

What LMHCs in Florida Should Know About Requests for Emotional Support Animal Letters

At a recent webinar I presented for the National Board of Forensic Evaluators (NBFEE), I polled 50 LMHCs on the question of how many requests for emotional support animal letters they've received from clients. Seventy percent of attendees reported that they had received at least one such request, and 40% reported that they received 3 or more requests. Increasingly, mental health counselors are being asked to write these letters, but few of us have any formal training on the complex nuances of addressing such requests.

To complicate matters, in many cases people seek ESA letters not because they have disabilities and require the ESA to function in a society, but rather because they want to transport their pets with them on trips inexpensively, or they want to move into an apartment or condo that prohibits certain animals, or maybe just because they enjoy bringing their pets with them to public places, none of which are legitimate requests for ESA letters.

In this article, I'll outline five facts that I think are vital for LMHCs to know before they consider writing such a letter, and then, having researched the professional literature and federal and state legislation pertinent to this issue, I'll provide LMHCs with suggested practices and resources to aid them in addressing ESA letter requests.

FACT #1: ESA's ARE NOT RECOGNIZED AS SERVICE ANIMALS UNDER THE ADA

The Americans with Disabilities Act (ADA) defines a service animal as "a dog that has been individually trained to do work or perform tasks for a person with a disability" (U.S. Department of Justice, 2011, para. 3). ESAs, on the other hand, are "animals that provide comfort by being with a person" (U.S. Department of Justice, 2011, para. 5). ESAs are NOT protected by the ADA, so employers are not required by the ADA to accommodate the use of ESAs by employees or by the general public.

FACT #2: IT IS ILLEGAL TO PORTRAY AN ESA AS A SERVICE ANIMAL

It's important for you and your clients to know that it is illegal to portray an ESA as a service animal. For example, a woman recently came into our counseling office with an untrained (though adorable) puppy donning a red vest labeled "Service Animal" with an ID badge obtained online that inferred that the animal was protected under the ADA. The client was cautioned about Florida Statute 413.08(9), which reads "A person who knowingly and willfully misrepresents herself or himself, through conduct or verbal or

written notice, as using a service animal and being qualified to use a service animal or as a trainer of a service animal commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 and must perform 30 hours of community service for an organization that serves individuals with disabilities, or for another entity or organization at the discretion of the court, to be completed in not more than 6 months" (Florida Legislature, 2017, para. 9). I am concerned that any LMHC, as well-intentioned as he or she may be, who erroneously supports the portrayal of an ESA as a service animal may be opening himself or herself up to liability if the client is ever charged for misrepresentation.

FACT #3: THE USE OF ESAs ARE PROTECTED BY FEDERAL LAW IN ONLY TWO CONTEXTS

Federal law extends unique protections to ESAs (compared to other animals) in only two contexts; air travel and housing. The Air Carrier and Access Act (ACAA)/14 CFR, Part 382 extends protections to "any animal shown by documentation to be necessary for the emotional well-being of a passenger" (U.S. Department of Transportation, 2016, p. 1). In fact, the ACAA essentially treats ESAs about the same as it does service animals.

The ACAA requires airlines to permit ESAs to sit with clients, provide service animal relief areas at airports, and prohibits airlines from requiring clients to sign waivers of liability for harm to ESAs, but there are several stipulations and exceptions. The ESA cannot obstruct the aisle or emergency exit, the passenger must provide a current letter from a licensed mental health professional, the animal must be trained to behave appropriately in a public setting, the ESA may be prohibited if it is deemed "unusual" (e.g., snakes, other reptiles, ferrets, rodents, and spiders) or is considered a direct threat to the health or safety of others, and the client may be required to provide up to 48 hours' advanced notice to the airline and check in one hour before the usual check-in time (U.S. Department of Transportation, 2010).

The letter from a licensed mental health professional must be no older than a year, be printed on the professional's letterhead, include the professional's type and state of licensure, and document that (a) the client has a mental or emotional disability as defined by the DSM, (b) the client needs (i.e., not wants, prefers, or would benefit from) the ESA to travel, and (c) is under the care of the mental health professional (U.S. Department of Transportation, 2010).

The Fair Housing Act defines an ESA as an animal that “provides emotional support that alleviates one or more identified symptoms or effects of a person’s disability” (U.S. Department of Housing and Urban Development, 2013, p. 2) and is not conceptualized as a pet. If the rationale for an ESA is well-documented and the accommodation request is reasonable, then landlords and property owners may be required to permit tenets to have an ESA in properties that otherwise prohibit animals. If there is not sufficient evidence to support the assertion that a client needs, versus wants or would benefit from, the ESA, the request may be denied.

FACT #4: TO WRITE AN ESA LETTER FOR A CLIENT, LMHCs MUST FIRST CONDUCT A DISABILITY EVALUATION/FUNCTIONAL LIMITATIONS ASSESSMENT

Both the Air Carrier Access Act and Fair Housing Act require clients to not only have a mental disorder, but to have a disability, and it is the LMHC’s responsibility to determine whether a client has a disability prior to writing an ESA letter (Bonness, Younggren, & Frumkin, 2017; Younggren, Boisvert, & Boness, 2016). There are many definitions of disability, some legal and some clinical. I favor a definition offered by Gladding (2018):

Disability: A physical, behavioral, or mental condition that limits a person's activities or functioning. A disability may be either temporary or permanent. It prevents a person from performing some or all of the tasks of daily life, such as taking care of bodily functions, walking, talking, or being independent of a caregiver (Kindle locations 2933-2935).

In the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5), disability refers to the functional impairments in social, occupational, and other important life activities (American Psychiatric Association, 2013). Federal legislation typically refers to an individual with a disability as someone who “has a physical or mental impairment that substantially limits one or more major life activities” (U.S. Department of Labor, n.d., para. 3).

Prior to writing an ESA letter, the counselor should specifically determine how the client’s symptoms interfere with his or her ability to perform important life activities, and specifically how the ESA enables the client to perform these activities. For example, suppose a client with Panic Disorder has a history of severe panic attacks and responds by avoiding public places, eventually developing Agoraphobia, but finds that when accompanied by her emotional support animal, she finds her panic attacks to be bearable enough to remain in public until the symptoms

have rescinded. If the counselor does not have a thorough and specific understanding of the client’s disability and the role of the ESA in ameliorating that disability, then the counselor should not write a letter attesting to such needs.

What might happen if an LMHC doesn’t assess disability thoroughly before writing an ESA letter? There are several court cases that shed some light on this issue. One such case here in Florida is *Hawn v. Shoreline Towers Phase I Condominium Association, Inc.*, ND Fla. 2009. In this case, a psychologist wrote a letter opining 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.’” (Ensminger & Thomas, 2013, p. 107). The psychologist then prescribed an ESA to “provide support and help plaintiff cope with his ‘emotionally crippling disability’” (Ensminger & Thomas, 2013, p. 107).

The psychologist wrote this letter based on a template his client gave him after just two one-hour counseling sessions and no in-depth or formal evaluation process. The court determined that this assessment process was insufficient to meet the legal standards outlined in the Fair Housing Act. This case is important to reflect on when a client who you’ve hardly worked with and have not formally evaluated for disability requests an ESA letter.

A tool recommended in the DSM-5 for assessing disability, the World Health Organization Disability Assessment Schedule, Version 2.0 (WHODAS 2.0), is free at <https://www.psychiatry.org/psychiatrists/practice/dsm/educational-resources/assessment-measures> and relatively easy to learn to administer and interpret. The WHODAS 2.0 enables LMHCs to identify functional impairments that may constitute disability.

However, the WHODAS 2.0 is entirely dependent on accurate and insightful feedback from clients and/or their family members. Because some clients are prone to falsify or exaggerate information in order to obtain an ESA letter, I strongly recommend that LMHCs use tools and measures designed to detect signs of malingering, feigning, and exaggeration of symptoms. Examples of such tests and structured interviews include the Personality Assessment Inventory, Structured Interview of Reported Symptoms-2, and the Structured Interview of Malingered Symptomatology. Additionally, securing records from other treatment providers and corroborating information from family members may be appropriate measures.

FACT #5: ESA LETTERS ARE NOT ALWAYS CLINICALLY APPROPRIATE NOR ETHICAL, AND CAN SOMETIMES BE DETRIMENTAL TO A CLIENT'S RECOVERY

I think it is best to offer a few real case scenarios to illustrate this point (some details have been revised to honor client confidentiality).

Case #1

Ralph was recently “kicked out” of his home by his wife, who is now considering divorce because of his chronic alcoholism and lack of follow-through with recovery. Ralph took the family dog with him and moved into an apartment. He shows up for his next therapy session with his dog with him, who is not very well-behaved. Ralph discloses that he has continued drinking and has not attended AA meetings because he cannot leave his dog alone. He also requests an ESA letter so that he can bring the dog with him into public places that don't permit dogs.

Case #2

Juanita shows for her initial appointment with a three-tiered baby stroller containing two Chihuahuas and a cat (one animal in each compartment). During the appointment, she appears anxious, disheveled, disorganized, stressed, and distracted, tending to the needs of her restless animals so intently that she often has to interrupt herself or the therapist. She reports that she is not certain she will have much time for therapy because she is very busy with her “fur babies.” She wants an ESA letter, stating that she doesn't need therapy or medication, just her “kids” (referring to her animals).

Case #3

Emmett contacts a therapist and asks if he can get an emotional support animal. He explains that he and his girlfriend are going to fly up north to visit family. His girlfriend has a Chihuahua that she does not want to leave behind, as it makes her anxious. “Plus,” he explains, “dog kennels are expensive, and so are fees for bringing them on a plane.”

The therapist explains that if Emmett's girlfriend would like treatment for her anxiety, she can come in and the therapist can conduct an assessment and treatment plan, which may or may not include an emotional support animal. Emmett responds, “Oh, she doesn't want treatment, she just wants to bring her dog on the plane.”

In the first and second scenarios, my conclusion was that the clients' animals were actually interfering with—not aiding—the client's progress and participation in therapy and/or recovery, and in the third scenario I questioned

how likely it would be that Emmett's girlfriend's possible disorder(s) could simultaneously be so severe and limiting that she needed an ESA to function in a society, yet she was not concerned enough about her mental health to need any form of treatment.

Generally speaking, I am concerned about treating mental disorders by fostering dependence on any single person or animal rather than working with clients to help them develop inner coping strategies sufficient to access—and thrive in—the world around them. I am concerned that reinforcing a client's belief that she can only cope with life if she has an animal by her side may maximize dependency while minimizing independence. Other questions arise, such as what happens if or when the animal dies or is no longer able to travel due to its age or physical condition. If we replaced the term “ESA” with a significant other, does it sound so healthy to say, “I can only cope with the world if my boyfriend is by my side?” Wouldn't the optimal therapeutic outcome be for the client to participate in society without needing someone or something outside herself?

Lastly, if too many people acquire ESA letters that aren't truly necessary, and government, airlines, etc. start to “crack down,” how might this impact others in society, including individuals with legitimate disabilities who require trained service animals to perform essential activities of daily living? I believe these are all important questions to ponder as a clinician expected to filter dilemmas through ethical values of autonomy, nonmaleficence, beneficence, justice, fidelity, and veracity.

RECOMMENDED STRATEGIES

Bonness, Younggren, and Frumkin (2017) offer the following strategies for addressing ESA letter requests:

1. Assess whether the ESA-related accommodation will lead to improvement in the client's psychological condition (i.e., is it therapy-related). If so, make reduction of the need for the animal a long-term therapy goal.
2. Conduct a comprehensive disability determination evaluation, including assessment measures designed to detect malingering and exaggeration of symptoms
3. Develop an evidence-based protocol for addressing ESA letter requests.
4. Limitations should be offered in the letter (e.g., time restrictions)

RECOMMENDED RESOURCES

If I've done my job well in exploring the nuances of writing ESA letters, you hopefully now see how complex this matter can be. Fortunately, there are some resources to help you learn more and ensure that you are following legal requirements and recommended practices. The National Board of Forensic Evaluators (NBFEE), which is partnered with Florida Mental Health Counselors Association (FMHCA), has graciously offered a link to all FMHCA members containing an ESA Assessment/Letter Checklist, sample ESA letter, and copies of a Power-Point on a recent webinar, all downloadable for free at <https://app.box.com/v/ESA>. In addition, FMHCA members can view a 1.5-hour video recording of the ESA assessment webinar on YouTube at <https://www.youtube.com/watch?v=N0G3L46jpXE>. It is my sincere hope that FMHCA members find these resources helpful.



About the Author and References



Aaron Norton, LMHC, LMFT, MCAP, CCMHC, CRC, CFMHE

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