

Robeson Co.

Steven W. Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

David T. Marshall, DVM
State Veterinarian

August 16, 2010

Mr. James Fletcher
Robeson County Animal Shelter
205 Landfill Road
St. Pauls, NC 28384

CERTIFIED MAIL
RETURN RECEIPT
REQUESTED
7006 2760 0003 0472 2112

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Re: SUSPENSION OF EUTHANASIA TECHNICIAN CERTIFICATION
James Fletcher
Euthanasia Technician Certification no. CET2009-0723JF

Dear Mr. Fletcher:

This letter is an Order issued pursuant to N.C. Gen. Stat. § 19A-24 and 02 NCAC 52J .0419 concerning your certification as a euthanasia technician employed by Robeson County Animal Shelter from the Animal Welfare Section of the North Carolina Department of Agriculture and Consumer Services ("NCDA&CS). Investigation of your practices and conduct as a euthanasia technician at said animal shelter indicates that grounds exist for suspension of your certification based upon violation(s) of the requirements set forth under the NC Animal Welfare Act and the rules for euthanasia technicians promulgated under that law.

The attached Notice of Violation(s) describes in detail the factual basis for your suspension. You have failed to carry out the duties of a Certified Euthanasia Technician, demonstrated by the acts and/or omissions described in said Notice.

You may contest this decision by filing a petition under the North Carolina Administrative Procedure Act, N.C. Gen. Stat. § 150B-23, within five (5) days of your receipt of this Order. Please find enclosed information on filing said petition.

Therefore, you are notified to CEASE AND DESIST from performing those duties and tasks involved in euthanizing animals in a registered animal shelter. If the Animal Welfare Section finds evidence indicating that you performed any such duties or tasks following your receipt of this letter, the NCDA&CS has the authority to impose a civil penalty of up to five thousand dollars (\$5,000.00) pursuant to:

§ 19A-40. Civil Penalties.

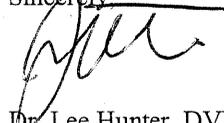
The Director may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Director shall consider the degree and extent of harm caused by the violation. 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.

Your suspension is effective immediately upon receipt of this letter. You may resolve this matter without resort to litigation by entering into a consent agreement with the NCDA&CS setting forth appropriate remediation and terms for lifting this suspension order and restoring your certification and privileges. A proposed consent agreement has been enclosed. If you wish to resolve this matter in accordance with the terms set forth in the proposed consent agreement, you need simply sign and return it to me in the enclosed, self-addressed envelope. Upon receipt I will sign the original agreement and return a copy to you for your records.

When you have satisfied the terms and conditions set forth in the consent agreement to the Department's satisfaction, I will issue notice to you and to your employer that your privileges as a certified euthanasia technician have been reinstated and that this order of suspension has been cancelled.

If you have any questions concerning the basis for this order or the terms of the proposed consent agreement, you may call me at the telephone number listed above.

Sincerely,



Dr. Lee Hunter, DVM,
Director, Animal Welfare Section
Veterinary Division, NCDA&CS

Enclosures: 1) Notice of Violation(s);
 2) Appeal Information
 3) Consent Agreement

cc: David McLeod, Assistant Commissioner, NCDA&CS
 Dr. David Marshall, State Veterinarian, NCDA&CS
 Barry Bloch, Assistant Attorney General, NCDOJ
 Albert Locklear, Director, Environmental Health, Robeson County
 Pat Sholar, Animal Health Technician, NCDA&CS

APPEAL INFORMATION

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:

Mr. Ray Starling
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.

NOTICE OF VIOLATION

Respondent's Name: Mr. James Fletcher
Certified Euthanasia Technician no. CET2009-0723JF

Address of Respondent:

Date(s) of Activity: November – December, 2009

Work Site: Robeson County Animal Shelter
205 Landfill Road
St. Pauls, NC 28384

Date of Inspection: May 26, 2010

Name of Animal Welfare Section
Investigator(s): Pat Sholar

The following statement includes facts upon which the Animal Welfare Section bases its conclusion that you have violated certain provisions of the North Carolina Animal Welfare Act and regulations promulgated there under. The facts may be based upon several sources including observations made by the investigator during his investigation, statements made to the investigator by a complainant or other individuals or property owners, documents, and/or analyses of records or photographs taken by the investigator.

1. On Wednesday, November 4, 2009, you failed to administer a dose of Ketamine to four "hound" dogs each weighing approximately five pounds, as required by your facility's intracardiac euthanasia protocol. Said failure likely caused the dogs to be inadequately anesthetized when you administered the lethal injection, which could constitute abuse and/or neglect of each of these animals. (ID nos. 40184, 40185, 40186, 40187)
2. On Wednesday, November 4, 2009, you failed to administer the required amount of Fatal Plus euthanasia agent, 6 cc for a dog weighing approximately 60 lbs., to two "bull" dogs weighing that amount. Instead you administered only 3 cc of that drug, which could constitute abuse and/or neglect of these animals. (ID no. 40101, 41296)

3. On Wednesday, November 4, 2009, you failed to administer the required amount of Fatal Plus euthanasia agent, 4.5 cc for a dog weighing approximately 45 lbs., to a "bull" dog weighing that amount. Instead you administered only 3 cc of that drug, which could constitute abuse and/or neglect of this animal. (ID no. 40181)
4. On Wednesday, November 4, 2009, you failed to administer the required amount of Fatal Plus euthanasia agent, 5 cc for a dog weighing approximately 50 lbs., to a "lab" dog weighing that amount. Instead you administered only 3 cc of that drug, which could constitute abuse and/or neglect of this animal. (ID no. 42861)
5. On Friday, November 13, 2009, you failed to administer the required amount of Fatal Plus euthanasia agent, 1.8 cc for a cat weighing approximately 18 lbs., to a cat weighing that amount. Instead you administered only 1 cc of that drug, which could constitute abuse and/or neglect of this animal. (ID no. 42818)
6. On Friday, November 13, 2009, you failed to administer the required amount of Fatal Plus euthanasia agent, 6.5 cc for a dog weighing approximately 65 lbs., to a "lab" dog weighing that amount. Instead you administered only 2 cc of that drug, which could constitute abuse and/or neglect of this animal. (ID no. 43867)
7. On Monday, November 16, 2009, you failed to administer the required amount of Fatal Plus euthanasia agent, 5 cc for a dog weighing approximately 50 lbs., to a "chow" dog weighing that amount. Instead you administered only 4 cc of that drug, which could constitute abuse and/or neglect of this animal. (ID no. 42813)
8. On Monday, November 16, 2009, you failed to administer the required amount of Fatal Plus euthanasia agent, 3 cc for a dog weighing approximately 30 lbs., to a "shepherd" dog weighing that amount. Instead you administered only 2 cc of that drug, which could constitute abuse and/or neglect of this animal. (ID no. 42873)
9. On Monday, November 16, 2009, you failed to administer the required amount of Fatal Plus euthanasia agent, 5 cc for a dog weighing approximately 50 lbs., to a "shepherd" dog weighing that amount. Instead you administered only 4 cc of that drug, which could constitute abuse and/or neglect of this animal. (ID no. 43868)
10. On Monday, November 16, 2009, you failed to administer the required amount of Fatal Plus euthanasia agent, 6 cc for a dog weighing approximately 60 lbs., to a "shepherd" dog weighing that amount. Instead you administered only 4 cc of that drug, which could constitute abuse and/or neglect of this animal. (ID no. 43866)
11. On Wednesday, November 18, 2009, you failed to administer the required amount of Fatal Plus euthanasia agent, 6 cc for a dog weighing approximately 60 lbs., to two "shepherd" dogs weighing that amount. Instead you administered only 4 cc of that drug, which could constitute abuse and/or neglect of this animal. (ID no. 42876)
12. On Wednesday, November 18, 2009, you failed to administer the required amount of Fatal Plus euthanasia agent, 5 cc for a dog weighing approximately 50 lbs., to a "chow" dog weighing that amount. Instead you administered only 3 cc of that drug, which could constitute abuse and/or neglect of this animal. (ID no. 43864)
13. On Thursday, November 19, 2009, you failed to administer the required amount of Fatal Plus euthanasia agent, 5 cc for a dog weighing approximately 50 lbs., to a "rott" dog weighing that amount. Instead you administered only 4 cc of that drug, which could constitute abuse and/or neglect of this animal. (ID no. 43876)
14. On Friday, November 20, 2009, you failed to administer the required amount of Fatal Plus euthanasia agent, 4 cc for a dog weighing approximately 40 lbs., to a "chow" dog weighing that amount. Instead you administered only 3 cc of that drug, which could constitute abuse and/or neglect of this animal. (ID no. 43818)
15. On Friday, November 20, 2009, you failed to administer the required amount of Fatal Plus euthanasia agent, 4 cc for a dog weighing approximately 40 lbs., to a "lab" dog weighing that amount. Instead you administered only 3 cc of that drug, which could constitute abuse and/or neglect of this animal. (ID no. 43253)
16. On Friday, November 20, 2009, you failed to administer the required amount of Fatal Plus euthanasia agent, 2.5 cc for a dog weighing approximately 25 lbs., to a "shepherd" dog weighing that amount. Instead you administered only 1 cc of that drug, which could constitute abuse and/or neglect of this animal. (ID no. 42888)
17. On Friday, November 20, 2009, you failed to administer the required amount of Fatal Plus euthanasia agent, 5 cc for a dog weighing approximately 40 lbs., to a "bull" dog weighing that amount. Instead you administered only 4 cc of that drug, which could constitute abuse and/or neglect of this animal. (ID no. 42889)
18. On Tuesday, November 24, 2009, you failed to administer the required amount of Fatal Plus euthanasia agent, 6 cc for a dog weighing approximately 60 lbs., to a "bull" dog weighing that amount. Instead you administered only 4 cc of

that drug, which could constitute abuse and/or neglect of this animal. (ID no. 4227)

19. On Tuesday, November 24, 2009, you failed to administer the required amount of Fatal Plus euthanasia agent, 4 cc for a dog weighing approximately 40 lbs., to a "chow" dog weighing that amount. Instead you administered only 3 cc of that drug, which could constitute abuse and/or neglect of this animal. (ID no. 43252)
20. On Wednesday, November 25, 2009, you failed to administer the required amount of Fatal Plus euthanasia agent, 6 cc for a dog weighing approximately 60 lbs., to a "rott" dog weighing that amount. Instead you administered only 4 cc of that drug, which could constitute abuse and/or neglect of this animal. (ID no. 38094)
21. On Wednesday, November 25, 2009, you failed to administer the required amount of Fatal Plus euthanasia agent, 5 cc for a dog weighing approximately 50 lbs., to a "rott" dog weighing that amount. Instead you administered only 4 cc of that drug, which could constitute abuse and/or neglect of this animal. (ID no. 43257)
22. On Wednesday, December 2, 2009, you failed to administer the required amount of Fatal Plus euthanasia agent, 6 cc for a dog weighing approximately 60 lbs., to a "bull" dog weighing that amount. Instead you administered only 4 cc of that drug, which could constitute abuse and/or neglect of this animal. (ID no. 42894)
23. On Wednesday, December 2, 2009, you failed to administer the required amount of Fatal Plus euthanasia agent, 4 cc for a dog weighing approximately 40 lbs., to a "chow" dog weighing that amount. Instead you administered only 3 cc of that drug, which could constitute abuse and/or neglect of this animal. (ID no. 43261)
24. On Monday, December 7, 2009, you failed to administer the required amount of Fatal Plus euthanasia agent, 8 cc for a dog weighing approximately 80 lbs., to a "shepherd" dog weighing that amount. Instead you administered only 7 cc of that drug, which could constitute abuse and/or neglect of this animal. (ID no. 42809)
25. On Wednesday, December 16, 2009, you failed to administer the required amount of Fatal Plus euthanasia agent, 5 cc for a dog weighing approximately 50 lbs., to a "hound" dog weighing that amount. Instead you administered only 4 cc of that drug, which could constitute abuse and/or neglect of this animal. (ID no. 42051)
26. On Wednesday, December 16, 2009, you failed to administer the required amount of Fatal Plus euthanasia agent, 4 cc for a dog weighing approximately 40 lbs., to a "bull" dog weighing that amount. Instead you administered only 3 cc of that drug, which could constitute abuse and/or neglect of this animal. (ID no. 43765)
27. On Wednesday, December 16, 2009, you failed to administer the required amount of Fatal Plus euthanasia agent, 4 cc for a dog weighing approximately 40 lbs., to a "bull" dog weighing that amount. Instead you administered only 3 cc of that drug, which could constitute abuse and/or neglect of this animal. (ID no. 43764)
28. On Wednesday, December 16, 2009, you failed to administer the required amount of Fatal Plus euthanasia agent, 3 cc for a dog weighing approximately 30 lbs., to a "lab" dog weighing that amount. Instead you administered only 2 cc of that drug, which could constitute abuse and/or neglect of this animal. (ID no. 43346)
29. On Wednesday, December 16, 2009, you failed to administer the required amount of Fatal Plus euthanasia agent, 5 cc for a dog weighing approximately 50 lbs., to a "hound" dog weighing that amount. Instead you administered only 3 cc of that drug, which could constitute abuse and/or neglect of this animal. (ID no. 42057)
30. On Monday, December 21, 2009, you failed to administer the required amount of Fatal Plus euthanasia agent, 4 cc for a dog weighing approximately 40 lbs., to a "bull" dog weighing that amount. Instead you administered only 3 cc of that drug, which could constitute abuse and/or neglect of this animal. (ID no. 41967)
31. On Monday, December 21, 2009, you failed to administer the required amount of Fatal Plus euthanasia agent, 4 cc for a dog weighing approximately 40 lbs., to a "shepherd" dog weighing that amount. Instead you administered only 3 cc of that drug, which could constitute abuse and/or neglect of this animal. (ID no. 43405)
32. On Monday, December 21, 2009, you failed to administer the required amount of Fatal Plus euthanasia agent, 4 cc for a dog weighing approximately 40 lbs., to a "bull" dog weighing that amount. Instead you administered only 3 cc of that drug, which could constitute abuse and/or neglect of this animal. (ID no. 43406)
33. On Monday, December 21, 2009, you failed to administer the required amount of Fatal Plus euthanasia agent, 4 cc for a dog weighing approximately 40 lbs., to a "chow" dog weighing that amount. Instead you administered only 3 cc of that drug, which could constitute abuse and/or neglect of this animal. (ID no. 41955)

Based on the results of our investigation, there is reason to believe that your acts and/or omissions violated the following provisions of the North Carolina Animal Welfare Act and/or the rules promulgated there under:

02 NCAC 52J .0419 **Grounds for Discipline – Certified Euthanasia Technicians**

The Department may refuse to issue, renew, or reinstate the certification of a Euthanasia Technician, or may deny, revoke, suspend, sanction, or place on probation, impose other forms of discipline, and enter into consent agreements and negotiated settlements with Certified Euthanasia Technician pursuant to the procedures set forth in G.S. 150B, Article 3, for any of the following reasons:

- (1) Failure to Carry Out Duties. Failure to carry out the duties of a Certified Euthanasia Technician;...
- (7) Unethical or Unprofessional Conduct. Unethical or unprofessional conduct means to knowingly engage in conduct of a character likely to deceive or defraud the public. Such conduct includes working in conjunction with any agency or person illegally practicing as a Certified Euthanasia Technician; failing to provide sanitary facilities or apply sanitary procedures for the euthanizing of any animal; euthanizing animals in a manner that endangers the health or welfare of the public; **gross ignorance, incompetence or inefficiency in the euthanizing of animals as determined by the practices generally and currently followed and accepted as approved by the American Veterinary Medical Association, the Humane Society of the United States or the American Humane Association**; intentionally performing a duty, task or procedure involved in the euthanizing of animals for which the individual is not qualified; and swearing falsely in any testimony or affidavits relating to practicing as a Certified Euthanasia Technician;

02 NCAC 52J .0501 **INTRACARDIAC INJECTION**

Intracardiac injection shall only be used on animals that have been anesthetized or heavily sedated.

Each of the above violations of the North Carolina Animal Welfare Act is subject to a civil penalty or may serve as grounds for disciplinary action against your license, as follows:

N.C. Gen. Stat. § 19A-24. ...

(b) In addition to rules on the euthanasia of animals adopted pursuant to subdivision (5) of subsection (a) of this section, the Board of Agriculture may adopt rules on the euthanasia of animals for:

- (7) **Denial, suspension, or revocation of certification of euthanasia technicians who either violate any provision of the Animal Welfare Act pursuant to Article 3 of Chapter 19A of the General Statutes or otherwise become ineligible for certification. ...**
- (10) **The duties, responsibilities, and standards of conduct for certified euthanasia technicians. (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 there under. 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.)

STATE OF NORTH CAROLINA

COUNTY OF WAKE

N.C. DEPARTMENT OF AGRICULTURE)
AND CONSUMER SERVICES)
VETERINARY DIVISION, ANIMAL)
WELFARE SECTION,)

Complainant)

v.)

JAMES FLETCHER,)

Respondent.)

CONSENT
AGREEMENT

RECITALS

The North Carolina Department of Agriculture and Consumer Services (the "Complainant") and James Fletcher (the "Respondent") desire to fully and finally settle this and all other disputes and controversies surrounding the Complainant's suspension of the Respondent's certification as a euthanasia technician employed by Robeson County Animal Shelter, and desire to affect a full and final settlement solely in order to avoid the burden and expense of continued litigation.

WHEREAS, on August 16, 2010, Complainant suspended Respondent's certification as a euthanasia technician upon discovery of evidence indicating that the Respondent had failed to perform his duties under said certification, and issued the Respondent an Order to that effect and a Notice of Violation describing in detail the evidence supporting that conclusion, which are attached hereto and incorporated by reference.

WHEREAS, on August 16, 2010, Respondent's suspension went into effect upon his receipt of said Order.

WHEREAS the parties desire to resolve this matter without further litigation.

NOW THEREFORE, the parties agree as follows:

1. Complainant agrees that, upon receiving the signed original of this Agreement from the Respondent, it will stay its suspension of the Respondent's certification and restore all of the rights and privileges thereof. This stay shall remain in place for sixty days beginning on that day. Complaint shall notify the Respondent by faxed memorandum to his place of employment, Robeson County Animal Shelter, that it has received said signed original of this Agreement.
2. Within sixty days of Complainant's receipt of this Agreement from the Respondent, the Respondent will undergo training and examinations as set forth in 02 NCAC 52J .0407(a) with a trainer approved in advance by the Complainant, using a written examination approved in advance by the Complainant. Said training and examinations shall be taken and completed in the presence of the Complainant's designee. The Respondent will notify the Complainant immediately upon scheduling said training and examinations. If no such

training and/or examinations are available within 250 miles of Respondent's place of employment within the sixty day period, the Respondent shall notify the Complainant and request an extension of additional time in which to complete said training and examinations, informing the Complainant when the next available training and examinations are available within 250 miles of Respondent's place of employment.

3. If Respondent fails to successfully complete the training and examinations set forth in 02 NCAC 52J .0407 within the sixty days, or within such additional time as the Complaint may extend, Complainant's suspension order shall be reinstated on the day following the end of the sixty days, or the period Complainant has added to said sixty days. In that event, Respondent may apply for certification as a euthanasia technician one year from the date that suspension of his certification is reinstated. Respondent's application shall be processed in accordance with 02 NCAC 52J, without consideration to the fact that Respondent's original certification is suspended.
4. The Respondent hereby acknowledges his right to submit a petition for a formal hearing to the North Carolina Office of Administrative Hearings to resolve this matter and waives said right by consenting to the terms of this Agreement.
5. The persons signing this Agreement represent that they have full authority and representative capacity to execute this Agreement in the capacities indicated below, and that this Agreement constitutes the valid and binding obligations of all parties, the parties represent to each other that they have full power and all requisite authority to execute and perform this Agreement.
6. At all times the Respondent shall comply with the provisions of the North Carolina Animal Welfare Act, N.C. Gen. Stat. Chapter 19A, and the regulations promulgated there under. Should the Complainant find substantial and credible evidence while this Agreement is in effect that Respondent or individuals working under his direction and control have committed violations of the AWA or its regulations, Complainant may, as a matter within its sole discretion, deem the Respondent to be in material breach of this Agreement and immediately lift any stay of the suspension of Respondent's certification as a euthanasia technician, and impose any other sanction upon the Respondent as it is authorized to impose by law.
7. The parties agree to act in good faith in the implementation of this agreement.
8. The parties agree to bear their own attorneys fees and costs.
9. It is understood between the parties that this Agreement contains the entire agreement between the parties hereto regarding the matters set forth, and it supersedes all previous negotiations, discussions and understandings regarding such matters. Terms of this Agreement are contractual and not a mere recital, and may be modified only in a writing executed by all signatories hereto.
10. The effective date of this Agreement will be the date on which it has been executed by all parties as shown

on the signature lines below.

11. North Carolina law shall govern the interpretation and enforcement of this Agreement.

IN TESTIMONY WHEREOF, the parties have set their hands and seals on the dates indicated below:

James Fletcher
RESPONDENT

Date: _____

Barry H. Bloch
Assistant Attorney General
N.C. Department of Justice
ATTORNEY FOR COMPLAINANT

Date: _____

Dr. Lee Hunter, DVM
Director, Animal Welfare Section
North Carolina Department of Agriculture & Consumers Services
FOR COMPLAINANT

Date: _____