

BEFORE THE HOUSE
House Financial Institutions, Housing, and Urban Development

Opponent Testimony re: H.B. 282

By: Paul G. Wilkins
Student Legal Services, Inc.
November 28, 2017

Chairman Dever, Ranking Member Smith and members of the Committee, H.B. 282 radically changes the power balance between landlords and tenants. Student Legal Services, Inc. opposes H.B. 282 because it will give landlords another way to intimidate tenants.

Throughout my time as a tenant advocate, I have seen landlords use many tactics to intimidate tenants. They are able to do so because tenants are often unaware of their rights and responsibilities or the landlord's rights and responsibilities. Landlords will refuse repairs or services and threaten eviction to tenants who stand up to a landlord's intimidation tactics.

I have attached, as Exhibit A, a form used by landlords to intimidate disabled veterans and other disabled individuals. This form was created by a law firm which represents many of Ohio's landlords. The form is widely used throughout the state.

When a disabled individual needs a service animal, they must ask for a reasonable accommodation to allow them to have the service animal. Some landlords charge higher rent, fees, or security deposits to have animals in an apartment. Other landlords do not allow pets in any apartments for any reason. Federal and Ohio law require landlords to allow service animals in their apartments without any additional rent or fees. Landlords know they cannot outright deny the reasonable accommodation request for a service animal so they resort to intimidation tactics such as this form.

Exhibit A attempts to intimidate the health care provider¹ who has certified the disabled person's need for a service animal. On the second page, the Department of Justice and the Department of (Housing and) Urban Development are invoked and the health care provider is threatened with criminal penalties for providing incorrect information. In paragraphs two and three, the form implies that the health care provider must be licensed in the State of Ohio to verify the disability of an Ohio tenant. No such requirements exist. Paragraph eleven incorrectly state that it is illegal to engage in the practice of mental health counseling in Ohio over the internet without a valid license issued by the state of Ohio.

¹ While I use "health care provider" in my testimony for the sake of brevity, neither Ohio nor Federal law require that the person providing verification of the disability be a health care provider. Rather, the person providing verification of disability need only be a person who is familiar with the tenant's disability.

I have represented multiple tenants whose health care providers have refused to fill out this form out of fear of the fictitious legal ramification. When I, and my colleagues at Student Legal Services, challenge the use of Exhibit A, the service animal is always approved. Unfortunately, not every disabled individual has access to legal representation. I have attached, as Exhibit B, a form that requests all of the information that is required by federal and state law to verify a disabled person's need for a service animal.

Exhibit A is only one form of intimidation used by landlords. Landlords routinely retain security deposits and threaten a lawsuit for additional money or damage to the tenant's credit score if the tenant decides to challenge the reasons for retaining the security deposit. H.B. 282 would allow landlords to threaten criminal action to tenants who try to enforce their rights as tenants. For these reasons, Student Legal Services opposes H.B. 282.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read 'Paul G. Wilkins', with a long horizontal flourish extending to the right.

Paul G. Wilkins

EXHIBIT A

Writers Direct Dial: [REDACTED]

Email: [REDACTED]

August 2, 2017

[REDACTED]

[REDACTED]

Sent via U.S. Ordinary Mail, Fax, & Email

Re: [REDACTED]
Request for an assistance animal

Dear [REDACTED]

Please be advised that my name is [REDACTED]. I am an attorney in Columbus, Ohio representing the interests of [REDACTED]. I have been asked to review and provide a disposition to [REDACTED]'s request for an assistance animal. I am in receipt of a letter purportedly from [REDACTED]'s office dated August 1, 2017. In recent Sixth Circuit Court of Appeals case, Overlook Mutual Homes Inc. v. Vickie L Spencer, the court citing Howard v. City of Beavercreek, 276 F. 3d 802 806 (6th Circuit 2002) and Bronk v. Ineichen, 54F 3d. 425, 429 (7th Circuit) held that among other requirements, a proper verification for an assistance animal should identify that [REDACTED] is handicapped within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(h) and that the assistance animal is medically necessary. The concept of necessity in the Sixth Circuit (Ohio) requires at the minimum the showing that the desired accommodation is necessary to ameliorate the effects of [REDACTED]'s disability.

In addition to the prerequisites mentioned above, the Columbus Office of Fair Housing and Equal Opportunity (HUD) requires a "medical professional to have knowledge of the requesters disability through the process of an examination, or possess knowledge of the requesters disability through a professional association with the requester/tenant where knowledge of the requesters disability is derived, as an acceptable document." Unfortunately, there are some "red flags" which necessitates that I question the veracity of the August 1, 2017 request.

As you are no doubt aware, each state licenses counselors, social workers, therapists, and requires that only LCSW's licensed in that state are eligible to treat and/or prescribe for someone

located in that state. While I certainly appreciate that Telehealth or Telecounseling may be an acceptable and appropriate form of treatment and diagnosis, most states have exhaustive precautions and limitations. California Business and Professional Code Section 2290.5 and the California Board of Behavioral Sciences through California Code of Regulation Title 16 Section 1815.5 (see attached) provides said standards and limits a California Licensee or registrant's telehealth services to clients located in another jurisdiction only if the California licensee or registrant meets the requirements to lawfully provide services in that jurisdiction (see Title 16 Section 1815.5(e)). Furthermore, Ohio Revised Code Section 4757.01 makes it illegal to engage in the practice of counseling or therapy unless a person is currently licensed in Ohio (see attached). A violation of Title 16 § 1815.5(e) is an act of unprofessional conduct under California Law (1815.5(f)) and is a criminal act under Ohio Law (R.C. 4757.02 attached).

A review of the State of Ohio counseling board's web sites does not indicate that you are currently licensed in the State of Ohio. That being said, a housing provider (especially in the Sixth Circuit) can request proper verification and proof of disability and medical nexus when the need is not obvious. Similar complaints are currently pending before State of California – State and Consumer Services Agency – Board of Behavioral Services. After the attached verification has been executed, kindly return to my attention and I will promptly provide a disposition.

Sincerely,

A black rectangular redaction box covers the signature area, obscuring the name and any handwritten notes or dates that might have been present.

The above named person has applied for housing or is a current resident of housing managed and operated by Inn Town Homes. The Department of Justice ("DOJ") and the Department of Urban Development ("HUD") are jointly responsible for enforcing federal fair housing laws.

Fair housing laws allow individuals who have a mental or physical disability, which substantially limits a major life function, to request that a housing provider grant him/her a reasonable modification and/or accommodation in rules, policies, procedures or practices. Federal regulations allow a housing provider to verify information that is used in determining an individuals eligibility.

The above named individual has identified you as a professional that can verify and provide opinion regarding his/her requested accommodation. We ask your cooperation in providing information and returning it to the requesting organization listed at the top of the page. Your prompt return of this information will help assure timely processing of the application for assistance. The applicant/tenant has consented to this release of information as shown below.

RELEASE: I hereby authorize the release of the requested information. Information obtained under this consent is limited to information that is no older than 12 months.

Date

CRIMINAL PENALTIES FOR MISUSING THIS CONSENT:

Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government. HUD, the PHA and any owner (or any employee of HUD, the PHA or the owner) may be subject to penalties for unauthorized disclosures or improper uses of information collected based on the consent form. Use of the information collected based on this verification form is restricted to the purposes cited above. Any person, who knowingly or willingly requests, obtains or discloses any information under false pretenses concerning an applicant may be subject to a misdemeanor and fined not more than \$5000. Any applicant or participant affected by negligent disclosure of information may bring civil action for damages, and seek other relief, as may be appropriate against the officer or employee of HUD, the PHA or the owner responsible for the unauthorized disclosure or improper use.

TO BE COMPLETED BY VERIFIER ONLY

Definition of "Disabled"

Under Federal Law, an individual is disabled if he/she has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment, or is regarded as having such impairment. "Life activities" have been defined, but are not limited to, caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. "Substantially limits" means more than a minor inconvenience or slight limitation. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immune Deficiency Virus infection, mental retardation, emotional illness, drug addiction, and alcoholism. This definition doesn't include any individual who is a drug addict and is currently using illegal drugs or an alcoholic who poses a direct threat to property or safety because of alcohol use.

1. Is the above named individual disabled as defined above?

Yes No

If no, please describe why not: _____

2. Are you professionally licensed and authorized to provide such a diagnosis in the State of Ohio?

Yes No

If no, please describe why not: _____

3. Have you applied for a Social Worker's License in Ohio?

Yes No

4. Have you treated or evaluated the above named individual(s) within the last twelve months?

Yes No

If no, please describe why not: _____

5. In making [REDACTED]'s diagnosis, was an in-person examination conducted?

Yes No

If no, please describe why not: _____

6. California Business and Professions Code 2290.5, California Code of Regulation Title 16 Section 1815.5 provides standards and limitations of practice for telehealth. Did you comply with these standards?

Yes No

If no, please describe why not: _____

7. If you only utilized an "on-line" consultation as the basis of your diagnosis and prescription, please specifically indicate what, if any, protocols were utilized to ensure accurate and truthful patient information?

8. In your professional opinion, is the requested accommodation necessary to achieve lease compliance or is it necessary to provide the Resident or household member the same opportunity that a non-disabled Resident has to use and enjoy housing? (Note: the concept of necessity requires at a minimum the showing that the desired accommodation will affirmatively enhance a disabled resident's quality of life by ameliorating affects of the disability.)

Yes No

If no, please describe why not: _____

9. Could lease compliance be more effectively achieved by some other accommodation?

Yes No

If yes, briefly describe the accommodation you have in mind _____

10. In your professional opinion, is the need for this accommodation related to the applicant's disability?

Yes No

If no, please describe why not: _____

11. Are you aware that it is illegal to engage in the Practice of Mental Health Counseling in Ohio over the internet without a valid license issued by the State of Ohio?

Yes No

I acknowledge my answers to these questions to be my professional opinion made in good faith to a reasonable degree of medical certainty, and in accordance with reasonable medical standards.

Signature

Date



Disability Verification Form

EXHIBIT B

I have been _____'s physician, medical professional, and/or
(Name of Patient)

health care provider since _____.
(Date)

I am aware that the Fair Housing Act, the Americans with Disabilities Act and Section 504 of the Rehabilitation Act define disability as:

1. A physical or mental impairment which substantially limits one or more of the person's major life activities, and/or
2. A record of having a physical or mental impairment which substantially limits one or more of the person's major life activities, and/or
3. Being regarded as having a physical or mental impairment which substantially limits one or more of the person's major life activities including, but not necessarily limited to: caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and/or working.

I, _____, affirm that _____
(Name of Medical Professional) (Name of Patient)

has a disability as defined above. As a direct result of this disability, it is a medical necessity that his/her reasonable accommodation/modification request for:

(Reasonable Accommodation/Modification Details)

be granted to allow for the full use and enjoyment of the premises. Granting this request will alleviate the effects of his/her disability in the following way(s):

Signature: _____ Date: _____

Name of Medical Professional (print): _____

Title: _____

Address: _____

Telephone: _____ Fax: _____ Email: _____