Steven W. Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

David T. Marshall, DVM
State Veterinarian

September 24, 2013

Mr. Taylor Bartholomew
Franklin County Animal Shelter
Franklin County
1640 Timberlake Road
Louisburg, North Carolina 27549

FED EX/UPS

NOTICE OF CIVIL PENALTY

RE: CIVIL PENALTY ASSESSMENT FOR VIOLATIONS OF ANIMAL WELFARE ACT, N.C. GENERAL STATUTE § 19A-24(a)(5) AND TITLE 2, N.C. ADMINISTRATIVE CODE, CHAPTER 52J, SECTION .0402

Dear Mr. Bartholomew:

Pursuant to N.C. Gen. Stat. §§ 19A-24 and -40 I am issuing this notice to you that a civil penalty has been assessed against you by the North Carolina Department of Agriculture and Consumer Services, Veterinary Division (NCDA&CS). The civil penalty order and assessment are attached.

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 in the Office of Administrative Hearings (OAH) to appeal the penalty assessment.

Pursuant to N.C. Gen. Stat. § 150B-22, either party to a dispute may initiate informal settlement negotiations at any time. To negotiate a settlement of this assessment, present your offer to Dr. Lee Hunter, Director, Animal Welfare Section, who may be contacted by telephone at (919) 733-7601. 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. David T. Marshall
State Veterinarian
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. Gen. Stat. § 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. 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 919/733-0926. 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,

Lee Hunter, DVM, MPH
Director, Animal Welfare Section

JLH/mwb

Attachment: Assessment Document

cc: Mr. Barry Bloch, Assistant Attorney General
Ms. Tina Hlabse, Legal Affairs
David T. Marshall, DVM, State Veterinarian

STATE OF NORTH CAROLINA
COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, VETERINARY DIVISION

IN THE MATTER OF MR. TAYLOR BARTHOLOMEW	NOTICE OF VIOLATIONS AND ASSESSMENT OF CIVIL PENALTY For Violations Of: Animal Welfare Act N.C. General Statute § 19A-24 2 N.C. Administrative Code 52J .0402

Acting pursuant to N.C. Gen. Stat. §§ 19A-24 and -40, Dr. Lee Hunter, Director, Animal Welfare Section, North Carolina Department of Agriculture and Consumer Services (NCDA&CS) makes the following:

FINDINGS OF FACT

1. At all times pertinent to this matter Taylor Bartholomew (Mr. Bartholomew") was employed by Franklin County as Director of the Franklin County Animal Shelter ("FCAS").

2. On July 25, 2013, Mr. Bartholomew was not a certified euthanasia technician.

3. On July 25, 2013, Mr. Bartholomew, while acting in his capacity as Director of FCAS, assessed the physical condition of and decided to euthanize a male basset hound, impound number 4-3-0534, call no. 20, which was then being held at FCAS.

4. Mr. Bartholomew has provided the NCDA&CS with a written statement in which he admits that he made the decision to "dispatch the animal."

5. FCAS' animal impoundment record for the dog Mr. Bartholomew euthanized states:

   a. that the dog was euthanized on July 25, 2013, by "gunshot."

   b. that the dog was "attacked by a male pitbull, (sic) dog had bitten off toe and tore muscle and tendon in back right leg. Other bite wounds all over and lost alot (sic) of blood.";

6. Mr. Bartholomew's written statement includes assertions that:

   a. FCAS' certified euthanasia technician "was not available at the time.";

b. Mr. Bartholomew was not aware on July 25, 2013, that gunshot could not lawfully be used in a registered animal welfare shelter facility to euthanize an animal.

7. Mr. Bartholomew's statement omits any mention of efforts to summon a certified euthanasia technician or veterinarian or to treat the dog to reduce its pain and suffering until such time as a CET or veterinarian could arrive and properly euthanize it.

As a result of this investigation, the North Carolina Department of Agriculture and Consumer Services, Veterinary Division, Animal Welfare Section, alleges that Mr. Bartholomew, either by act or omission, violated the following provision of the N.C. General Statute:

a) N.C. Gen. Stat. § 19A-24
b) North Carolina Administrative Code 52J .0402:

§ 19A-24. Powers of Board of Agriculture.

(a) The Board of Agriculture shall:

(1) Establish standards for the care of animals at animal shelters, boarding kennels, pet shops, and public auctions. A boarding kennel that offers dog day care services and has a ratio of dogs to employees or supervisors, or both employees and supervisors, of not more than 10 to one, shall not as to such services be subject to any regulations that restrict the number of dogs that are permitted within any primary enclosure.

(2) Prescribe the manner in which animals may be transported to and from registered or licensed premises.

(3) Require licensees and holders of certificates to keep records of the purchase and sale of animals and to identify animals at their establishments.

(4) Adopt rules to implement this Article, including federal regulations promulgated under Title 7, Chapter 54, of the United States Code.

(5) Adopt rules on the euthanasia of animals in the possession or custody of any person required to obtain a certificate of registration under this Article. An animal shall only be put to death by a method and delivery of method approved by the American Veterinary Medical Association, the Humane Society of the United States, or the American Humane Association. The Department shall establish rules for the euthanasia process using any one or combination of methods and standards prescribed by the three aforementioned organizations. The rules shall address the equipment, the process, and the separation of animals, in addition to the animals' age and condition. If the gas method of euthanasia is approved, rules shall require

(i) that only commercially compressed carbon monoxide gas is approved for use, and

(ii) that the gas must be delivered in a commercially manufactured chamber that allows for the individual separation of animals. Rules shall also mandate training for any person who participates in the euthanasia process.

(1977, 2nd Sess., c. 1217, s. 5; 1987, c. 827, s. 62; 2004-199, s. 12; 2005-276, s. 11.5(b); 2005-345, s. 22; 2008-198, s. 2(a).)

§ 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 .0402 AUTHORIZED PERSONS

Only a Certified Euthanasia Technician, Probationary Euthanasia Technician, or a veterinarian licensed to practice veterinary medicine in North Carolina may euthanize an animal in a certified animal shelter. A Certified Euthanasia Technician shall not euthanize animals using a method for which he or she is not currently certified except as specified in 02 NCAC 52J .0700.

History Note: Authority G.S. 19A-24;
Eff. March 23, 2009.

02 NCAC 52J .0701 METHODS OF EUTHANASIA PERMITTED UNDER EXTRAORDINARY CIRCUMSTANCES AND SITUATIONS

For purposes of this Section, extraordinary circumstance or situation includes a situation which is offsite from the shelter, in which an animal poses an immediate risk to animal, human or public health and in which no alternative, less extreme measure of euthanasia is feasible. It also includes circumstances or situations in which it would be inhumane to transport an animal to another location to perform euthanasia.

History Note: Authority G.S. 19A-24;
Eff. March 23, 2009.

02 NCAC 52J .0702 GUNSHOT OR OTHER METHODS

Under extraordinary circumstances and situations which occur offsite from the shelter, a shelter employee may use gunshot or other extreme method of euthanasia as set forth in the American Veterinary Medical Association, Humane Society of the United States or American Humane Association Guidelines incorporated by reference in 02 NCAC 52J .0401.

History Note: Authority G.S. 19A-24;
Eff. March 23, 2009.

II. CONCLUSIONS OF LAW

A. Mr. Bartholomew violated 2 N.C. Administrative Code 52J .0402 and may be assessed a civil penalty of up to $5,000.00 per violation pursuant to N.C. Gen. Stat. § 19A-40.

B. The Director of the Animal Welfare Section, pursuant to N.C. Gen.Stat. § 19A-40, has the authority to assess civil penalties in this matter.

III. DECISION

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 violation of 2 N.C. Administrative Code 52J .0402.

Accordingly, Mr. Bartholomew is assessed a civil penalty of: $5000.00 for violating N.C. General Statue § 19A-24 and 2 North Carolina Administrative Code 02 NCAC 52J .0701, and his euthanasia technician privileges are suspended for six months.

$5,000.00 TOTAL AMOUNT ASSESSED

Sept 24, 2013
Date

Dr. Lee Hunter
Director, Animal Welfare Section
North Carolina Department of
Agriculture & Consumer Services