

WHO LET THE DOGS OUT? A LEGAL PRIMER ON SERVICE DOGS IN THE EMERGENCY DEPARTMENT



Authors: Elijah Nielson, PhD, JD, LLM, LCSW, and Erica Lowe, Orem, UT

Section Editors: Cindy Lefton, PhD, RN, Charlie Peterson, MSN, APRN, FNP-BC, CEN, Christine Pittenger, MSN, RN, CEN, and Jennifer Williams, PhD, RN, ACNS-BC, CCRN, CNS

CE Earn Up to 8.0 Hours. See page 226.

The increase of 4-legged companions accompanying patients to the emergency department is an ongoing trend. Combining knowledge from our social work colleagues with legal expertise and insights from fellow ED nurses, this month's Experience Talks column provides readers with useful tips to help meet the needs of patients with their support dogs and follow the Americans With Disabilities Act guidelines.

According to the United States Census Bureau, 1 in 5 Americans have a disability of some sort and 7 million Americans report severe depression and/or anxiety.¹ Perhaps not surprisingly, service dogs have begun to play an increasingly visible role in modern society in addressing the mental health needs of patients visiting the emergency department.² The increasing frequency of canine companions in the emergency department also has created specific challenges when caring for patients.³ The authors observed firsthand the concerns some ED nurses experience, especially during triage, when a patient presents to the emergency department with a service dog in tow. Before we address the applicable law surrounding service dogs, we believe it is important to highlight a few real-life examples taken from actual practice. To better understand the perceptions involving service dogs in the emergency department, the authors interviewed 4 ED nurses currently practicing from different facilities.

When presented with the question, "What do you do when you encounter a patient with a dog at triage?" the 4 nurses responded with varying answers. Nurse 1, a member of her facility's Americans With Disabilities Act (ADA) task force, which is focused on service dogs in the hospital, provided a response that fully complied with the ADA (1990).

On the other end of the spectrum, nurse 2 was not quite sure how to handle the situation and stated, "Um, I really don't do anything. I just look at them for a second and then take the patient with their dog over to the exam room. I'm just not sure what to do; there are so many directives of what I should or shouldn't be doing that I don't even ask anymore. I just figure someone else will figure it out—and I don't want to do the wrong thing. So I just bring them back. I punt, yeah, I basically just punt it to someone else to figure out."

Echoing a similar sentiment, nurse 3 answered the question with the following explanation of how she handled the arrival of a patient with a service dog: "I just say whatever my boss wants me to say. They are always changing things all the time anyway—so I just say what I am told to say. It hasn't really happened to me that often though."

Whereas nurses 2 and 3 were uncertain of how to proceed, nurse 4 seemed quite confident in his answer, even though his conclusion was legally incorrect, as he explained:

"You can kind of tell if they are a service dog or not. I think the patient is often just looking for a fight by saying 'this is my service dog,' so I try to just not react—and if there is a room available in the emergency department where I can bring the dog in without contaminating the emergency department then I'll do it. But if there isn't a room available that is close to the entrance, then I won't. I'll just say, 'Sorry, we can't have dogs in the emergency department.'"

While these responses provide a variety of perspectives, in regard to the ADA and service dogs, what really matters? The short, legal answer, of course, is that under the ADA—as well as under the 1986 Emergency Treatment and Active Labor Act (EMTALA)—it is required that health care providers stabilize and always do what is best for their patients.⁴

Elijah Nielson is Assistant Professor, Utah Valley University, Orem, UT.

Erica Lowe is a BSW candidate, Utah Valley University, Orem, UT.

Editor's note: You may notice two additional section editors: "the Christines." Chris and Charlie, two extraordinary minds, have joined the team and we are excited they will be taking Experience Talks to the next level.

For correspondence, write: Elijah Nielson, PhD, JD, LLM, LCSW, Utah Valley University, 800 W University Pkwy, Orem, UT 84058; E-mail: elijah.nielson@uvu.edu.

J Emerg Nurs 2019;45:208-10.
0099-1767

Copyright © 2019 Emergency Nurses Association. Published by Elsevier Inc. All rights reserved.

<https://doi.org/10.1016/j.jen.2018.12.015>

Therefore, the way nurses interact with patients and their service dogs in the emergency department has both legal and clinical implications.

The following scenario, based on a real-life case, underscores this fact.

In this case a male patient (patient A), accompanied by his well-behaved, harnessed, Rottweiler-breed service dog, presented to the emergency department requesting treatment for acute physical trauma. Patient A's spouse had physically assaulted him and subsequently had been arrested for domestic violence just prior to patient A's arrival at the emergency department. At triage, patient A, whose mental health diagnoses included posttraumatic stress disorder (PTSD) and anxiety, was noticeably agitated, tearful, and dysphoric with a mood-congruent affect. Although the service dog was under patient A's control, the triage nurse refused to allow the service dog to accompany the patient into the emergency department. At that point, patient A's agitation escalated, requiring the placement of an involuntary mental health hold so the treatment team could complete their assessment.

This scenario demonstrates how the ED nurse's response to a service dog can exacerbate PTSD, anxiety, and other types of symptoms associated with various acute psychiatric crises. Recognizing the impact nurse responses to service dogs can have on patients combined with the necessity to abide by ADA guidelines, preventing similar situations is a win-win for staff and patients.

We reviewed the applicable US and state laws regarding service dogs in medical settings. Because individual state laws vary—and in fact can allow for broader definitions of what constitutes a service animal—we refer the reader to the attorney general's office of their respective state for information about applicable state laws.⁵ For the purposes of this article we will focus primarily on the ADA.

The ADA is the controlling law regarding service animals and is applicable to all states and territories of the US.⁶ In other words, this means that as a federal law, the ADA will preempt any contrary state laws. Thus, whereas individual state laws may broaden the definitions or rights of service animals, these state or territorial laws are preempted from contravening any of the rights and privileges guaranteed under the ADA.⁷ Under this law "service animals" are expressly defined as dogs that have been trained to specifically assist a person with his or her particular disability.⁸

Hospitals that serve the public are required by the ADA to allow service animals into every area of the hospital that members of the public are typically allowed to access; in other words, the law expressly permits service animals to enter examination rooms and patient rooms in the emer-

gency department.⁸ Persons with service animals must maintain control of their dog; generally this means the dog must be leashed or harnessed unless the individual's disability—or the dog's work as a service animal—prevents the use of such devices.⁸

Under the ADA, if nursing staff have a question about the work of a service animal, they may ask 2 questions: (1) "Is the dog a service animal because of a disability?" and (2) "What service is the animal trained to provide?"⁸ Nursing staff may not ask about the person's disability, require a demonstration of the dog's abilities, refuse service because they are afraid of or allergic to dogs, or require the person to remove his or her service dog from the hospital (unless the dog is not being controlled or is not housebroken).⁹

There is no requirement under the ADA that a service animal be a specific breed of dog, there is also no exclusion of breed types from qualifying as a service animal, and a hospital may not prohibit a service animal from entry into the facility simply because of stereotypes about a particular breed of dogs.¹⁰ However, if a service animal—by its behavior—poses a direct threat to the safety of staff or others, then that dog may be excluded from entry into the hospital.¹⁰ In addition, service animals are not required to wear a vest identifying them as such, nor are these dogs required to be professionally trained or certified as a service animal.¹⁰

We have summarized what we believe are the most relevant parts of the ADA in relation to nursing practice and service animals in the emergency department. We will now apply the ADA to the scenario that we shared in our introductory section.

Patient A, accompanied by his well-behaved, harnessed, Rottweiler-breed service dog, presented to the emergency department requesting treatment for acute physical trauma. Patient A's spouse had physically assaulted him and subsequently had been arrested for domestic violence just prior to his arrival at the emergency department. At triage patient A, whose mental health diagnoses included PTSD and anxiety, was noticeably agitated, tearful, and dysphoric with a mood-congruent affect. Although the service dog was under patient A's control, the triage nurse refused to allow the service dog to accompany the patient into the emergency department. At that point, patient A's agitation escalated, requiring the placement of an involuntary mental health hold so the team could complete their assessment.

Let us now deconstruct this example based on an actual case. Although the nurse may have thought they were following the hospital policy, refusing to allow the service dog to accompany patient A into the emergency department

violated the law. Why did this violate the ADA? The reader may recall that under the ADA, nursing staff may not prevent a service animal from entering the emergency department unless the dog is not being controlled, is not housebroken, or presents a direct threat to the safety of staff and others. In this case, the service animal was well behaved, in a harness, and under patient A's control. These observations suggest that the service animal was housebroken and was not a threat to others. Therefore, the nurse violated the ADA by refusing ED entry to the service animal without justification.

But what about the fact that the service dog in this real life example was a Rottweiler breed? Although the Rottweiler breed is stereotyped as dangerous,^{11,12} under the ADA it is not permissible to prohibit entry of a service animal into the emergency department simply because of a fear of or bias toward the service animal's breed. Therefore, if the nurse in this example refused entry to the service animal because it was a Rottweiler, then they violated the ADA by engaging in illegal breed discrimination.

What if the triage nurse was uncertain about whether patient A's dog was actually a service animal? Remember that under the ADA you may always ask (1) "Is the dog a service animal because of a disability?" and (2) "What service is the animal trained to provide?" The patient then could have replied "Yes" to question 1 and "To reduce my symptoms of anxiety and PTSD" to question 2. The triage nurse then could have avoided violating the ADA by allowing the service animal to accompany the patient into the emergency department.

We hope this article has been helpful in alleviating the concern some ED nurses feel, especially during triage, when patients present to the emergency department with a service dog in tow. Service dogs have begun to play an increasingly visible role in modern society in addressing the mental health needs of patients visiting the emergency department. Our hope is this column has provided information that will diminish potential trepidation that can occur when a patient and his or her service dog arrive at your emergency department. Increasing one's knowledge and understanding of how the ADA applies to service animals and the 2 questions one can legally ask in regard to service dogs in the emergency department can help nurses provide even better care by ensuring patients receive the support and assistance needed from their service animals during emergent situations.

REFERENCES

1. United States Census Bureau. Nearly 1 in 5 people have a disability in the U.S., Census Bureau Reports. <https://www.census.gov/newsroom/releases/archives/miscellaneous/cb12-134.html>; July 25, 2012. Accessed December 21, 2018.
2. Muramatsu R, Thomas K, Leong S, Ragukonis F. Service dogs, psychiatric hospitalizations, and the ADA. *Psychiatric Serv*. 2015;66(1):87-89.
3. Levey J, Chappy S. Service dogs in the perioperative setting. *AORN J*. 2017;105(4):365-369.
4. Stanger K. Avoiding EMTALA penalties [web log comment]. <https://www.hhhealthlawblog.com/category/emtala>; October 4, 2012. Accessed December 21, 2018.
5. Rosenbaum S. Disability rights and public accommodations: state-by-state. https://adasoutheast.org/publications/ada/public_accommodations_disability_rights_state-by-state_Final.pdf; February 2011. Accessed December 21, 2018.
6. United States Department of Justice, Civil Rights Division. Information and technical assistance on the Americans with Disabilities Act. https://www.ada.gov/ada_intro.htm. Accessed December 21, 2018.
7. Ramsey M. The Supremacy Clause, original meaning and modern law. *Ohio State Law J*. 2013;74(4):559-622.
8. United States Department of Justice, Civil Rights Division. Service animals. https://www.ada.gov/service_animals_2010.htm. Accessed December 21, 2018.
9. United States Department of Justice. Americans with Disabilities Act Title III Regulations: Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities. 28 CFR Part 36 § 36.302(c)(2)(i)(ii) Service animals. https://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_regulations.htm#a302. Accessed December 21, 2018.
10. United States Department of Justice, Civil Rights Division, Disability Rights Section. Frequently asked questions about service animals and the ADA. https://www.ada.gov/regs2010/service_animal_qa.pdf. Accessed December 21, 2018.
11. Creedon N, Suilleabhain P. Dog bite injuries to humans and the use of breed-specific legislation: a comparison of bites from legislated and non-legislated dog breeds. *Irish Veterinary J*. 2017;70(23). <https://doi.org/10.1186/s13620-017-0101-1>. Published July 21, 2017. Accessed December 21, 2018.
12. Horswell B, Chahine C. Dog bites of the face, head and neck in children. *W V Med J*. 2011;107(6):24-27.

Submissions to this column are encouraged and may be sent to **Cindy Lefton, PhD, RN**

clefton@q4solutions.com

or

Jennifer Williams, PhD, RN, ACNS-BC, CCRN, CNS

jawilliamsncns@gmail.com

or

Charlie Peterson, MSN, APRN, FNP-BC, CEN

charlie.peterson@bjc.org

or

Christine Pittenger, MSN, RN, CEN

cpitteng@kumc.edu