



# Emotional Support Animals: What Clinicians Need to Know

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## Objectives

- Describe relevant federal and state laws
- Explore the evidence base for the use of ESA
- Review the process of conducting an ESA evaluation and pertinent ethical considerations
- Consider liability concerns and strategies to reduce liability

## **Disclosures**

I have no financial or nonfinancial disclosures

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Workgroup on Emotional Support Animals

## **Definitions and Terminology**

# Emotional Support Animal

An animal of any species that alleviates symptoms of a psychiatric disability through the animal’s companionship or presence

## Definitions

Term	Species	Who is helped	Training required
Service Animal	Dog or mini horse	Individual owner with a disability	Individually trained to assist one person
Psychiatric Service Animal	Dog or mini horse	Individual owner with a psychiatric disability	Individually trained to assist one person
Emotional Support Animal	Any	Individual owner with a psychiatric disability	No
Therapy Animal	Any	Various (individual psychotherapy, large group settings)	Animal and handler trained in obedience and socialization
Pet	Any	Owner	No

Term	Performs Specific Task	Mitigates an individual's disability
Service Animal	Yes, related to the owner's disability	Yes, any disability under the ADA
Psychiatric Service Animal	Yes, related to the owner's psychiatric disability	Yes, disability from a psychiatric illness
Emotional Support Animal	No, provides emotional comfort, well-being, support, or companionship	Yes, disability from a psychiatric illness
Therapy Animal	No, provides emotional comfort, well-being, support, or companionship	No, used to mitigate suffering or illness but not a legal disability
Pet	No, provides comfort and companionship to the owner	No

## ESA vs PSA

An individual with depression feels comforted by their rat and is able to get out of bed due to need to care for rat.

An individual with non-epileptic seizure disorder has a dog that detects warning signs and alerts them prior to the onset of an episode

An individual with schizophrenia has a mini horse that is trained to bring the pill bottle to them, thereby improving medication adherence.

# Relevant Federal, State, and Local Laws

## Relevant Laws

Term	Legal right to enter public establishment	Legal right to enter medical settings	Regulations
Service Animal	Yes	Yes, with restrictions	ADA
Psychiatric Service Animal	Yes	Yes, with restrictions	ADA
Emotional Support Animal	No	No	FHA, ACAA, IDEA, state and local laws
Therapy Animal	No	Yes	State and local laws
Pet	No	No	None

## **Americans with Disabilities Act**

- Service Animals are limited to dogs and, in some cases, miniature horses
- Specifically states: “Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.”
- Considered an extension of the owner; can be excluded from the premises if not housebroken
- Questions You Can Ask:
  - Is this dog a service animal that is required for a disability?
  - What work or task is the dog trained to perform?

## **Fair Housing Act**

- Prohibits discrimination in housing, including discrimination based on disability
- Categorizes service animals AND emotional support animals as “assistance animals” that are “not pets”
- Permits reasonable accommodations for ESA (ex: waive pets policy, pet deposit fee)
- Landlords are not entitled to medical records or an individual’s diagnosis
- Landlords can request supporting documentation

## **Air Carrier Access Act**

- Prohibits commercial airlines from discriminating against individuals on the basis of their disability
- Since January 2021, airlines are no longer required to accommodate ESAs
- Service animals (including psychiatric service animals) are protected under the ACAA

## **Individuals with Disabilities Education Act**

- All those with a disability are entitled to “free appropriate public education”
- Protects the use of service animal
- Does not guarantee use of an ESA

## **State and Local Laws**

- It is essential to be aware of state and local laws that may influence your ESA evaluation
- California
  - Clinician must be licensed in California and have an established relationship with the client for at least 30 days before providing a letter
- Florida
  - Clinician must have held at least one in person appointment with the person requesting the letter
- New York City
  - Certain non-domesticated animals prohibited by public health code can be excluded as ESAs (ex: raccoons)

## **Evidence and Clinical Considerations**



## **ESA Evidence**

- There is currently no direct evidence of ESA clinical benefit for psychiatric symptoms.
- 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. Study did not control for other psychiatric treatments received during the study period.
- Another study currently underway is examining the use of ESAs as treatment in veterans with Post-Traumatic Stress Disorder (PTSD).

## **Service Animal and Pet Evidence**

- Mixed evidence for service and therapy animal benefit in the treatment of PTSD, anxiety, dementia, autism spectrum disorder, and schizophrenia
- Studies are small, underpowered, and lack randomized control design
- Therapy animals experience increase in cortisol
- Pet ownership
  - Associated with: Reduced cardiovascular risk, improved physical and psychological well-being
  - Possibly due to: incr social support, social interaction

## Conducting an ESA Evaluation

### Should I get formal training?

- Few formal training opportunities for ESA certification
- Many available are produced by animal enthusiasts and organizations → bias
- 36% of mental health providers feel unqualified to make an ESA determination (Bonness et al., 2017)

.....luckily practice guidelines have been proposed

## **Two Components of an ESA Evaluation**

- 1) Does the patient have a chronic mental impairment due to a psychiatric condition as defined by the DSM-5TR that is substantially limiting their functioning (i.e., a disability)?
- 2) Will the ESA alleviate those impairments?

**ESA Evaluations  
=  
Disability Evaluations**

## What is a Disability Evaluation?

- Usually required to answer specific questions using specific definitions (e.g., “disability,” “impairment,” “mental health condition”)
- Purpose is to gather information so that an organization or system can translate it into a specific course of action, such as:
  - Providing workplace accommodations
  - Authorizing health care benefits and arranging for medical care
  - Making changes in employment status
  - Awarding damages or disability benefits
  - Certifying an ESA

## Types of Disability Evaluations

- Social Security Disability Insurance (SSDI)
- Workers’ Compensation
- Private disability insurance claims
- VA benefits
- Disability evaluations related to litigation (e.g., seeking compensation for damages due to injury)
- Americans with Disabilities Act (ADA)
- Fitness-for-duty evaluations
- Return to work evaluations
- ESA evaluations

“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 to remain psychologically stable.”

- *Younggren et al. (2020)*

## **Additional Considerations**

- Consider the patient’s ability to care for the animal
- Be aware of state-by-state variability in definitions and whether clinician-patient relationship is required
- Minimally necessary clinical information should be included in letters to protect confidentiality
- Recommended to review every 6 months to ensure ongoing therapeutic benefits

## **Should I evaluate the pet?**

- You may be asked to evaluate the animal, and comment on temperament and training
- Obtain collateral information from a certification program, animal behaviorist, or veterinarian
- APA Resource Document (2022):
  - “As psychiatrists are not trained to assess an animal’s temperament, evaluating an animal’s suitability as an ESA is outside their area of expertise”

## **Ethics**

## **Ethical Considerations**

- Unethical and illegal to engage in disability fraud by writing ESA letters simply to allow patients to bring pets to non-pet-friendly venues, override pet restrictions, etc.
- Misusing ESA certifications:
  - Negative impacts public's perception of disabled
  - Undermines justice for patients who genuinely require assistance animals

## **Additional Ethical Considerations**

- Ethically permissible to decline to write letters even for patients with genuine disabilities given limited evidence supporting their use
- Carefully weigh risks and benefits for the individual patient, including paucity of evidence supporting their use

# Liability Considerations

## In the Matter of Accusation against Carla Jean Black (2019)

- Carla Jeanne Black, a Licensed Marriage and Family Therapist
- License revoked for practicing out of state without a license to do so, and for not doing a “proper assessment” before issuing the ESA letter
- Problematic Findings:
  - Website Indicated she specialized in ESA letters (no way to specialize).
  - Provided telehealth evaluations that lasted 10-60minutes
  - Evaluations in states where she did not have the license to practice.

*In the Matter of Accusation against Carla Jeanne Black: Stipulated Settlement for Case No. 2002016001583 (2019)*



## Riverbrook vs Abimbola Fabode and other Occupants (2020)

- Anne Venet, a Limited Licensed Professional Counselor
- 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” 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**.
- District court ruled in favor of Ms. Venet – a ruling affirmed by the circuit court

Riverbrook v Abimbola Fabode and all other Occupants (2020)

## Bhogaita v. Altamonte Heights Condominium Association

- Patient diagnosed with PTSD by his psychiatrist was denied requested ESA accommodation despite three different supportive letters from his psychiatrist over several months
- Psychiatrist explained the therapeutic relationship between pt and his dog, and that patient’s 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
- Patient filed suit, claiming that the Condominium Association, Inc’s (AHCA) denial of his request for a reasonable accommodation violated federal and Florida fair housing laws
- The court of appeal found that the psychiatrist's letters, which were provided to the condominium association 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"

## Special Circumstances

- Dog Bites (including ESA)
  - Owner is 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.
  - Exception – provocation, trespassing
- Service animals
  - Most service animals wear a vest that warns bystanders not to bother the animal. 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 if they were truly unable to control the SA.

## Recommendations

- Practice with a valid license and only in states you are licensed to practice – be alert re telehealth
- An existing clinician-patient relationship before an ESA is written
- State the clinical justification for the recommendation of ESA
- State the major life activity impaired by the patient's psychiatric disability
- Offer a professional opinion that an ESA would alleviate the impairment
- Warn patient of the potential for liability
- Remain alert to the potential of being sued if they deviate from established standards of professional practice.

# Additional Resources

## AAPL Practice Resource: Forensic Evaluation of a Psychiatric Disability

- Consider explanations for the reported disability other than a mental disorder (including malingering)
- Evaluation includes a psychiatric interview, a review of the records, and collateral information

PRACTICE RESOURCE

### AAPL Practice Resource for the Forensic Evaluation of Psychiatric Disability

Stuart A. Anfang, MD, Liza H. Gold, MD, and Donald J. Meyer, MD

Full Document: Anfang SA, Gold LH, Meyer DJ. AAPL practice resource for the forensic evaluation of psychiatric disability. *Journal of the American Academy of Psychiatry and the Law Online Supplement* 2018; 46 (1). Available at: <http://www.psyl.org/content/46/1/Supplement>

*J Am Acad Psychiatry Law* 46:102, 2018

This updated Practice Resource is a review of legal and psychiatric factors, to give practical guidance and assistance in the performance of psychiatric impairment and disability evaluations. It was developed by a Task Force of forensic psychiatrists who routinely conduct evaluations of psychiatric impairment and disability and who have expertise in this area. The process involved a thorough review of the original 2008 American Academy of Psychiatry and the Law guidelines, updated to current practice and integrating expert feedback and revisions into the final draft. In May 2017 the AAPL Council voted to title all of AAPL's educational products as AAPL Practice Resources. This Practice Resource is a revision of the 2008 AAPL Practice Guidelines for the Forensic Evaluation of Psychiatric Disability. The final text was reviewed by the AAPL Council and approved in May 2016. It should not be construed as dictating a standard for forensic disability and impairment evaluations, nor does it present all acceptable ways of performing them. Differing fact patterns, clinical factors, relevant statutes, administrative and case law, and the psychiatrist's judgment determine how to proceed in each evaluation. It is expected that any clinician who agrees to perform forensic evaluations in this domain has the appropriate qualifications. Sections I and II discuss disability evaluations in general, including practical considerations, definitions, and ethics. Section III provides general con-

cepts for disability evaluations. Sections IV and V address the different types of disability evaluations more specifically, using a general-organizational principle to distinguish between the types of disability evaluations. Suggestions for adapting the general concepts for each type of evaluation are provided. The first general category of disability claims, reviewed in Section IV, represents the most common source of referrals for disability evaluations related to litigation in which plaintiffs claim they are disabled as a result of psychiatric illness or injury and are seeking compensation for damages. These include Social Security Disability Insurance (SSDI), Workers' Compensation or personal injury, private disability insurance claims, and other specialized compensation and pension programs (e.g., Veterans' benefits). Such claims generally must be accompanied by psychiatric documentation to meet requirements for compensation.

Section V reviews a newer category of disability evaluations that has emerged over the years after passage of new legislation, addition to case law governing child labor, and the increasing responsibilities of employers toward their employees. Broadly speaking, these evaluations are designed to meet requirements to continue working. These include evaluations related to the Americans with Disabilities Act (ADA), fitness-for-duty evaluations, and return-to-work evaluations.

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The Journal of the American Academy of Psychiatry and the Law

# American Psychiatric Association Resource Document Resource Document on Emotional Support Animals

- 15-page guide
- Available on [psychiatry.org](https://www.psychiatry.org)

## APA Resource Document

### Resource Document on Emotional Support Animals

Approved by the Joint Reference Committee, June 2022

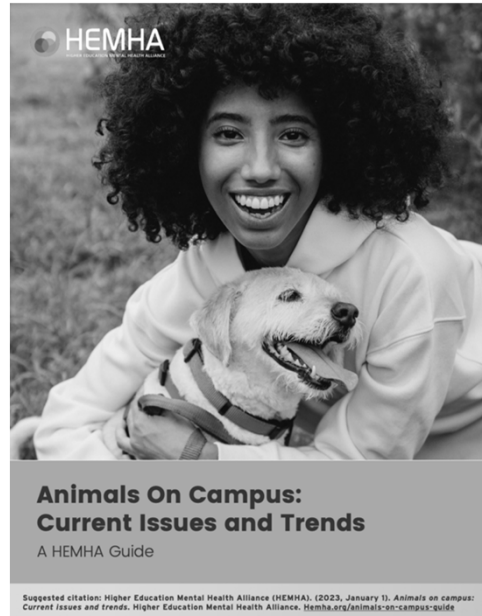
"The findings, opinions, and conclusions of this report do not necessarily represent the views of the officers, trustees, or all members of the American Psychiatric Association. Views expressed are those of the authors." -- *APA Operations Manual*.

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

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# HEMHA Animals on Campus Guide

<https://hemha.org/our-projects>



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