



Steven W. Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

R. Douglas Meckes, DVM
State Veterinarian

April 18, 2016

J. Dudley Watts, Jr.
Forsyth County Manager
201 North Chestnut Street
Winston-Salem, NC 27101

NOTICE OF CIVIL PENALTY

Re: CIVIL PENALTY ASSESSMENT FOR VIOLATIONS OF N. C. GENERAL STATUTE §19A-32.1(a), (b)(2) and (g) and TITLE 02 N. C. ADMINISTRATIVE CODE, CHAPTER 52J, SECTIONS .0101(1) – (5); .0103 and .0210(c).

AWS-CP-2016-4

Facility: Forsyth County Department of Animal Control Animal Shelter

Dear Mr. Watts:

Pursuant to N. C. General Statute § 19A-40 I am issuing this notice to you that the Forsyth County Department of Animal Control Animal Shelter is assessed a civil penalty of \$5,200.00 as provided in the enclosed Notice of Violations.

With regard to the civil penalty, within 60 days from the date of receipt, you must do one of the following:

1. Pay the civil penalty assessment; or
2. File a written petition for a contested case hearing with the N. C. Office of Administrative Hearings to appeal the penalty assessment.

Pursuant to N. C. General Statute § 150B-22, either party to a dispute may initiate informal settlement negotiations at any time. To negotiate a settlement of this assessment, you may contact me by telephone at (919) 707-3280. Settlement offers do not extend the 60-day deadline for payment or filing of a contested case petition.

Additional information about your options is provided below:

PAYMENT

To pay the penalty, please send your payment by check or money order made payable to the North Carolina Department of Agriculture and Consumer Services to:

North Carolina Department of Agriculture and Consumer Services
Dr. Patricia Norris
Director, Animal Welfare Section
1030 Mail Service Center
Raleigh, NC 27699-1030

APPEAL

If you file a contested case petition, it must be in writing and in the form prescribed by N.C. General Statute § 150B-23. The petition must be accompanied by a filing fee of twenty dollars (\$20.00) payable to the N.C. Office of Administrative Hearings ("OAH"). Should you have any questions about what the fee would be for your case, please contact the OAH Clerk's Office at 919-431-3000. Payment can be made by cash, money order, certified check or check drawn on an attorney's trust account. Make checks payable to: Office of Administrative Hearings. File the petition and one copy with:

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714

Any questions about filing a petition may be directed to the Clerk of OAH by telephone at 919-431-3000. You must serve NCDA&CS by mailing a copy of the petition to:

Ms. Tina Hlabse
North Carolina Department of Agriculture and Consumer Services
Registered Agent and General Counsel
1001 Mail Service Center
Raleigh, NC 27699-1001

Payment of the penalty will not foreclose further enforcement action against you for any new violation. If the violations which resulted in the assessment are of a continuing nature, NCDA&CS reserves the right to assess additional civil penalties in the future or take other enforcement action against you.

Your attention to this matter is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia Norris, DVM, MS". The signature is written in a cursive style with a horizontal line extending to the left.

Patricia Norris, DVM MS
Director, Animal Welfare Section

Attachment: Notice of Violations, Assessment of Civil Penalty

cc: R. Douglas Meckes, DVM, State Veterinarian
Tina Hlabse, General Counsel, NCDA&CS
Joe Reardon, Assistant Commissioner, NCDA&CS
Christopher R. McLennan, Assistant Attorney General

7. The facility inspection and records review detailed above and review of the information provided by the complaint revealed the following:
- a) Three cats with the identification numbers A329121, A329122 and A329123 were taken in by the shelter as strays on February 18, 2016. All 3 cats were euthanized on February 19, 2016. No documentation of serious illness or injury at the time of euthanasia could be found. When asked, shelter staff disclosed the reason for the early euthanasia was because the animals were “feral.”
 - b) A cat with the identification number A329340 was taken in by the shelter as a stray on February 27, 2016. The kennel card notes a wound on the front leg. The cat was euthanized on February 29, 2016. No evidence of veterinary care could be found. No documentation of justification for early euthanasia was provided.
 - c) A cat with the identification number A329346 was taken in by the shelter as a stray on February 27, 2016. The kennel card indicates that this cat had an injured left front leg. The intake registry indicates “stray injured cat – basic care.” The medical history record for this cat indicates instructions for veterinary care issued on February 29, 2016. The cat was euthanized on February 29, 2016. No documentation of serious illness or injury at the time of euthanasia could be found.
 - d) A cat with the identification number A329535 was taken in by the shelter as an owner surrender on March 5, 2016 as noted in the kennel card and in the computer. The cat was euthanized on March 7, 2016. No written consent by the owner or other justification for the disposition of the animal before the expiration of the minimum holding period could be found.
 - e) A dog named Carmen with the identification number A321751 was taken in by the shelter as a stray on October 30, 2015. A note was made in the computer on October 30, 2015 at 15:52 that “dog has a prolapsed uterus. fw.” Another note was made into the computer on November 1, 2015 at 17:16 which stated: “Was told by a volunteer that this dog has a prlasp (sic) uterus. I sent a picture to Dr. Strickland asking him if the dog needed any medication the only thing he prescribed was tramadol if the dog was in pain ,(sic) gave her 1.5 tramadol, the dog is due out today 11/1/15 at 15:48 . nh.” No documentation of any veterinary care being administered to this dog on October 30 or October 31, 2016 could be found. Veterinary care was not sought until late afternoon on November 1, 2016. There is no evidence that this veterinary care was sought due to daily observation by staff of the medical condition which had been present since intake.
 - f) A kitten with the identification number A320629 was taken in by the shelter as a stray on October 16, 2015. The intake registry notes this kitten to be 1 month old and “sick.” The medical history for this kitten notes on October 16, 2015: “Eyes possibly blind.” The complainant notes that on October 18, 2015, she observed that the kitten was unable to eat the wet food in the kennel and was doing poorly. The complainant states she brought her concerns to the attention of the staff present at the shelter that day. An entry into the computer on October 19, 2015 at 10:52 notes “Cat is a foster, medical emergency. Cat can not (sic) eat on its own, 3-5 weeks old, sickly.” The computer record notes on October 19, 2015 at 11:32 that the kitten died in the kennel. No evidence of any veterinary care being administered to this kitten could be found.
 - g) A dog named Bear with identification number A121091 was owner surrendered to the shelter on February 19, 2016. The Intake Registry notes this dog is “elderly and has medical issues.” The Activity Card for this dog notes “the dog is fourteen years old and cannot hardly walk – due to hip and leg issues.” A memo entered in the computer on February 22, 2016 at 7:57 by Scott Bird notes: “Dog

displaying strange behavior. Unbalanced, can barely move, head tilted strange. Old. OK to euth this dog." A memo entered in the computer on February 22, 2016 at 16:12 noted: "Dog bit Monica Sparks at approx. 15:09 PM today. As per T. Jennings dogs (sic) head to be sent to Raliegh (sic) for testing." Shelter records indicate that the bite occurred during handling the dog in preparation for euthanasia. The decision was made not to continue with the euthanasia and send the remains for rabies testing but to place the dog in a 10 day quarantine. The complainant states that she observed this dog on February 28, 2016 not doing well, (urine in his water bowl, vomit/diarrhea in his kennel, severely lethargic or unable to move). She stated that she discussed her concerns with a staff member on that day. A memo entered into the computer on March 2, 2016 at 11:42 notes: "This dog died in the kennel. Happened sometime in the very early morning hours of 03.01.16. Staff found dog around 8:00AM dead in kennel." No evidence could be found of veterinary care being provided to this dog despite being barely able to walk at the time of intake and displaying significant neurological signs during the stay at the shelter.

h) A dog with the identification number A329347 was taken in by the shelter as a stray on February 28, 2016. A memo entered into the computer on February 29, 2016 at 16:18 notes: "This dog is a medical emergency. Dog hit by a car. Can not (sic) move, heavy breathing. Possible broken or fractured right hindlimb. Dog can not (sic) move. OK to euth this dog as a medica (sic) lemergency (sic). Dog is aggressive, staff could not scan animal. OK to euth dog." This animal was not euthanized until late afternoon (16:40) on February 29, 2016. No evidence of veterinary care being provided to this dog during the interim period could be found.

i) A dog with the identification number A329124 was taken in by the shelter as a stray on February 19, 2016. The dog was noted as "sick-emaciated dog" on the Intake Registry. This dog was euthanized on February 19, 2016. No determination, in writing, by the shelter manager, that the animal was seriously ill or injured to justify the euthanasia before the expiration of the minimum holding period could be found.

j) A dog with the identification number of A330368 was taken in by the shelter as a stray on March 17, 2016 according to staff interviews, medical records from the attending veterinary clinic and the activity card of the ACO who transported the dog. This dog was admitted directly to the attending veterinary clinic and assessed as being severely injured with spinal injuries and pelvic fractures. The veterinarian recommended euthanasia due to the severity of the injuries. The dog was transported to the shelter on March 18, 2016 and euthanized. No shelter record either computer generated or hand written could be located for this dog. No intake information or euthanasia information, except the DEA log entry, could be found for this dog. None of the information required by the 02 NCAC 52J Section .0101 could be located for this dog.

k) A litter of puppies with the identification numbers A328372, A328377, A328379, A328381, A328382, A328383, and A328384 have intake dates of February 10, 2016 on their kennel cards. According to shelter staff statements, these nursing puppies actually entered the shelter with their dam on February 2, 2016, not on February 10, 2016 as indicated in the shelter records. The shelter staff indicated that their procedure for litters of nursing animals was not to record the actual day of intake but to record the date on which their disposition had been decided. The dam had been confiscated due to a bite and was placed in a 10 day quarantine. The dam was euthanized on February 11, 2016 at the end of her quarantine period. The puppies were also euthanized on February 11, 2016. The puppies are noted on the kennel card as owner surrendered animals, yet no owner surrender form with a signature could be located. No Intake Registry sheet could be located for 6 of the 7 puppies. When asked by Inspector Shore for the Intake Registry sheets, the shelter staff produced one for puppy A328372 dated March 29, 2016, which is more than 6 weeks after the puppy had been euthanized.

l) A review of shelter records for March 2016 revealed 53 animal records that were missing origination, animal description, location of the animal, disposition information, euthanasia information and/or record of veterinary care as required in 02 NCAC 52J .0101(1) – (5). The review of shelter records for February 2016 revealed 27 animal records with similar missing information.

m) Review of shelter records reveal that numerous animal records are missing required information such that compliance with N. C. General Statute §19A-32.1 could not be ascertained.

CONCLUSIONS

As a result of this investigation, the North Carolina Department of Agriculture and Consumer Services, Veterinary Division, Animal Welfare Section, finds that the shelter either by act or omission, violated the provisions of N. C. General Statutes §19A-32.1(a), (b)(2) and (g) and 02 North Carolina Administrative Code 52J .0101(1) - (5); .0103 and .0210(c).

Violation of N. C. General Statutes §19A-32.1(a) and (b)(2) occurred with animals A329121, A329122, A329123, A329340 and A329346.

Violation of N. C. General Statute §19A-32.1(g) occurred with animal A329535.

Violation of 02 North Carolina Administrative Code 52J .0101(1) - (5) occurred with A330368 and numerous animals as detailed above.

Violation of 02 North Carolina Administrative Code 52J .0103 occurred with numerous animals as detailed above.

Violation of 02 North Carolina Administrative Code 52J .0210(c) occurred with animals A321751, A320629, A121091, and A329347.

(See Appendix for text of cited General Statutes and Administrative Code)

CIVIL PENALTIES

As required by N.C. Gen. Stat. § 19A-40, in determining the amount of the civil penalty, I have considered the degree and extent of harm caused by the violations listed above.

Accordingly Forsyth County Department of Animal Control Animal Shelter is assessed a civil penalty for the following violations:

- 1) \$500.00 for 5 violations of N. C. General Statute §19A-32.1(a) and (b)(2);
- 2) \$100.00 for violation of N. C. General Statute §19A-32.1(g);
- 3) \$500.00 for violation of 02 North Carolina Administrative Code 52J .0101(1) – (5);
- 4) \$100.00 for violation of 02 North Carolina Administrative Code 52J .0103; and
- 5) \$4,000.00 for 4 violations of 02 North Carolina Administrative Code 52J .0210(c)

\$5,200.00 TOTAL AMOUNT ASSESSED

April 18, 2016

Date

Patricia Norris, DVM, MS

Patricia Norris, DVM, MS
Director, Animal Welfare Section
North Carolina Department of
Agriculture & Consumer Services

Appendix

RELEVANT LAWS AND REGULATIONS

§ 19A-32.1. Minimum holding period for animals in animal shelters; public viewing of animals in animal shelters; disposition of animals.

(a) Except as otherwise provided in this section, all animals received by an animal shelter or by an agent of an animal shelter shall be held for a minimum holding period of 72 hours, or for any longer minimum period established by a board of county commissioners, prior to being euthanized or otherwise disposed of.

(b) Before an animal may be euthanized or otherwise disposed of, it shall be made available for adoption under procedures that enable members of the public to inspect the animal, except in the following cases:

- (1) The animal has been found by the operator of the shelter to be unadoptable due to injury or defects of health or temperament.
- (2) The animal is seriously ill or injured, in which case the animal may be euthanized before the expiration of the minimum holding period if the manager of the animal shelter determines, in writing, that it is appropriate to do so. The writing shall include the reason for the determination.

(g) An animal that is surrendered to an animal shelter by the animal's owner may be disposed of before the expiration of the minimum holding period in a manner authorized under subsection (f) of this section if the owner provides to the shelter (i) some proof of ownership of the animal and (ii) a signed written consent to the disposition of the animal before the expiration of the minimum holding period.

§ 19A-40. Civil Penalties.

The Director may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Director shall consider the degree and extent of harm caused by the violation. The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1995, c. 516, s. 6; 1998-215, s. 3.)

02 NCAC 52J .0101 RECORDS; ANIMAL SHELTERS, ETC.

Operators of all animal shelters, pet shops, public auctions, and dealers shall maintain records on all dogs and cats showing the following:

- (1) origin of animals (including names and addresses of consignors) and date animals were received;
- (2) description of animals including species, age, sex, breed, and color markings;
- (3) location of animal if not kept at the licensed or registered facility;
- (4) disposition of animals including name and address of person to whom animal is sold, traded or adopted and the date of such transaction; in the event of death, the record shall show the date, signs of illness, or cause of death if identified; if euthanized, the record shall show date and type of euthanasia; and
- (5) record of veterinary care including treatments, immunization and date, time, description of medication (including name and dosage), and initials of person administering any product or procedure.

History Note: Authority G.S. 19A-24;
Eff. April 1, 1984;
Amended Eff. January 1, 2005; April 1, 1985.

02 NCAC 52J .0103 INSPECTION OF RECORDS

All operators of animal shelters, pet shops, boarding kennels, public auctions, and persons operating as dealers shall make all required records available to the director or his authorized representative on request, during the business and cleaning hours listed on the license application. The operator must be able to match each animal to its record upon request. Records shall be maintained for a period of one year after the animal is released.

History Note: Authority G.S. 19A-24; 19A-25;
Eff. April 1, 1984;
Amended Eff. January 1, 2005; April 1, 1985.

02 NCAC 52J .0210 VETERINARY CARE

(c) Each dog and cat shall be observed daily by the animal caretaker in charge, or by someone under his direct supervision. Sick or diseased, injured, lame, or blind dogs or cats shall be provided with veterinary care or be euthanized, provided that this shall not affect compliance with any state or local law requiring the holding, for a specified period, of animals suspected of being diseased. If euthanasia is performed at a certified facility, a list of personnel approved to perform euthanasia shall be maintained in a Policy and Procedure Manual as described in 02 NCAC 52J .0800. Diseased or deformed animals shall be sold or adopted only under the policy set forth in the "Program of Veterinary Care." Full written disclosure of the medical condition of the animal shall be provided to the new owner.

*History Note: Authority G.S. 19A-24;
Eff. April 1, 1984;
Amended Eff. March 23, 2009; January 1, 2005.*