

white Pitbull mix dog severely injured by the road from an apparent automobile collision.

3. Mr. Yaninas submitted a written report of this event, stating that he found the dog at this location, and approached a woman who was standing behind the dog and who identified herself as the dog's owner. Mr. Yaninas recommended that she take the dog to the emergency veterinarian or allow him to take the dog to the animal shelter and humanely euthanize it. The woman verbally gave permission to him to remove the dog to RCAS and euthanize it. Mr. Yaninas did not ask the woman for proof of ownership or get her written consent to euthanize the dog before the end of the statutory 72 hour period.
4. Mr. Yaninas' report states that he gave the woman a "door hanger" and requested that she call RCAS with her information for the report.
5. Mr. Yaninas used a catch pole to lift the dog onto the truck. He stated he did so because the dog weighed approximately fifty pounds and it was necessary to do so to avoid personnel (sic) injury.
6. Mr. Yaninas' report states that he contacted RCAS Manager Staton, explained the dog's condition and received authorization to humanely euthanize the dog. The report does not reflect whether Mr. Yaninas informed Mr. Staton that he intended to use carbon monoxide to euthanize the dog.
7. Mr. Yaninas reported that he humanely euthanized the dog using the carbon monoxide chamber located at RCAS at 8:20 p.m. At that time he was the sole person present at RCAS.
8. Mr. Yaninas report states that euthanasia by lethal injection is "not allowed in the County Policy and Procedures for RCAC for injured animals."
9. Review of RCAS documents of this matter revealed that Mr. Yaninas had not secured written authorization from the dog's owner to permit RCAS to euthanize the dog less than 72 hours after RCAS received the dog.
10. Ms. Keisha Woodard submitted a written complaint to Rowan County Health Department stating, in part:
11. The dog was unable to move his back end, his right eye was hanging out of the socket and he had blood coming out of his mouth, but appeared calm;
12. Mr. Yaninas arrived and asked, "Are y'all the owners?" and "Do you want the dog or not?"

13. The dog's owner stated, "I don't think there is anything that can be done for him."
14. Mr. Yaninas then "took a pole with a loop and yanked that poor dog up off the asphalt and slung him into the cage! The dog was hollering, the lady started screaming and crying, her husband was trying to get her turned around to get her in the truck so she didn't have to witness anything further."
15. Mr. Yaninas "acted as if (he) was doing them a favor by not charging them to put the dog down."
16. On February 7, 2014, Mr. Yaninas submitted a written statement to RCAS Animal Control Supervisor Clai Martin recounting his report and reflecting that:
17. Based upon his observation of the dog, it was injured and not near death;
18. He euthanized the dog without a second person present because he could not stand to see the dog continuing to suffer anymore.
19. On January 9, 2014, RCAS manager Tommy Staton completed and signed a "Reason for Early Euthanasia Report" for animal no. 58345, stating that it was injured, "hit by car, eyeball hanging out could not use back legs."
20. On or about February 7, 2014, RC Animal Control Supervisor Martin issued Mr. Yaninas a written warning, ordered him to go through retraining and undertake sensitivity training.
21. Review of RCAS' euthanasia manual in use on January 19, 2014, revealed that it did include a copy of 02 NCAC Chapter 52J, section .0601 et seq.
22. Review of RCAS' euthanasia manual in use on January 19, 2014, revealed that it did not authorize the use of carbon monoxide to euthanize animals that are severely injured and/or near death.
23. The Department has been informed by counsel for Rowan County that Mr. Yaninas otherwise been an exemplary employee during his three years of employment.
24. As a result of this investigation, the North Carolina Department of Agriculture and Consumer Services, Veterinary Division, Animal Welfare Section, determined that RCAS, and Mr. Yaninas, either by act or omission, violated the following provisions of the N.C. General Statute:
 - a) N.C. Gen. Stat. § 19A-24
 - b) N.C. Gen. Stat. § 19A-32.1
 - c) North Carolina Administrative Code 52J .0419

- d) North Carolina Administrative Code 52J .0602
- e) North Carolina Administrative Code 52J .0609

1. On February 17, 2014, the Department issued an Order suspending Mr. Yaninas' certification of as a euthanasia technician and assessing him and RCAS civil penalties of \$1,000.00 each.
2. On or about March 6, Mr. Yaninas filed a Petition for Contested Case Hearing with the North Carolina Office of Administrative Hearings, assigned file number 14 DAG 01524, appealing the Department's assessment of a civil penalty against him and suspension of his certification as a euthanasia technician. Rowan County has no contested its civil penalty.

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

NOW THEREFORE, the parties agree as follows:

1. Mr. Yaninas and RCAS agree that, upon signing this negotiated Settlement Agreement, they thereby waive their rights to appeal the Department's decision to suspend Mr. Yaninas' certification as a euthanasia technician and to impose civil penalties of one thousand dollars (\$1,000.00) upon each of them for the acts and omissions set forth above, to the North Carolina Office of Administrative Hearings and/or any court or tribunal having jurisdiction over them, the Department and the Department's exercise of its lawful authority. Further, Mr. Yaninas shall, within ten days of receiving notice that the Department has accepted this Settlement Agreement, sign and file with the North Carolina Office of Administrative Hearings a voluntary dismissal with prejudice pursuant to N.C. R.C.P. Rule 41(a) in the case captioned, "David M. Yaninas, Petitioner, v. North Carolina Department of Agriculture and Consumer Services, Veterinary Division, Respondent," file no. 14 DAG 01524.

2. The Department shall stay imposition of six hundred dollars (\$600.00) of Mr. Yaninas' civil penalty of one thousand dollars (\$1,000.00). Mr. Yaninas shall pay the sum of

four hundred dollars (\$400.00) within thirty (30) days of receipt of notice of the Department's acceptance of this Settlement Agreement. The remainder of the civil penalty, six hundred dollars (\$600.00) shall remain stayed for a period of nine months according to the terms and conditions set forth in paragraphs three, four, five and six below. The Department hereby stays imposition of five hundred dollars of the one thousand dollar (\$1,000.00) civil penalty imposed upon RCAS from one thousand dollars to five hundred dollars (\$500.00). RCAS shall pay five hundred dollars (\$500.00) to the Department within thirty (30) days of receipt of notice of the Department's acceptance of this Settlement Agreement. The remainder of the civil penalty, five hundred dollars (\$500.00) shall remain stayed for a period of nine months according to the terms and conditions set forth in paragraphs three, four, five and six, below;

3. The parties agree that, if RCAS and Mr. Yaninas fully and faithfully satisfy the requirements of this Settlement Agreement and the Department finds no new violations of the North Carolina Animal Welfare Act or the rules promulgated thereunder for a period of nine months after this Settlement Agreement is signed by the Department's authorized representative, then the stayed portions of RCAS' and Mr. Yaninas' civil penalties shall be deemed cancelled;

4. The Department agrees to lift the suspension of Mr. Yaninas' euthanasia technician certification upon his satisfactory completion of the following requirements:

a) Mr. Yaninas shall inform the director of the Animal Welfare Section of his intention to complete the qualification course for certification as a euthanasia technician, stating the date, location, and name of instructor giving the course. The Department reserves the right to disapprove of the instructor and direct Mr. Yaninas to complete the course under the instruction of an instructor it approves;

b) Mr. Yaninas shall attend said certification course, successfully complete the written examination for certification and successfully complete the practical examination for the methods of euthanasia for which he wishes to be certified, except for CO, which the parties expressly agree will not be restored by the Department, within nine months from the date he receives notice that the Department has approved this Settlement Agreement. It is understood by the parties that if Mr. Yaninas fails either or both the written and practical examinations he attempts after attending the certification course, he may attempt to pass the examination(s) he failed without retaking the certification course or the examination he has already passed so long as he passes both examinations within the nine month period provided. If he fails to pass both examinations within said nine month period, he may only seek restoration of his euthanasia technician certification by submitting a new application;

c) Upon receipt of confirmation from the course instructor that Mr. Yaninas has attended the course and successfully passed the certification examinations, the Department shall lift its suspension of Mr. Yaninas' certification as a euthanasia technician except for his privileges to operate the CO chamber located on the grounds at RCAS. The privilege of operating said CO chamber shall remain in full force and effect for nine months running from the date the Department approves this agreement. Mr. Yaninas may serve as the second person present while another certified euthanasia technician or a veterinarian operates the CO chamber. Upon completion of said nine month period, Mr. Yaninas may apply for reinstatement of his privilege of operating the CO chamber on the grounds at RCAS;

5. If the Department receives information that RCAS or Mr. Yaninas, while acting in his capacity as a certified euthanasia technician at RCAS, has committed another violation of the North Carolina Animal Welfare Act or the rules promulgated thereunder, whether relating to animal euthanasia or any other aspect of the laws or rules applicable to animal shelters under the North Carolina Animal Welfare Act, or information that RCAS or Mr. Yaninas has otherwise failed to comply with this Settlement Agreement, the Department may, as a matter within its sound discretion, lift the stay of RCAS's remaining civil penalty and/or lift the stays and impose the remaining portions of both of their civil penalties, together or separately;

6. If Mr. Yaninas notifies the Department before the expiration of said nine month period to request additional time in which to attend said course, informing the Department of the circumstances that shall prevent him from doing so by his deadline, the Department shall inform Mr. Yaninas of the date and location of the next available approved CET training course to be held no farther than 200 miles from his place of residence and that his successful completion of said course is required for his continued compliance with this Settlement Agreement. If Mr. Yaninas fails to comply with said requirement or any other obligation established by this Settlement Agreement or any subsequent amendment to it, the Department may, as a matter within its sound discretion, lift the stay and reimpose his obligation to pay the remainder of his civil penalty of six hundred dollars (\$600.00);

7. The RCAS and Mr. Yaninas acknowledge that, upon acceptance and execution of this settlement agreement by the Department, the settlement agreement shall become a public record within the meaning of Chapter 132 of the North Carolina General Statutes and shall be subject to public inspection and dissemination pursuant to the provisions thereof;

8. The parties agree to act in good faith in the implementation of this agreement;

9. The parties may discuss this Settlement Agreement, provide any pertinent documents and the final executed written Settlement Agreement to the press and the public, in accordance with N.C. Gen. Stat. Chapter 132. Further, the parties agree to bear their own attorneys' fees and costs;

10. It is understood between the parties that this Settlement 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;

11. The effective date of this settlement agreement will be the date on which it has been executed by all parties as shown on the signature lines below;

12. 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:



DAVID M. YANINAS, Individually

Date: 03/24/14



Gary Page, County Manager
As authorized agent for Rowan County Animal Shelter

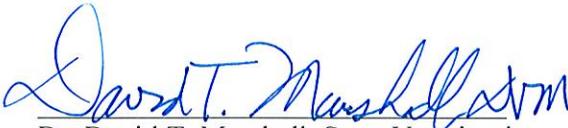
Date: 3/24/14

FOR THE DEPARTMENT:



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

Date: 3/31/2014



Dr. David T. Marshall, State Veterinarian
North Carolina Department of Agriculture & Consumers Services

Date: 3/31/14