of the terms, perhaps assuming that relevant federal definitions can be applied where necessary. Thus, for a local bus line, it might be expected that an emotional support animal will be able to travel with the passenger because the Department of Transportation has said that such animals may travel with passengers in the cabins of commercial airplanes. Other evidence, such as a phone conversation with a ticket seller, may indicate that the animal has to be a fully trained service animal, which is characterized in Category One above. A letter that says that the animal provides necessary emotional support may not be enough if the local bus line has decided that only service animals, as defined by the DOJ, may go aboard its buses. In this case, it might be best that the professional explain that his or her letter will not be helpful and decline, if possible, to write it for the patient at all.

## Places of Public Accommodation

Most businesses, such as restaurants, theaters, hotels, hardware stores, and the like, do not have to admit pets or even emotional support or comfort animals. Thus, their obligations are generally only to users of dogs in Category One. In 2010, the DOJ defined a service animal 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” (28 CFR 36.104; 75 Fed. Reg. 56236, 56250, September 15, 2010; miniature horses that serve as guides, while not defined as “service

animals,” were given the same access as service dogs). The Department further stated that the “work or tasks performed by a service animal must be directly related to the handler’s disability.” The word *handler’s* was changed to *individual’s* in 2011 at least in part to indicate that a service dog might sometimes serve an individual who is not its handler, as could happen with an autism service dog (76 Fed. Reg. 13286, March 11, 2011). The definition specified, however, that “provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.” Thus, as indicated in the categorization provided above, an emotional support animal is not, to the DOJ or under most definitions, a service animal.

A business is entitled to inquire as to the function of a purported service animal if its function is “not readily apparent.” In such situations, as will generally be the case with a psychiatric service animal, the business can inquire “if the animal is required because of a disability and what work or task the animal has been trained to perform.” Asking the task or function an animal has been trained to perform does not violate the prohibition on requesting information about an individual’s specific disability. Thus, as noted in *Grill v. Costco Wholesale Corp.* (2004), the task or function question could be answered by, for example, “the animal is trained to alert me when a medical condition is about to occur” or “the animal is trained to pick items up off the floor for me.” Such questions and answers do not require that the individual divulge the specifics of his or her disability.

#### AIRLINE TRAVEL

Airline travel requires that an animal either be trained as a service animal or provide mental or emotional support to an individual with a DSM condition, but even if an animal has not been trained for its support function, it must exhibit a sufficient level of support as to not be a nuisance inside the aircraft. Thus, airline travel involves admitting users of dogs in Categories One and Two above.

The Department of Transportation defines a service animal as any “animal that is individually trained or able to provide assistance to a qualified person with a disability; or any animal shown by documentation to be necessary for the emotional well-being of a passenger” (73 Fed. Reg. 27614, 27657, 27663, May 13, 2008). The Department has announced its intention to revise this definition slightly to read:

*Service Animal:* Any animal that is individually trained or able to provide assistance to a qualified person with a disability or any animal shown by documentation to be necessary to support a passenger with an emotional or mental disability. (77 Fed. Reg. 39800, 39804, July 5, 2012)

The revision means that the passenger must have an emotional or mental disability, not just that the service animal is necessary for the passenger's emotional well-being. The Department wants to be clear that an animal providing only emotional support to a person whose only disability is physical does not have to be admitted to the cabin. Carriers may insist on recent documentation from a licensed mental health professional to support the passenger's desire to travel with such an animal. Under 14 CFR 382.27, airlines may require advance notice regarding transportation "of an emotional support or psychiatric service animal in the cabin." The rules also specify that any animal admitted to a cabin "must be trained to behave properly in a public setting." Thus, the animal should have a commensurate level of obedience training.

In releasing guidance on what a passenger must produce regarding an animal, the Department specified that a mental health professional's support letter must be on office stationery:

With respect to an animal used for emotional support (which need not have specific training for that function but must be trained to behave appropriately in a public setting), airline personnel may require current documentation (*i.e.*, not more than one year old) on letterhead from a licensed mental health professional stating (1) that the passenger has a mental health-related disability listed in the Diagnostic and Statistical Manual of Mental Disorders (DSM IV); (2) that having the animal accompany the passenger is necessary to the passenger's mental health or treatment; (3) that the individual providing the assessment of the passenger is a licensed mental health professional and the passenger is under his or her professional care; and (4) the date and type of the mental health professional's license and the state or other jurisdiction in which it was issued. . . . Airlines are not permitted to require the documentation to specify the type of mental health disability, *e.g.*, panic attacks. (73 Fed. Reg. 27614, 27659)

Thus, psychologists are advised that they must put a support letter on the office letterhead and must include information about their licensing. An exact DSM condition need not be specified, but the psychologist must be willing to state that the animal is "necessary to the passenger's mental health or treatment."

In issuing final regulations in 2010, the DOJ received comments proposing precisely the same requirements regarding letters from mental health professionals as were adopted by the Department of Transportation. The DOJ rejected this approach to service animal verification by mental health professionals, stating:

These commenters asserted that this will prevent abuse and ensure that individuals with legitimate needs for psychiatric service animals may use

them. The Department believes that this proposal would treat persons with psychiatric, intellectual, and other mental disabilities less favorably than persons with physical or sensory disabilities. The proposal would also require persons with disabilities to obtain medical documentation and carry it with them any time they seek to engage in ordinary activities of daily life in their communities—something individuals without disabilities have not been required to do. Accordingly, the Department has concluded that a documentation requirement of this kind would be unnecessary, burdensome, and contrary to the spirit, intent, and mandates of the ADA. (75 Fed. Reg. 56272, September 5, 2010)

Despite rejecting the approach of the Department of Transportation, a user of a service dog in a setting governed by DOJ rules may often find that having a letter from a mental health professional will reduce resistance to access with the animal.

#### HOUSING

The trend among courts that have considered whether an animal can live in an apartment or condominium is to require that an animal belong in Categories One, Two, or Three. Some jurisdictions had restricted housing to Category One. For instance, in 2003, a federal district court in Hawaii had limited access to a condominium unit to a service dog in *Prindable v. Association of Apartment Owners of 2987 Kalakaua* (2003). Recently, however, a judge in the same court found that the law had evolved since 2003 and that a dog did not require specialized training for accommodation to a no-pets policy of a condominium association (*Association of Apartment Owners of Liliuokalani Gardens at Waikiki v. Taylor*, 2012).

The Fair Housing Act ensures that an individual with a handicap, which is defined as “a physical or mental impairment which substantially limits one or more of such person’s major life activities,” should not be discriminated against in any residential environment (42 U.S.C. 3602(h)). Discrimination includes a refusal to make a reasonable accommodation in rules, policies, practices, or services when such accommodations are necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling (42 U.S.C. 3604(f)(3)(B)).

The HUD has issued general regulations on reasonable accommodations that include an example of denying a blind applicant a dwelling unit because the applicant has a guide dog. The example states that this is a violation of the regulation “because, without the seeing eye dog, the blind person will not have an equal opportunity to use and enjoy the dwelling” (24 CFR 100.204(b) Example (1)). The DOJ and the HUD have issued joint guidance, the *Joint Statement of the Department of Housing and Urban Development and the Department of Justice: Reasonable Accommodations Under the Fair*

*Housing Act* (2004), giving, as an example of a failure to make a reasonable accommodation, not allowing a tenant with a hearing or signal dog to live with the dog in a residence. A hearing or signal dog alerts a master who is deaf or hearing impaired to sounds, such as an alarm, doorbells, tea kettles boiling, and so on, but presumably this is only an example, and other service dogs would be covered. The *Joint Statement* specifies that a housing provider may not ask about the nature or severity of a disability, though it may ask for enough “disability-related information . . . to verify that the person meets the [Fair Housing] Act’s definition of a disability (i.e., has a physical or mental impairment that substantially limits one or more major life activities).” Thus, in the opinion of these federal agencies, a psychologist may help a patient by writing a letter indicating that the individual has a disability but, as with the second category above, the psychologist does not need to specify what the disability is.

The HUD has issued regulations concerning the application of the general principles of the Fair Housing Act to individuals with animals living in HUD-assisted public housing and multifamily housing projects and for such projects for the elderly and persons with disabilities. These regulations do not apply to most non-HUD-assisted housing situations—thus, do not apply to the average rental or condominium arrangement—but courts often look to the HUD’s rules when considering what must be required of a landlord or condominium association. The HUD’s rules for these specific types of housing provide that no-pets policies may not be enforced “against animals that are necessary as a reasonable accommodation to support, or provide service to persons with disabilities” (24 CFR 5.303; 24 CFR 960.705(a)). Among functions such animals might perform are “alerting individuals to impending seizures, and providing emotional support to persons who have a disability related need for such support” (73 Fed. Reg. 63834, October 27, 2008).

The regulations regarding HUD-assisted public housing state that the individual requesting the accommodation for the assistance animal must (a) have a disability, (b) need the animal to assist with the disability, and (c) demonstrate that there is a relationship between the disability and the assistance that the animal provides. The HUD states that a housing authority is entitled to verify the existence of the disability if it is not readily apparent. Thus,

persons who are seeking a reasonable accommodation for an emotional support animal may be required to provide documentation from a *physician, psychiatrist, social worker, or other mental health professional that the animal provides support that alleviates at least one of the symptoms or effects of the existing disability.* (73 Fed. Reg. 63825, 63834 October 27, 2008; emphasis added)

HUD specifies that

emotional support animals do not need training to ameliorate the effects of a person's mental and emotional disabilities. Emotional support animals by their very nature, *and without training, may relieve depression and anxiety, and/or help reduce stress-induced pain in persons with certain medical conditions affected by stress.* (73 Fed. Reg. 63836; emphasis added)

Thus, a psychologist asked to help an individual keep an animal in these specified kinds of public housing with a no-pets policy must be prepared to state that the patient's animal "alleviates at least one of the symptoms or effects" of the patient's disability. The psychologist does not need to verify that the animal is trained for any specific function: only that it performs an alleviating function by living with the patient. Some of the letters that have been most effective in disputes that have reached litigation, as discussed below, did provide specificity as to the psychological condition of the patient as well as describing the specific nature of the animal's benefits to the patient.

### Deducting Service Animal Expenses on Tax Returns

In an Information Letter sent to Congressman John Tanner, (IRS, INFO 2010-0129, May 11, 2010), the IRS cited two Tax Court cases effectively providing that to deduct the cost of a psychiatric service dog, the expense of the dog must be made primarily for the prevention or alleviation of a disease, and the taxpayer must be prepared to show that these expenses would not have been made but for the disease (*Havey v. IRS*, 1949; *Jacobs v. IRS*, 1974). To succeed in a claim for a deduction, a taxpayer would be wise to obtain a letter from a medical or mental health professional in advance of getting a service or emotional support dog. The letter would, ideally, refer to the professional's recommendation that the dog be obtained and state that the dog would alleviate the patient's condition or a symptom of that condition. Although many users of service animals do not have significant income, the tax benefit of owning a service dog may be particularly apparent to parents of an autistic child who may purchase a service dog at significant cost.

### LETTERS AND TESTIMONY THAT WERE PERSUASIVE

A municipal housing authority tried to remove Carol Henderson's dog, which weighed 90 pounds, because it was well over the building's 20-pound limit. (*Iowa ex rel. Henderson v. Des Moines Municipal Housing Agency*, 2007, 2010) Henderson sought to establish that the dog was a service dog and enlisted the help of Dr. Jerilyn Lundberg, who wrote a letter stating

Carol Henderson has been diagnosed with post-traumatic stress disorder and has been assaulted several times. She has self trained a service dog to assist her with tasks around the home such as turning on the lights when she enters a room and retrieving her light instrument as well as acknowledging suspicious persons on the property. She has had one circumstance already in which her service dog has chased away a potential offender.

This is one of the few cases where a court mentions an end-user training a service dog. The dispute continued, and Lundberg wrote another letter:

Carol Henderson is under my care. She is the victim of a violent crime and has psychiatric diagnoses related to that. She is presently also in the process of evaluation and treatment of these psychiatric disorders. She has a self-trained service companion that lives with her. This animal plays an important part in her recovery and in her psychological well being at this time. In my opinion, removal of the animal would impede the process of recovery.

Then a psychotherapist wrote a third letter on Henderson's behalf:

As you may recall, Carol was diagnosed with Post Traumatic Stress Disorder—(309.81) by Dr. Lundberg. Carol underwent Psychiatric review with Dr. Margaret Shin, MD on April 7, 2005. Carol was diagnosed with Adjustment Disorder with Depressed Mood-309.00. Carol has completed some psychotherapy sessions with this clinician in the past few weeks and she will remain in services. Carol has essentially just begun treatment. She is prone to emotional outbursts and is often overwhelmed by the events at hand. She cannot fully care for herself, in terms of full-time employment, primarily due to her tendency to isolate and suffer with migraines. Her lack of self-care has led to a mental health commitment by family members as recent as 2003. Carol displays characteristics of one who has been traumatized. Her former husband beat her face against a pile of rocks/concrete causing a good deal of damage to the facial region. To this day, Carol has a lack of interest or desire to participate in important social activities. She remains apart from others and is estranged from her parents. Additionally, she is cautious and has not developed trust in others. Carol has been advised to apply for disability and is proceeding with that effort. It is my feeling that her depression will eventually be seen as more serious, as she continues with the treatment process. Dr. Lundberg has urged Carol to continue with a service animal and has advised that it is essential to Carol's emotional health. Please consider her status carefully in regards to future housing options.

This is one of the most detailed letters reported in the case law of service dog disputes and is one of the few that gives specific DSM categories. The letter

includes more detail than the HUD and most courts require, but this detail may have been persuasive to the Iowa appellate court, which sent the matter back down to the trial court for further proceedings. In doing so, the court said that “a reasonable jury could find that the requested accommodation [the dog] was ‘necessary to afford [Henderson] equal opportunity to use and enjoy her dwelling.’”

A New York City resident who was having trouble taking her dog on public transportation, sued the NYC Transit Authority (*Stamm v. New York City Transit Authority*, 2011). In addition to her own testimony regarding how her dog helped her, a report was written by Dr. Spencer Eth, a professor and vice chairman of psychiatry at New York Medical College. The report stated:

Wargas [the dog] has assumed critical psychological tasks, which Ms. Stamm relies upon to help maintain her psychiatric stability. Wargas is exquisitely sensitive to changes in Ms. Stamm’s level of anxiety, such that Wargas may become aware of escalating anxiety before Ms. Stamm herself can appreciate the change in her mental state. Consequently, Ms. Stamm is better able to control the disruptive effects of her psychological terror.

The court noted that Eth’s evidence “may be sufficient to establish that the tasks which Ms. Stamm’s dogs have been trained to perform fit within the category of tasks ‘that assist individuals with disabilities to detect the onset of psychiatric episodes and ameliorate their effects.’” A motion for summary judgment by the city was denied.

In a case involving a student who sought to bring a service dog to a college campus, the student first produced a psychological evaluation outlining her mental health diagnosis (*Alejandro v. Palm Beach State College*, 2011). The court said that the student’s PTSD and depressive disorder were well documented:

Plaintiff’s psychologist states that without her service dog, Plaintiff “appears to experience severe and debilitating anxiety as a result of her disability.” . . . The psychologist also states that Plaintiff’s service dog “makes a clinical difference for Ms. Alejandro, and has proved to be a crucial accommodation, enabling her, for the most part, to study and learn without experiencing debilitating anxiety.”

The court granted Alejandro’s request for injunctive relief to bring her service animal on the campus.

In a dispute with a condominium association, a veteran suffering from PTSD submitted three letters from a doctor, whose background and specific degree were not described. Portions of the letters read as follows:

- (1) Due to mental illness, [Bhogaita] has certain limitations regarding social interaction and coping with stress and anxiety. In order to help alleviate these difficulties, and to enhance his ability to live independently and to fully use and enjoy the dwelling unit, I am prescribing an emotional support animal that will assist [Bhogaita] in coping with his disability. . . .
- (2) I am prescribing an emotional support animal that will assist [Bhogaita] in coping with his disability, specifically his dog, Kane. [Bhogaita] has therapeutic relationship with this specific dog, Kane. As an emotional support animal, Kane serves to ameliorate otherwise difficult to manage day to day psychiatric symptoms in [Bhogaita]. . . .
- (3) [Bhogaita] has certain limitations regarding social interaction and coping with stress and anxiety. This limits his ability to work directly with other people, a major life activity. . . He is able to work with the assistance of his emotional support animal. Otherwise his social interactions would be so overwhelming that he would be unable to perform work of any kind. . . . (*Bhogaita v. Altamonte Heights Condominium Association, Inc.*, 2012)

Though the three letters were obviously repetitive and lacked detail, they were enough to persuade the court that the resident had a disability and that a reasonable accommodation to allow the dog was necessary for the resident to enjoy the dwelling.

In a Florida case, *Falin v. Condominium Association of La Mer Estates, Inc.* (2012), the resident's mother, who lived with him, had a 3-pound Chihuahua. Encountering resistance from the condominium development, the Falins submitted a letter from Dr. Maxine Hamilton, Mrs. Falin's physician, stating that the dog helped alleviate her disabilities and recommended that she be allowed to keep it as an emotional support animal. The condominium management attacked the medical evidence. According to the court, Dr. Hamilton "conceded that she had signed the letter (which Mr. Falin provided) without making sure that it was accurate." Nevertheless, the court found that Dr. Hamilton's subsequent testimony was sufficient for a jury to find that "Ms. Falin's dog was necessary to alleviate her disabilities," which could include "at a minimum the showing that the desired accommodation will affirmatively enhance a disabled plaintiff's quality of life by ameliorating the effects of the disability [quoting *Bronk v. Ineichen*]:"

Specifically, Dr. Hamilton opined that the dog helped remedy Ms. Falin's anxiety, difficulty in sleeping, and related symptoms. . . . That opinion was based on reports from Ms. Falin's family members and the doctor's own observations of Ms. Falin. . . . When asked by Plaintiff's counsel how Ms. Falin would react if she did not have her dog, Dr. Hamilton

stated, “I think she would get very agitated, distraught, become difficult to . . . take care of.” . . . This testimony is substantial evidence that would support a finding in Plaintiff’s favor on the necessity element of his reasonable-accommodation claim. . . . And to the extent this evidence conflicts with Dr. Hamilton’s other testimony, it is the role of the jury—not this Court—to resolve that conflict.

Thus, the doctor’s testimony overcame the boiler-plate nature of the letter she had signed. The court denied the condominium development’s motion for summary judgment.

In a case arising in Ohio, residents of a mutual housing corporation sought to keep a dog for their daughter Lynsey (*Overlook Mutual Homes, Inc. v. Spencer*, 2009). They produced a letter from Dr. Miriam Hoefflin, Lynsey’s treating psychologist, indicating that, as a result of her assessment and counseling of Lynsey, she had recommended that the child “have a service dog to facilitate treatment.” Although the dog’s barking indicated a lack of training, the psychologist’s letter helped establish that the dog could be an emotional support animal.

In a Pennsylvania case, a resident of a condominium had multiple sclerosis and sought to keep a dog (*Fulciniti v. Village of Shadyside Condominium Association*, 1998). A psychiatrist sent a letter to the association stating that the tenant needed the dog for “special protection, back-up communication, and physical assistance” and that the tenant’s “quality of life should be improved by the dog.” A neurologist wrote a letter to the same effect. The letters were persuasive to the federal district court.

## LETTERS AND TESTIMONY THAT WERE NOT PERSUASIVE

In a Florida case, an individual who obtained a Labrador retriever in contravention of the condominium association’s rules did not at first claim it was a service animal (*Hawn v. Shoreline Towers Phase I Condominium Association, Inc.*, ND Fla. 2009). When he began to sense that the mere lovability of the dog was not going to change the association’s policy, he shifted to a service dog argument. A federal district court described a letter from one psychologist:

In one letter, a psychologist, Patrick Evans, Ph.D., opined that the plaintiff suffered from severe panic attacks; was unable to properly cope with anxiety and stress; and was particularly vulnerable “while residing at his home/condo due to past occurrences on that property.” Dr. Evans thus wrote that he was “prescribing a service animal” to provide support and help plaintiff cope with his “emotionally crippling disability.”

The court seemed predisposed to minimize the opinions of Dr. Evans, stating,

Although the defendants could not have known this at the time, the record shows that at the time Dr. Evans signed this one-page letter, his entire treatment of plaintiff consisted of two recent one-hour counseling sessions. During the second session, the plaintiff gave Dr. Evans the “text” or “template” for the letter that he wanted to be sent to Shoreline. Dr. Evans testified during deposition that he used “much” of what the plaintiff wrote, although he “probably made some changes” to the letter before sending it to the board.

A second letter from a chiropractor was also written by the resident for the chiropractor to sign. The court granted summary judgment to the condominium association. The case clearly stands for the proposition that professionals should write their own letters.

In a case where a customer was denied access to a Costco store in Washington State, the veteran produced a letter from her psychologist describing her disabilities and stating that she was a suitable candidate for a service animal (*DiLorenzo v. Costco Wholesale Corp.*, 2007). The animal she tried to bring into the store was, however, a puppy, which she sometimes carried. The store was skeptical, and the court agreed it had a right to be. The psychologist’s recommendation should not, however, be criticized, as it was a general recommendation, not a determination regarding the dog the veteran actually brought to the store.

In a dispute with a homeowner’s association, a resident submitted evidence from a medical doctor, a psychiatrist, and a nurse (*Sun Harbor Homeowners’ Association, Inc. v. Bonura*, 2012) Unfortunately, the three did not always agree:

Dr. Ross testified via video deposition that he treated Ms. Vidoni between 2004 and 2005 for injuries she suffered as a result of a motor vehicle accident which occurred in 2004. He found that Ms. Vidoni had improved throughout the treatment period, and although she continued to have lingering deficits in coordination and dexterity, he concluded that she did not have any substantial limitation on any major life activity. Dr. Ross did not prescribe a therapy dog for Ms. Vidoni.

Dr. DeFilippo, a psychiatrist, saw Ms. Vidoni four times beginning in October 2009, some 4 months after the lawsuit was filed in this case. He reviewed Ms. Vidoni’s records, including a 2008 letter from Dr. Luciano Dias. . . . Dr. DeFilippo opined that he believed a therapy dog was required for Ms. Vidoni’s condition because of her ongoing depression and anxiety, and his personal observation on two occasions of her interaction with the dog, which he noticed helped her with those troubles.

There were a number of reasons why the residents lost their case, including a failure to cooperate in providing answers to legitimate questions of the homeowners' association, but the inconsistent medical testimony did not help.

In a case arising in Bismarck, North Dakota, a condominium association attempted to remove the resident's dog (*Lucas v. Riverside Park Condominiums Unit Owners Association*, 2009). The resident produced a letter from a clinical psychologist stating Lucas needed "a therapeutic companion assistive animal." A second letter from a physician referred to a prescription for a therapeutic pet "as a medically needed part of his treatment." Another letter from a physician asked the Association "to permit A. William to keep, maintain, and raise an assistive therapeutic companion service animal (dog). It is also my opinion that there has been a significant change in Mr. Lucas' health (disability status) since the last time he was examined by me." The court called the letters "conclusory and ambiguous." Although the letters may not have helped, the tenant likely lost the case because of unreasonable demands he placed on the association for viewing the materials regarding his condition.

## SCIENTIFIC STUDIES OF PSYCHOLOGICAL BENEFITS OF ANIMALS

Some reviews of legal and research literature have seen evidence that animals are effective in treating mental conditions:

Studies continue to validate the effectiveness of animals in treating physical and mental illnesses, and emotional support animals have been proven to decrease depression, stress, and anxiety. (Waterlander, 2012, citing two newspaper articles and a law review article for this observation)

Some recent articles characterize prior results less optimistically. Peacock, Chur-Hansen, and Winefield (2012) included a lengthy discussion of companion animals and mental health and concluded that much of it was characterized by methodological weakness. These authors note that some prior studies indicate that companion animals may actually exacerbate psychological symptoms, cause higher levels of depression, and increase emotional distress and psychoticism. Threat of separation from a companion animal may lead to rejection of medical advice and failure to move out of inappropriate housing situations. Both from prior studies and the part of the paper that includes original research, the authors conclude that "strong attachment bonds to a companion animal might not necessarily be beneficial and, in some circumstances, might potentially lead to poor health outcomes"

(Peacock et al., 2012, p. 301). They also made an observation relevant to the issue of the psychological effect of service animals:

The level of attachment between service animals (such as guide dogs for the vision impaired) has attracted little attention in the scientific literature. Given the important role service animals play, a better understanding of the working animal-human bond would be instructive. (Peacock et al., 2012, p. 301)

Herzog (2011) notes that there has been a strong media bias because people like to read stories about how good their pets are for them, but “studies in which pet ownership has been found to have no impact or even negative effects on human physical or mental health rarely make headlines” (p. 237). The lack of media attention may also explain part of another phenomenon, which Herzog calls the “file drawer effect.” This is a tendency of researchers not to publish results that are not positive towards animal ownership:

At a session at a 2009 conference on human–animal interactions, for example, one researcher reported that separation from their pets had no effect on the psychological adjustment of college students, another found that interacting with animals did not reduce depression in psychiatric nursing home residents, and a third found no differences in the loneliness of adult pet owners and non-owners. So far, none of these studies have appeared in print. (Herzog, 2011, p. 238)

Winkle, Crowe, and Hendrix (2012) observe that “few rigorous studies” exist regarding the utility of dogs as an “assistive technology option” (p. 54). The authors searched the literature for service animal studies using keywords and found 432 papers that might have been relevant. After eliminating studies that were anecdotal, reviews, primarily qualitative, and dissertations, they were left with only 23, and 11 more were eliminated for focusing on issues the authors were not concerned with, leaving only 12. Unfortunately, in the opinion of the authors of this overview study, all 12 papers they looked at closely “had research design quality concerns including small participant sizes, poor description of the interventions, outcome measures with minimal psychometrics and lack of power calculations” (p. 54). Persons with progressive conditions such as multiple sclerosis and Parkinson’s disease demonstrated significantly higher positive affect scores, with service dogs moderating the effects of depression. Psychosocial characteristics did not differ significantly between those partnered with service dogs and those without service dogs. The authors concluded that in order for occupational therapists to make recommendations for the use of service dogs, “the evidence to support such decisions must be strengthened” (p. 54).

Beck et al. (2012) looked at therapy dog programs for soldiers to determine whether the interaction with dogs “improved mood states, decreased stress levels, increased resilience, lowered levels of fatigue, and improved daily functions for reintegration and transition to the next stage of their life. . .” (p. 40). This study did find some improvement from animal-assisted therapy:

There were no differences over a period of 8 weeks in mood state, stress levels, resilience, fatigue, and most measures of daily function following participation in OT [Occupational Therapy] Life Skills classes with and without ATT [AAT?]. Significant differences were found for 3 subscales of the FSQ [functional status questionnaire] (where a higher score indicates improvement); psychological function (PF), work performance (WP), and quality of interaction (QI). (Beck et al., 2012, p. 41)

The authors conceded that their results were generally “nonsignificant” but noted that anecdotal evidence “supports the value of the intervention with service members” (p. 41). The trouble, of course, is that anecdotal evidence will not satisfy much of the psychological research community. (For the effect of pets in reducing stress, see also Allen [2003]).

### SO WHAT CAN PSYCHOLOGISTS SAY, AND WHAT SHOULD THEY SAY?

For most letter requests regarding a specialized animal, a psychologist should be prepared to say:

1. The individual on whose behalf the letter is being written is a patient. If this is not the case, the psychologist should state the reason for the evaluation. If it is to confirm the recommendations or opinion of another professional with regard to a specialized animal, the psychologist should state how he or she was able to make such a confirmation. The patient must generally suffer from a condition or conditions listed in the latest DSM, but the condition or conditions need not be specified. Letters from mental health professionals sometimes specify the condition because the effect of the dog on the condition is much easier to explain if the condition is described. Thus, a child that engages in pica, eating inappropriate items, that has a dog that is able to interrupt this behavior, is often most easily described as having a condition on the autism spectrum and the dog as an autism service dog.
2. The patient has an animal that alleviates an effect or symptom of the condition by providing either (a) services related to the condition or (b) comfort or (c) both. The psychologist should understand that if the most

that can be said is (b), the animal is likely an emotional support animal, and the letter will not help the patient with most public accommodations or some transportation situations, though it may be useful for housing or airline travel.

3. It would probably be useful to state whether the psychologist has observed the animal interacting with the patient. Otherwise, it may appear that the psychologist is repeating the patient's self-reporting of the benefits of the animal. Letters that have been written for medical and psychological professionals by patients have generally had little influence with judges and may actually hurt the patient's arguments for regarding the animal involved as something more than a pet.
4. If the psychologist watched the patient interacting with the dog, he or she should state how long the observation occurred. The psychologist should ask that the dog perform tasks it has been trained to perform with regard to the disability. The psychologist's presence is likely to keep the patient stable, but if the dog interrupts some destructive or symptomatic behavior, this would be extremely important to note. Thus, if the dog presses itself to the patient's back when he or she is in a line to get in a theater, a way that some dogs are trained to make PTSD patients feel safe, this should be noted.
5. It will be particularly useful if the psychologist states that he or she recommended that the patient obtain a specialized animal in the first place. If so, the letter should state whether the recommendation was for a service animal or an emotional support animal. For a tax deduction for the cost of acquiring a service animal (or conceivably an emotional support animal), the patient may have to establish that the animal was acquired specifically because of the condition and would not have been acquired if the patient had not had the condition. The psychologist recommending the animal in advance will help this argument considerably.
6. It will be helpful if the psychologist can speculate on possible negative effects should the patient not be able to live with the animal, if a housing situation is involved, or have the animal with him or her, if travel or access to a public accommodation is involved. Saying that the individual will be more comfortable if he or she can keep the animal nearby may not be so helpful because this would be true of many people and their pets, and businesses are appropriately concerned that the reason many people want to keep an animal nearby is because it makes life more fun for them, even if it discomforts those around them. For a veteran with PTSD, it can be particularly helpful to state that the animal is trained to perform a specific task—say, sit at the veteran's back and keep some distance from people behind him or her—and to say that this task will reduce the chances of the veteran having a panic attack.
7. Psychologists should not write letters unless they can say that the animal in question can provide or is providing some benefits to the patient.

They should not claim more about the benefits of the animal than they can make from their own observations and should not make claims that the animal is curing the patient of anything.

8. Although the psychologist has to be careful not to claim expertise he or she does not have, it will be useful to mention whether there has been contact with a professional dog trainer the psychologist knows to have credentials qualifying that individual to train service dogs. The psychologist should request any training records specific to the work or tasks the dog performs with regard to the needs of the individual. If the dog was trained under a specific regimen of a training organization, that organization's protocols should be reviewed. Some organizations of dog trainers, such as Assistance Dogs International, post helpful materials online. If the psychologist recommended a service dog for the patient and actually recommended a specific source for the dog, the letter should state why that specific source was recommended. Thus, the psychologist might say that he or she has known other dogs trained at the facility for individuals suffering from PTSD.

Generally, the more detail the better. A skeptical reader, say a landlord or a train conductor, will be more apt to be persuaded when the psychologist has obviously looked closely at the functions that the animal provides to its handler.

The psychologist should understand that although other individuals may have superior expertise when it comes to the training a dog receives, letters are seldom sought from trainers and, when a matter comes to court, the psychologist may provide the only professional testimony involved in a case. (However, see *Falin v. Condominium Association of La Mer Estates, Inc.*, [2012], where the testimony of a biologist stated that the dog in question was an emotional support animal, not a service dog.) Since the psychologist may not be called as an expert but rather to explain why he or she wrote the letter for the patient, the psychologist may want to agree with the patient that time spent in preparing to testify and testifying will, if not covered by an expert witness fee, be remunerated at the psychologist's typical rate.

## CONCLUSIONS

Few psychologists use animals in therapeutic contexts, but they should not be uncomfortable with helping a patient who wants to keep an animal to alleviate a symptom of a DSM condition or make life easier for a person with such a condition. Before writing a letter, however, they should make certain that what they can say will actually help the patient. What may help a patient keep a dog in an apartment may not get the dog on an airplane,

and what may help with the latter purpose may not get the dog in a restaurant. The three broad categories described here are a snapshot of the law at the moment of this writing, and a psychologist should be sure where the patient's objectives with regard to the animal fit into the applicable law at the time he or she is asked to write the letter.

Psychologists should not expect that a letter, no matter how well considered and drafted, will automatically allow the patient to keep the animal or bring it into an environment where animals are otherwise excluded. Some businesses and landlords will be resistant no matter how strong the case on the client's behalf. Not all judges are sympathetic to animals, and the cases described here indicate that different judges, seeing the same evidence, may reach opposite conclusions. Still, a letter may help a patient a great deal, and mental health professionals should not shy from providing them within the parameters described here.

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