

INFORMATIONAL HEARING

SUBJECT: FAKE SERVICE DOGS, REAL PROBLEM OR NOT?

**Hearing on the Possible Use of Fake Service Dogs and Fake Identification by
Individuals to Obtain Special Access to Housing, Public Places or
Airports/Airlines for Their Animal**

Monday February 24, 2014

11:00 A.M. - 2:00 P.M.

State Capitol, Room 4203

BACKGROUND PAPER

PURPOSE OF HEARING

This Committee was approached by the State Board of Guide Dogs for the Blind (Board) to address this issue, and possibly have an informational hearing to discuss the problem with “fake” service dogs – individuals who are exploiting service dogs by faking their pets as working service dogs and using online companies that sell service dog paraphernalia to create the appearance that they have a service dog. This hearing will highlight the negative impact this practice has on legitimate service dog owners, such as guide dog users and the fact that it is against the law to do so. This Background Paper attempts to explain many of the different laws that apply to use of service dogs and how these laws may also apply to other support dogs which are not defined as service dogs. Distinctions between the types of service dogs and other support dogs are explained and which may give rise to some confusion of how the laws may apply. This Paper also describes the growing problem of using “fake” service dogs and how this may impact

the business community and the disability community as well. There is also a related issue of how the medical profession may be having an impact on this issue by writing out “prescriptions” for use of service dogs or support dogs and understanding what steps are taken to evaluate the need for a service dog or support dog for those that have a disability and those with questionable needs who wish to have access with their dog.

LEGAL BACKGROUND: FEDERAL AND STATE LAWS (Also See Attached Chart: Appendix A)

According to a recent article, sorting through the legal framework on service animals is enough to make anyone feel like a dog chasing its tail. The lack of clarity puts disabled people in danger by causing others to question the legitimacy of their service animals. At the same time, businesses, employers, housing providers and the public can unwittingly violate the law.

Accommodation provisions are contained in the American With Disabilities Act, the federal Fair Housing Act, California’s Fair Employment and Housing Act, the Air Carrier Access Act, Unruh Civil Rights, Disabled Persons Act, and various other state and local laws. “A virtual hornet’s nest, they each define and require different standards for service animals to accommodate persons with disabilities, and are often vague and unclear.”¹

ADA Laws and Regulations

Overview. The Department of Justice published revised final regulations implementing the Americans with Disabilities Act (ADA) for title II (State and local government services) and title III (public accommodations and commercial facilities) on September 15, 2010, in the Federal Register. These requirements, or rules, clarify and refine issues that have arisen over the past 20 years and contain new, and updated, requirements, including the 2010 Standards for Accessible Design (2010 Standards). This publication provides guidance on the term “service animal” and the service animal provisions in the Department’s new regulations.

- Beginning on March 15, 2011, only dogs are recognized as service animals under titles II and III of the ADA.
- A service animal is a dog that is individually trained to do work or perform tasks for a person with a disability.
- Generally, title II and title III entities must permit service animals to accompany people with disabilities in all areas where members of the public are allowed to go.

How a “Service Animal” is Defined. Service animals are defined as dogs that are individually trained to do work or perform tasks for people with disabilities. Examples of such work or tasks include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (PTSD)

¹ Information obtained for an article titled, “*Clearing up the law on service animals,*” printed on December 3, 2013, and written by Phyllis Cheng, Director of Department of Fair Employment and Housing, and Mallory Sepler-King, Civil Rights Fellow at the Department.

during an anxiety attack, or performing other duties. Service animals are working animals, not pets. The work or task a dog has been trained to provide must be directly related to the person's disability. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.

This definition does not affect or limit the broader definition of "assistance animal" under the Fair Housing Act or the broader definition of "service animal" under the Air Carrier Access Act. Some State and local laws also define service animal more broadly than the ADA does.

Under California law, "service dog" means "any dog individually trained to the requirements of the individual with a disability, including, but not limited to, minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items." This definition includes services for people with physical, developmental or psychiatric disabilities, including autism, epilepsy, and mental illnesses. Under both state and federal law, an animal that is trained to perform tasks that benefit a person with psychiatric disabilities is a "psychiatric service animal."

How to Show That a Dog Qualifies as a Service Animal. The only requirement to be a service animal is that the animal be individually trained to benefit the person with a disability. A service animal may be trained by a non-certified professional, a friend, a family member, or the person with the disability.

Under California law, assistance dog identification tags are available for service animals and service animals in training, if the animal is being trained by the individual with a disability or a licensed trainer, through a county animal control department. The county will not make an independent assessment as to whether the animal is trained to perform work or tasks for the benefit of the individual with a disability. Even if you are issued an identification tag for your animal, the animal must meet the requirements of a service animal in order to be protected under federal and state law. When applying for an assistance dog identification tag, you must sign a declaration that states you understand that it is a crime to misrepresent yourself as the owner or trainer of a trained service animal. In California, to falsely identify or pretend your dog is a service animal is punishable by six months in jail or a fine of up to \$1,000, or both. It is a violation of Penal Code Section 365.7.

Where Service Dogs are Allowed. Under the ADA, State and local governments, businesses, and nonprofit organizations that serve the public generally must allow service animals to accompany people with disabilities in all public entities and places of public accommodations where the public is normally allowed to go. These include places of lodging, establishments serving food or drink, places of entertainment, places for public gathering, sales or rental establishments, professional offices, hospitals, offices of health care providers, stations used for public transportation, museums and libraries, zoos, parks, places of recreation, places of exercise, places of education, and social service establishments.

There may be some restrictions for access to the places outlined above. For example, in a hospital it would be inappropriate to exclude a service animal from areas such as patient rooms, clinics, cafeterias, or examination rooms. However, it may be appropriate to exclude a service

animal from operating rooms or burn units where the animal's presence may compromise a sterile environment.

California law provides an even broader definition of public accommodations and requires reasonable modifications in a facility's policies to accommodate the use of service animals in any place in which the general public is invited. The reasonable modification mandate also applies to public entities such as state and local governmental entities, as well as private entities that receive federal funds. Therefore, service dogs are also allowed into government buildings, public transportation services, and private entities which receive federal financial assistance.

The law is not clear as to whether there must be a connection between the services provided by a service dog and the nature of the reasonable modification for that particular disability. For example, if the dog is trained only to fetch medication or phones at home, and the dog does not provide any benefit in a store, the law is not clear whether the store has to let the dog in with its owner. The law also allows public accommodations and public entities to refuse to make "reasonable accommodations in policies" (including "no pets" policies in housing), if they can show that making such modifications would fundamentally alter the nature of such goods, services, privileges, advantages, programs, activities, or accommodations. Each determination would have to be addressed according to its individual facts, based on this standard.

Service Dogs Must be Under Control. Under the ADA, service animals must be harnessed, leashed, or tethered, unless these devices interfere with the service animal's work or the individual's disability prevents using these devices. In that case, the individual must maintain control of the animal through voice, signal, or other effective controls.

Inquiries, Exclusions, Charges, and Other Specific Rules Related to Service Dogs. When it is not obvious what service an animal provides, only limited inquiries are allowed. Generally, staff of a business entity may ask two questions: (1) is the dog a service animal required because of a disability, and (2) what work or task has the dog been trained to perform. Staff cannot ask about the person's disability, require medical documentation, require a special identification card or training documentation for the dog, or ask that the dog demonstrate its ability to perform the work or task. Any additional questioning is in violation of ADA. Potential liability for failing to accommodate a legitimate service dog is high. The ADA authorizes fines of up to \$55,000 for a first violation and up to \$100,000 for subsequent violations; and California provides for additional civil fines. Because the risk of violation is prohibitive, the hands of business owners are effectively tied if they doubt the validity of a claimed service animal.² The liability to a business of challenging the identity of a dog is huge. Falsely accusing a valid service dog can result in lawsuits as well.

Allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals. When a person who is allergic to dog dander and a person who uses a service animal located in the same room or facility, for example in a school classroom or at a homeless shelter, they both should be accommodated by assigning them, if possible, to different locations within the room or different rooms in the facility.

² Ibid.

A person with a disability cannot be asked to remove his service animal from the premises unless: (1) the dog is out of control and the handler does not take effective action to control it or (2) the dog is not housebroken. When there is a legitimate reason to ask that a service animal be removed, staff of the business establishment must offer the person with the disability the opportunity to obtain goods or services without the animal's presence.

Establishments that sell or prepare food must allow service animals in public areas even if state or local health codes prohibit animals on the premises. People with disabilities who use service animals cannot be isolated from other patrons, treated less favorably than other patrons, or charged fees that are not charged to other patrons without animals. In addition, if a business requires a deposit or fee to be paid by patrons with pets, it must waive the charge for service animals. If a business such as a hotel normally charges guests for damage that they cause, a customer with a disability may also be charged for damage caused by the individual or their service animal. Staff of the business entity are not required to provide care or food for a service animal.

Fair Housing Law

Housing is covered under federal law in the Fair Housing Act (FHA) and under California law under the Fair Employment and Housing Act (FEHA). Under the FHA, landlords and homeowners' associations must make reasonable accommodations for people with disabilities. Housing providers must make exceptions to a "no-pets" policy to permit persons with disabilities to use and live with a service dog as a reasonable accommodation. There is no requirement that the dog be trained; however, the dog must provide a disability-related benefit to the individual with a disability. If the dog poses a direct threat to others, would cause substantial physical harm to the property of others, imposes undue financial or administrative burden to the landlord, or fundamentally alters the nature of the services provided by the landlord, then the landlord may refuse to allow a service dog. It should be noted that this is generally difficult to prove, especially when trying to argue that a service dog would constitute a fundamental alteration or undue burden on the part of the landlord or homeowners' association. Owners of the dog must also ensure that their service animal complies with state and local animal control laws and is not a danger or a nuisance to the community.

In allowing for a reasonable accommodation for a service dog, a landlord or homeowner's association may ask for documentation that the person has a disability and that there is a disability-related need for the dog. This can be done by providing a letter from the individual's primary care physician, psychiatrist or other mental-health care professional that the dog provides assistance or benefit directly related to the disability. However, the landlord should not request documentation if the disability and the related need for the service dog is obvious or the landlord otherwise should have known about the disability and need. It should be noted that the potential tenant need not disclose the details of their disability, nor provide a detailed medical history. They also are not required to provide proof of training or certification of the dog. The only requirement under the ADA is that the dog be (1) individually trained, and (2) work for the benefit of an individual with a disability.

The Housing & Urban-Rural Recovery Act of 1983 protects the rights of tenants in federally assisted housing for the elderly or persons with disabilities to have a pet, and further provides that the landlord is entitled to charge a deposit for that pet to cover any resulting damage to the property. However, if a dog is considered as a “service animal,” the tenant should be exempt from the deposit. According to the Department of Housing and Urban Development (HUD) regulations:

Service animals that assist persons with disabilities are considered to be auxiliary aids and are exempt from the pet policy and from refundable pet deposit. Examples include guide dogs for persons with vision impairments, hearing dogs for people with hearing impairments, and emotional assistance animals for persons with chronic mental illness.

If the individual’s service dog causes damage to the landlord’s unit or condominium complex, the housing provider may charge the individual for the cost of repairing the damage if the provider regularly charges tenants for any damage they cause on the premises. However, the landlord should only charge for excessive damage beyond what might be considered ordinary wear-and-tear.

Air Carriers Access Act

The federal Department of Transportation has rules (14 CFR part 382) that require airlines to allow passengers with a disability to fly with their service dogs in the cabin on all U.S. airlines. Animals do not need to be confined in a container or cage. The service animal is considered a the sole responsibility of the passenger with a disability whom the animal is accompanying.

No carrier or its affiliate is allowed to molest or annoy the service animal, or its owner at any time before, during, or after the flight. The service animal must be allowed to sit with its owner unless doing so obstructs possible emergency evacuation plans. As evidence that an animal is a service animal, the carrier must accept identification cards, other written documentation, presence of a dog harness, tags, or the credible verbal assurances of a qualified individual with a disability using the animal. The carrier is required to allow emotional or psychiatric service animals into the cabin only if the owner of the animal provides a doctor’s note which is no more than one year old with official looking letterhead that states the following:

- (1) The passenger has a mental or emotional disability recognized in the Diagnostic and Statistical Manual of Mental Disorders - Fourth Edition (DSM IV);
- (2) The passenger needs the emotional support or psychiatric service animal as an accommodation for air travel and/or for activity at the passenger’s destination;
- (3) The individual providing the assessment 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.

As long as the dog does not cause a disruption or pose a threat to others, it is unlikely to be rejected for boarding. Whenever a carrier decides not to allow a service animal onboard, they must provide written explanation to the passenger within 10 calendar days.

USE OF SERVICE DOGS AND SOME OF THE MORE SIGNIFICANT PROBLEMS ASSOCIATED WITH FAKE SERVICE DOGS

Use of Service Dogs

According to the University of Arizona, 0.9% of persons with disabilities are partnered with service dogs. In 1990, Congress found that there were 43 million Americans with disabilities, suggesting there are approximately 387,000 service dogs across the U.S. The Guide Dog community reports that there are approximately 10,000 guide dogs (from all guide dog schools) in the field. In light of the obvious fact that guide dogs for the blind must account for more than 2.5% of the overall service dog population, the University of Arizona figure likely includes emotional support animals which are sometimes grouped with service animals, such as under the Fair Housing Act or Air Carrier Access Act. A more reasonable estimate of the number of public access (task trained) service dogs in the U.S. might be 100,000 to 200,000.³

The American with Disabilities Act (ADA), as indicated, defines service animals as dogs that are individually trained to do work or perform tasks for the benefit of an people with disabilities. A service dog can be any size or breed. It does not, in most instances, need to carry any special identification, register with any agency or even wear a vest. These dogs are used as service companions around the world. They are specially trained to assist humans in many capacities:

- Sight
- Hearing
- Psychological disorders (depression, anxiety, phobias, PTSD)
- Autism
- Epilepsy
- Diabetes
- Allergies
- Narcolepsy

Service dogs may carry medications or oxygen tanks, or pull wheelchairs. In many countries, including the U.S., service dogs are protected by law and must be provided access to public places. It is not unusual to find a service dog with his or her human partner in malls, restarants, theaters, hotels of amusement parks, or on trains, buses or planes. Anywhere people go, their service dogs may follow. The relationship between a service dog and his companion – his or her partner – is one of mutual respect, trust, honor, faith and complete love. Service dogs become the eyes, ears, arms or legs to a person in need. They lead, guide and protect. They improve the

³ Information obtained from Service Dog Central @ servicedogcentral.org

quality of life for so many individuals with different physical and mental challenges. One partner of a service dog says, “I entrust my life to my dog – he has never failed me!”⁴

“Service Dogs” as Defined

Under the ADA, the definition of “service animal,” effective March 15, 2011, states:

Service animal means 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. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual’s disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal’s presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

Further explanation of service dogs which fit into this ADA definition are as follows:

Guide Dogs. These dogs are highly disciplined and trained service dogs. They assist blind and visually impaired people by avoiding obstacles, stopping at curbs and steps, negotiating traffic and other important tasks to assist them in their home and elsewhere. There are three training schools in California which are regulated by the Board of Guide Dogs for the Blind which is under the Department of Consumer Affairs. The training of guide dogs is extensive and instructors are licensed by the State.

Hearing Dogs. These service dogs are trained to alert the deaf and the hard of hearing to common sounds of their everyday life. Animals must be able to recognize the phone, the doorbell, a baby crying, smoke alarm and any other noise that may be important to the owner. They must be able to signal the owner differently, depending on the noise. This can include bringing an object to the owner or pulling the owner to a different location where he or she can properly handle the situation.

Mobility Service Dogs. These service dogs are trained to help people with mobility impairments and help with stability and balance while walking. Typically wheelchair users require this type of service dog. These dogs help people by retrieving dropped items, turning light switches and even paying for items at a store. They can even help the handler transfer from the wheelchair

⁴ Information obtained from an article titled, “Fake Service Dogs, Real Problem,” printed September 2012, and written by C.D. Watson.

and open or close doors for them. They are trained to help a person get dressed and many other day-to-day tasks for the person having to use a wheelchair or who have difficulty with mobility.

Medical Alert or Seizure Dogs. This type of service dog is trained to recognize precursors to certain medical conditions, or attend to its handler in the event of heart attack, stroke, diabetes, epilepsy, anxiety or panic attacks, etc. These dogs can also alert a person to a chemical sensitivity and direct the individual away from danger. They are assigned to people with chronic health conditions who may live alone and have trouble monitoring those conditions. In order to maintain their independence, individuals acquire dogs trained to recognize scents or other subtle signals that predict an upcoming attack.

Autism Service Dogs. Autism is a type of sensory disorder in which the person incorrectly processes different sensory information. People with autism usually have trouble identifying and expressing body language, facial cues and intonation. Thus they have trouble communicating with other people. These dogs are trained to alert its handler of certain behaviors so that the handler may keep these behaviors to a minimum. This dog provides stability and the dog's presence offers a calming influence and provides focus. Since people with autism do not have a way to prioritize information processing, they are trying to process everything, from the smell of the air to the feel of the clothing and much more, all at the same time. For example, in the event of a fire alarm, the person might have a hard time identifying the urgency of the situation and the key task of this type of service dog is to signal the importance of the event.

Psychiatric Service Dogs (PSDs). PSDs service dogs work for a person who has a documented mental disability such as panic attacks, anxiety disorder, schizophrenia, agoraphobia (inability to be able to go out in public) and other related mental health conditions such as Post Traumatic Stress Disorder (PTSD), and who is being treated by a medical professional. These dogs have been trained in very specific tasks to offer benefit to people with these disabilities. They might alert an individual to panic attacks, help with mobility if the person is dizzy from taking medication, interrupt a psychologically related attack, provide room searches or safety checks, or perform a variety of tasks specifically related to the person. For example, some PSDs are trained to remember and backtrack a route for when a person has a dissociative episode which may render them unable to say where they are or retrace his or her steps. The dog is able get the person home. These dogs are trained NEVER to leave their handler's side except for when required by their handlers.

Other Types of Support Dogs

Emotional Support Dogs (ESDs) or Comfort Dogs. The ADA states, "The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition. If a dog's sole function is to provide comfort or emotional support it does not qualify as service dog under the ADA." While these animals still may have some access rights such as those provided under housing laws and in the laws governing commercial aircraft as earlier mentioned, they are not entitled to enter businesses and other public places.

Some people are under the mistaken impression that the definition of service animals for people with psychiatric disabilities, or the use of emotional support animals under the ADA was changed with the new definition in 2011. They have not. These two items are the same as they have always been, but it became necessary for the Department of Justice to clarify its intent by spelling out in the definition that service dogs for people with mental/psychiatric disabilities are recognized while emotional support animals are not. The key change under the new definition is that formerly there were no restrictions on what species might be used for service work and now only dogs can be recognized as service animals.

People continue to confuse ESDs with PSDs, which has probably lead to this misunderstanding of whether the use of ESDs is covered under the ADA. A PSD, as indicated, is regarded as a service animal for purposes of the ADA. They are individually trained in obedience, performing tasks, and working in distracting public environments to mitigate their handler's psychiatric disability. Their primary function is not to provide emotional support, but to perform tasks which enable their partner to function in ordinary ways a non-disabled person takes for granted. The handler of a PSD must be able to present a letter of prescription for a a PSD from a medical doctor or licensed mental health professional.

An ESD is a dog that belongs to a person who may be emotionally or psychologically (psychiatrically) disabled. It is important to note that having a diagnosis of mental illness, by itself, is not sufficient to qualify a person for an ESD unless that illness is so severe it disables them. The person's mental health practitioner can make a determination of a person's disability and on that basis determine that the presence of the animal is necessary for the disabled person's mental health and write a prescription (letter) stating the dog is necessary for the normal day to day functioning of the disabled person. The dog needs no special training, although some may be provided. Under current Fair Housing and Air Carriers laws, an ESD is only protected as follows:

- To qualify for housing with a pet even if there is a "no pets" policy.
- To fly in the cabin of an aircraft with the disabled handler.

For purposes of receiving a waiver of the no pets policy, some of the same requirements for a PSD would apply to a request for a ESD; a "request for accommodation" letter along with a prescription or letter from a mental health practitioner which indicates that the person is considered as disabled and that the presence of the animal is necessary for their mental health.

ESD's are also sometimes called companion or comfort dogs. There is no standard definition of a comfort dog. However, the requirements would appear to be the same if a person was seeking a waiver from a "no pets" policy. It should be noted that pressure is being placed on those providing housing such as condominium associations. For example, in 2004, the Court of Appeal in California held in *Auburn Woods I Homeowners Ass'n v. Fair Employment and Housing Com.*, 121 Cal. App. 4th 1578 (2004), that a homeowner's association had discriminated against condominium residents, a married couple who suffered from depression and other disorders, in failing to reasonably accommodate their disabilities by permitting them to keep a

small companion dog. Since *Auburn Woods*, the number of housing disability cases involving companion or comfort animals as a reasonable accommodation has soared.⁵

There appears to be a lot of abuse. People hear about comfort animals from their friends, and they think, “I’ll just get a letter from my doctor.” Some doctors are inclined to help out their patients.⁶

In order to fly with an ESD in the cabin of an aircraft, the requirements are generally the same as required for a PSD. More and more airlines are taking into consideration, on a case-by-case basis, whether a comfort dog may accompany their owner. However, most will still require a letter from a mental health professional stating that the well being of the pet’s owner is at risk if they are separated from their pet. The most common reason given is mental anxiety or depression, but there are also situations where a physician may indicate that a person has a heart condition and that the dog will reduce the risk of stroke or heart attack.

Therapy Dogs

A therapy dog does not fit within the definition of service dog. It is a dog that may have some training and may be registered with a specific nonprofit organization and insured to go with its owner to visit facilities like hospitals, nursing homes, schools, or other institutional settings. The therapy dog and its partner visit to cheer up patients, to educate the community, to counter grief and stress, and generally be good canine ambassadors within the community. Most therapy dog partners are volunteers, but some dogs are partnered with therapists and other mental health professionals. Therapy dogs do not have the right to enter businesses that do not permit pets, unless they get permission from the business first. This includes the hospitals and nursing homes they visit to work with patients and residents there. They do not get to live in “no pets” housing or fly in cabins or aircraft.

It should be noted that the term “therapy dog” is sometimes used interchangeably with ESD or comfort dog. As indicated above, there are significant differences in how each type of dog will be treated for purposes of access.

Use of “Fake” Service Dogs: A Growing Problem

Over the last few years, the issue of individuals masquerading their animals as service animals has gone from a relatively small and pestilent one to something that some in the news media have dubbed a “*National Epidemic of Horrible People Pretending to Be Disabled.*” The impact of this on the disabled, business and medical communities, and the airline industry has been profound. Those with real disabilities have had their service animals attacked, sometimes on a regular basis by fake service dogs. Due to the ADA regulations that state that a business owner may not ask for any certification from the individual or the animal, medical documentation, or ask that the dog demonstrate its ability to perform the work or task, and may only ask if the dog is a service dog and what they are trained to help with, a claim by an individual that their dog is a

⁵ Ibid.

⁶ Information obtained from an article titled, “*HOA Pet Rules & Required Accommodations: The Facts About Comfort Animals,*” published July 2009.

service dog is basically all that is necessary, at least for business establishments. This has led some dog owners who do not have a disability and whose dog is not a service dog to use the ADA as a loophole to take their pets everywhere they go.

The business community is beginning to complain more about the fact that people are using “fake” service dogs and identification to gain access to areas otherwise off limits. Hotels, restaurants, grocery stores and department stores are all targets. A person may elevate their pets’ status by cloaking them in a service vest or other identifying accessories easily purchased through online sites, which claim to “register” service animals without any screening.

A Google search will produce a multitude of different service/emotional dog kits for sale from different small companies. These kits will provide tags for a particular person’s dog claiming they are a service or emotional dog, identification of the person and dog as a service dog, and a service dog vest. What is shocking is that even major online pet retailers offer links to companies selling these dog kits and/or certification. Purchasing a service dog certification or an official looking ID through one of these companies doesn’t make the dog a service dog, and these companies are causing havoc for legitimate service dog handlers. Even more shocking is that anyone can just as easily purchase a harness for their dog of the type that a blind person would use with their guide dog. Currently the companies offering fake identification for service dogs and their owners aren’t breaking any laws. Around the country, an increasing number of people are using their dogs to fake disabilities in order to obtain waivers for no pet housing, snag good parking spots, have access to airlines, bring their dogs into restaurants or hotels, or to just cut in lines at theme parks.

People with legitimate service dogs are being questioned more than ever because of the use of “fake” service dogs. They fear that they will have to carry around identification stating their disability. The current law does not require service dog handlers to carry any special identification. The fear of service dog handlers is that they will be questioned even more and that “fake” service dogs will undermine the legitimate needs of people with disabilities or problems that make a service dog indispensable. Another concern is that “fake” service dogs are not properly trained and may misbehave or even become aggressive in public places, thus causing a bad representation of service dogs in general.⁷

What is the harm in posing pets as service dogs? “The biggest backlash is creating public resentment of real service dogs. One act of disobedience, one minute of misbehavior, one unfortunate attack from a faker can create a lifetime of public suspicion, mistrust and tension. Handicapped individuals who depend on their service dogs, and the animals themselves, do not deserve the added stigma.”⁸ The fear is that as more abuse occurs, people with legitimate service dogs will be questioned even more and there will be further restrictions placed on valid service animals. Individuals may have to carry around identification stating their disability or identification for their service dog.

⁷ Information obtained from an article titled, “*Fake service dogs provoke resentment, possible rule changes,*” printed November 24, 20102, The Palm Beach Post.

⁸ Ibid.

The other harm is on business operations. If things go awry, a business, employer or housing provider could be vicariously liable for harm caused on its premises. An establishment forced to regularly accommodate multiple animals may have to pay for increased cleaning costs or lose customers, tenants or employees who fear or dislike animals.⁹

INVOLVEMENT OF THE MEDICAL COMMUNITY

Role and Responsibility of Physicians, Psychiatrists and Other Mental Health Professionals

It is not uncommon for a physician, psychologist or other type of mental health professional to be approached by the owner of a dog with a simple enough request: “Can you write something that says my pet is a service dog (or that I need one) so that I can take him to x, y, or z place with me or have my dog live with me?” (A sample letter to be written by the medical professional for a Housing request is in Appendix B and the requirements for an Airline request is provided in Appendix C of the Background Paper.) The question becomes whether the practitioner is qualified to make an independent determination as to the service dog status and/or the need of assistance of the dog because of the real or perceived disability. This is not something that is taught in medical school or as part of a psychology course of study. However, more and more doctors and mental health professionals are being called upon to verify that a disability exists and that there is a connection between the dog and the disability, that the dog is medically necessary and that the dog will help an individual in some capacity with their disability; real or not.¹⁰

Role and Responsibility of Veterinarians

Generally, legitimate service animals get excellent veterinary care through their organizations. The legitimate, reputable groups keep meticulous records that are filled out by the veterinarian when the dog is receiving a physical examination, shots or other care. However, what is the role of a veterinarian when they are aware that a person is trying to pass off the animal that has been brought before them for a physical examination or other care as a service dog and they are asking the veterinarian for a health certificate or other verification that the animal is a service dog? How are veterinarians responding to the pressure they are getting from their customers in this situation?

⁹ Cheng and Sepler-King, *“Clearing up the law on service animals.”*

¹⁰ Information obtained from an article titled, *“Do You Have a Doctor’s Note?”*, printed September 27, 2013, written by Susan Stellan.