

PUBLIC POLICY STATEMENT ON THE ADMISSION OF SERVICE ANIMALS TO PHYSICIANS' AND PODIATRISTS' OFFICES AND OTHER HEALTH CARE SETTINGS

Health care facilities, including doctor's offices, are covered under the Americans with Disabilities Act (ADA) as places of public accommodation. Places of public accommodation have a legal duty to make modifications of rules and policies when necessary to accommodate individuals with disabilities. 28 C.F.R. §36.202(c); W.Va. Code R. §77-1.7.7.

The ADA allows the use of service animals for the benefit of individuals with disabilities. An individual with a disability is a person with a "physical or mental impairment that substantially limits one or more major life activities of such individual." 42 U.S.C. §12102(2)(A).

The implementing regulations of the ADA provide that a service animal is "any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair or fetching dropped items." 28 C.F.R. § 36.104. This list is not exhaustive.

The ADA does not require specific identification or certification of these animals. Policies requiring proof of certification or similar documentation are in violation of the ADA.

Providers may ask if the animal is a service animal and may ask what tasks the animal has been trained to perform (although questions regarding the individual's specific disability are prohibited). The person seeking admission of the service animal need only identify himself/herself as a person with a disability, that he or she has a service animal, and describe the training of the animal.

Unless there is evidence that the presence or use of a service animal would pose a significant risk, the assumption should be that the service animal should be permitted to accompany its owner wherever that person goes. Places of public accommodation must permit the use of a service animal by a person with a disability unless the use would create a fundamental alteration of the provider's goods, services and/or accommodations or would pose a direct threat to the safety of others or the facility. The determination of a fundamental alteration or a direct threat to safety is fact specific, and is thus a case-by-case determination. The Department of Justice (DOJ) has recognized that service animals could pose a significant health risk in certain areas of a hospital. In determining the risk, the DOJ has stated that the determination of risk should be made by appropriate medical personnel. Note that under the ADA, a place of public accommodation may impose certain restrictions if those restrictions are based on an analysis of "actual risks and not on mere speculation, stereotypes or generalizations about individuals with disabilities." 28 C.F.R. §36.301 (b). Such considerations as the level of sterility precautions utilized and the presence of immunosuppressed patient populations have been suggested as legitimate considerations.

Once a finding of risk has been made, the medical personnel should list areas where exclusion is appropriate and permit service animals in all other areas. DOJ Technical Assistance Letter, Doc.302, May 10, 1993, Danforth, John C., service animals in hospitals.

The person with a disability who seeks admission of a service animal is responsible for the care of that animal, including providing supervision of the animal if separation is required to avoid a fundamental alteration or threat to safety. 28 C.F.R. 36.302(c)(2).

The CDC and Healthcare Infection Control Practices Advisory Committee (HICPAC) have established guidelines/recommendations for service animals in healthcare facilities. These recommendations may provide a practical shorthand practice guide for the practitioner.

IV. Service Animals

- A. Avoid providing facility access to nonhuman primates and reptiles as service animals.
- B. Allow service animals to the facility in accordance with the Americans with Disabilities Act of 1990, unless the presence of the animal creates a direct threat to other persons or a fundamental alteration in the nature of the services.
- C. When a decision must be made regarding a service animal's access to any particular area of the health-care facility, evaluate the service animal, patient, and health-care situation on a case-by-case basis to determine whether significant risk of harm exists and whether reasonable modifications in policies and procedures will mitigate this risk.
- D. If a patient must be separated from his or her service animal while in the health-care facility 1) ascertain from the person what arrangements have been made for supervision or care of the animal during this period of separation; and 2) make appropriate arrangements to address the patient's needs in the absence of the service animal.

MMWR Recommendations and Reports. (2003). "Guidelines for Environmental Infection Control in Health-Care Facilities: Recommendations of CDC and the Healthcare Infection Control Practices Advisory Committee (HICPAC)." Retrieved August 12, 2009 from <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5210a1.htm>. (*Citations omitted*).

Violations of the ADA may also be violations of the West Virginia Medical Practice Act, potentially subjecting the practitioner to discipline by the Board. The Board may discipline a physician or podiatrist for violating any provision of the Medical Practice Act or a rule or order of the board. W.Va. Code §30-3-14(c)(17). The legislative rules of the Board provide, in part, that the Board may discipline a physician or podiatrist upon satisfactory proof that the licensee has engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or any member


thereof. 11 CSR 1A §12.1(e). The licensee may also be disciplined by the Board if upon satisfactory proof it is demonstrated that the licensee: failed to perform any statutory duty or legal obligation placed upon a licensed physician or podiatrist, violated any law or lawfully promulgated rule or regulation of West Virginia, any other state, the Board, or the United States, which law or rule or regulation relates to or in part regulates the practice of medicine or podiatry, and or engaged in unprofessional conduct, including committing any act contrary to honesty, justice or good morals. 11 CSR 1A 12.1(j), (o), and (bb). Additionally, licensees may be disciplined for dishonorable, unethical or unprofessional conduct, including,

Conduct which is calculated to bring or has the effect of bringing the medical or podiatric profession into disrepute, including, but not limited to, any departure from or failure to conform to the standards of acceptable and prevailing medical or podiatric practice within the state, and any departure from or failure to conform to the current principles of medical ethics of the AMA available from the AMA in Chicago, Illinois, or the principles of podiatric ethics of the APMA available from the APMA in Bethesda, Maryland. For the purposes of this subsection, actual injury to a patient need not be established.


11 CSR 1A 12.2(d).

Principle IX of the American Medical Association Principles of Medical Ethics provides that, "A physician shall support access to medical care for all people." American Medical Association Opinion 10.01 Fundamentals of the Patient-Physician Relationship, at subsection 3 provides, "The patient has the right to courtesy, respect, dignity, responsiveness, and timely attention to his or her needs."

Physicians and podiatrists should be mindful of the needs of patients with disabilities, including those with service animals, so as to conform to the requirements of the law and the ethical standards of the profession.



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