



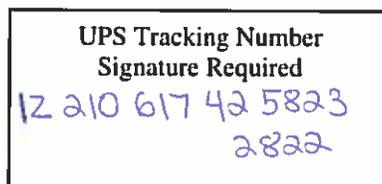
Steven W. Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

R. Douglas Meckes, DVM
State Veterinarian

February 18, 2015

Stokes County Animal Shelter
Attn: Chief Animal Control Officer Phillip Handy
1999 Sizemore Road
Germanton, North Carolina 27019



NOTICE OF CIVIL PENALTIES

RE: CIVIL PENALTY ASSESSMENT FOR VIOLATIONS OF TITLE 02, N.C. ADMINISTRATIVE CODE, CHAPTER 52J, SECTIONS .0210 & .0419

Dear Mr. Handy:

Pursuant to N.C. Gen. Stat. § 19A-40 I am issuing this notice to you that Stokes County Animal Shelter is assessed a civil penalty of \$1,000.00, as provided in the enclosed Notice of Violations and Order.

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 in the NCOAH 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 me. I may be contacted by telephone at (919) 715-7111. 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. 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,

Patricia Norris, DVM
Director, Animal Welfare Section

Attachment: Assessment Document

cc: R. Douglas Meckes, DVM, North Carolina State Veterinarian
Mr. Barry Bloch, Assistant Attorney General, N.C. Department of Justice
Ms. Tina Hlabse, General Counsel, NCDA&CS

STATE OF NORTH CAROLINA
COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF
AGRICULTURE AND CONSUMER SERVICES,
VETERINARY DIVISION

IN THE MATTER OF
ANIMAL SHELTER

) NOTICE OF VIOLATIONS, STOKES COUNTY
) ASSESSMENT OF CIVIL
) PENALTY
)
) For Violations Of:
) Title 2 N.C. Administrative Code 52J
) .0210 & .0419

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

FINDINGS OF FACT

1. At all times pertinent to this matter Stokes County Animal Shelter ("SCAS" or the "shelter") is an animal shelter registered pursuant to N.C. Gen. Stat. §19A-26.
2. At all times pertinent to this matter Stokes County Animal Control Officer Daryl Sheppard ("ACO Sheppard) and Chief Animal Control Officer Phillip Handy ("CACO Handy") are certified euthanasia technicians pursuant to N.C. Gen. Stat. §19A-24.
3. The Animal Welfare Section, NCDA&CS ("AWS") received a complaint that on January 15, 2015, ACO Sheppard picked up a brown and white male hound mix that was visibly injured. The complaint alleged that ACO Sheppard neither euthanized this dog nor took it for assessment and treatment to the veterinarian listed in the Shelter's Program of Veterinary Care (PVC) that day. ACO Sheppard placed the dog in the shelter where it stayed overnight.
4. During an inspection and investigation on January 26, 2015, AWS Inspector Lindsey Lloyd ("Inspector Lloyd") learned that ACO Sheppard picked up a stray white and brown mixed breed dog on January 15, 2015 at 1608 hours.
5. ACO Sheppard assigned Animal Shelter Tag Number 011506D ("tag 011506D") to the white and brown mixed breed dog and completed its intake form.
6. Tag 011506D's intake form notes that it was injured and was a "Hit By Car" (H.B.C.) victim.
7. Inspector Lloyd received statements from both ACO Sheppard and CACO Handy that they observed that this dog, tag 011506D, was injured and unable to bear weight on one of his rear legs.
8. ACO Sheppard and CACO Handy's written statements admit that neither of them took this dog, tag 011506D, to the veterinarian for assessment or treatment.
9. Neither ACO Sheppard nor CACO Handy euthanized or arranged for the euthanasia of this dog, tag 011506D.

10. Inspector Lloyd learned during the investigation that, on January 16, 2015, SCAS employee Willie Herndon ("Mr. Herndon") found the dog, tag 011506D, in a kennel with another dog. He saw that the dog's intake card noted that it was injured. Mr. Herndon observed that the dog was unable to bear weight on his rear leg and was bleeding from the rear.
11. Mr. Herndon took the dog, tag 011506D, to a veterinarian, Dr. Deborah Cowan, who assessed and euthanized it.
12. Mr. Herndon had not been present at the shelter on January 15, 2015.
13. Inspector Lloyd interviewed Dr. Deborah Cowan. Dr. Cowan relayed that she examined a male tan/white hound mix breed dog, tag 011506D, from SCAS, on January 16, 2015.
14. Dr. Cowan reported that she noted that this dog had a mid-shaft fracture of the femur (thigh bone) and was unable to bear weight on this leg. She recommended euthanasia and euthanized this dog.
15. Dr. Cowan recommended that the dog, tag 011506D, be euthanized because it was suffering pain and discomfort due to its untreated femur fracture and because SCAS could not provide it with a warm, clean, and protected environment.
16. Dr. Cowan told Inspector Lloyd that she concluded that SCAS could not provide a warm, clean and protected environment for this dog because it lacks an appropriate enclosure for injured animals. She knows this because she serves on SCAS' board and is familiar with its facility.
17. Dr. Cowan told Inspector Lloyd that she had not been informed of this dog's condition until January 16, 2015.
18. Dr. Cowan told Inspector Lloyd that, had SCAS informed her about this dog's condition when it was brought to SCAS, she would have had the dog transported to her clinic, examined him and euthanized him immediately.
19. SCAS' current application for renewal of its animal shelter certification of registration states, at Section 6 Emergency Veterinary Care:

"The shelter uses Dr. Debbie Cowan of Walnut Cove Animal hospital for emergencies and court cases."
20. SCAS' written protocol for euthanasia states: "If no CET is on call – one will be called in after hours for euthanasia."

As a result of this investigation, the North Carolina Department of Agriculture and Consumer Services, Veterinary Division, Animal Welfare Section, alleges that SCAS, either by act or omission, violated the following provisions of the N.C. Administrative Codes::

- a) North Carolina Administrative Code 52J .0210
 - b) North Carolina Administrative Code 52J .0419(1) and (7)
- (See Appendix for text of cited General Statutes and Administrative Codes)

§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.)

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 violations listed above.

Accordingly, SCAS is assessed a civil penalty of: \$1,000.00 for violating 2 North Carolina Administrative Codes 02 NCAC 52J .0210 and .0419.

\$1,000.00 TOTAL AMOUNT ASSESSED

2/18/2015

Date



Dr. Patricia Norris
Director, Animal Welfare Section
North Carolina Department of
Agriculture & Consumer Services

Appendix

N.C. Administrative Codes 52J .0210 and .0419(1) and (7)

02 NCAC 52J .0210 VETERINARY CARE

(a) A written program of veterinary care to include disease control and prevention, vaccination, euthanasia, and adequate veterinary care shall be established with the assistance of a licensed veterinarian by any person who is required to be licensed or registered under the Animal Welfare Act, Article 3 of Chapter 19A of the General Statutes.

(b) If there is a disease problem that persists for more than 30 days at the facility, the facility operator shall obtain and follow a veterinarian's written recommendations for correcting the problem.

(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.

(d) All animals in a licensed or registered facility shall be in compliance with the North Carolina rabies law, G.S. 130A, Article 6, Part 6. However, no shelter shall be disapproved following inspection or otherwise cited for failure to inoculate any dog or cat known to be less than 12 weeks old or until such animals have been in the shelter at least 15 days.

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

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;
- (2) Abuse of Chemical Substances. Abuse of any drug or chemical substance by:
 - (a) Selling, diverting or giving away drugs or chemical substances;
 - (b) Stealing drugs or chemical substances;
 - (c) Misusing chemical substances; or
 - (d) Abetting anyone in the foregoing activities;
- (3) Euthanizing animals without supervision as required by this subchapter;
- (4) Allowing uncertified individuals to euthanize animals;
- (5) Allowing probationary Euthanasia Technicians to euthanize animals outside of the Certified Euthanasia Technician's personal presence;
- (6) Fraud, misrepresentation, or deception in obtaining certification;
- (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;

(8) Conviction of any criminal offense as described in this Section;

(9) Improper Record Keeping. Failure to follow proper record keeping procedures as outlined in the rules in this Subchapter;

(10) Improper Security and Storage for Chemical Agents. Failure to provide and maintain proper security and storage for euthanasia and restraint drugs as established under applicable United States Drug Enforcement Administration and North Carolina Department of Health and Human Services statutes and rules;

(11) Improper Disposal of Chemical Agents and Equipment. Failure to dispose of drugs and the containers, instruments and equipment in a manner permitted by this Subchapter;

(12) Improper Labeling of Approved Chemical Agents. Failure to properly label approved euthanasia and restraint chemical agents;

(13) Revocation, Suspension or Limitation. The revocation, suspension, limitation, of a license, certificate or registration or any other disciplinary action by another state or United States jurisdiction or voluntary surrender of a license, certificate or registration by virtue of which one is licensed, certified or registered to practice as a Certified Euthanasia Technician in that state or jurisdiction on grounds other than nonpayment of the renewal fee;

(14) Failure of any applicant or certificate holder to cooperate with the North Carolina Department of Agriculture and Consumer Services during any investigation or inspection.

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