



Steven W. Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

R. Douglas Meckes, DVM
State Veterinarian

September 22, 2015

Transylvania County
Attn: Jaime Laughter, County Manager
101 South Broad Street
Brevard, North Carolina 28712

UPS Tracking Number Signature Required

1Z 210 617 425769 6155

NOTICE OF CIVIL PENALTY

RE: CIVIL PENALTY ASSESSMENT FOR VIOLATIONS OF NORTH CAROLINA GENERAL STATUTES §§ 19A-32.1 (a) & (b) (2) and TITLE 02, N.C. ADMINISTRATIVE CODE, CHAPTER 52J, SECTION .0402

Facility: Transylvania County Animal Services Shelter

Dear County Manager Laughter:

Pursuant to N.C. Gen. Stat. § 19A-40 I am issuing this notice to you that Transylvania County Animal Shelter is assessed a civil penalty of \$10,150.00, 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) 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. 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 919-431-3000. 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", written in a cursive style.

Patricia Norris, DVM
Director, Animal Welfare Section

Attachment: Assessment Document

cc: R. Douglas Meckes, DVM, North Carolina State Veterinarian
Ms. Tina Hlabse, General Counsel, NCDA&CS
Mr. Joe Reardon, Assistant Commissioner, NCDA&CS

8. The Shelter kennel card for Soldier (#18043) found by Inspector James in euthanasia files showed the initials of Gosnell and Byrd in the euthanasia section.
9. On July 22, 2015, Transylvania County Animal Control Officer Michael Gosnell provided a written statement acknowledging that he assisted Blackwell in the euthanasia of a pitbull that had completed its rabies quarantine.
10. On July 22, 2015 Transylvania County Animal Control Officer Charles Byrd provided a written statement denying involvement in the euthanasia of this pitbull which he named as "Sailor." He also provided a time card log which showed he was not working on October 20, 2014.
11. Inspector James reviewed the euthanasia files for the shelter from September 1, 2014 to July 21, 2015.
12. Review of these records indicates that there were 205 incidences of euthanasia being performed by staff members that were not certified euthanasia technicians. Forty-six of these euthanasias occurred during the period of time during which Director Vis was suspended.
13. The records show there were 81 incidences of euthanasia being performed on stray animals before the expiration of the 72 hour minimal hold period for reasons other than serious illness or injury.
14. There were more than 100 records in which there was conflicting information between the kennel card and the euthanasia log as to who euthanized the animal or in which incorrect information was entered.

As a result of this investigation, AWS, alleges that the Shelter, either by act or omission, violated the following provisions of the N.C. Administrative Codes:

- a) North Carolina General Statutes §§ 19A-32.1 (a) and (b) (2) – 81 violations
- b) North Carolina Administrative Code 52J .0402 – 205 violations

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

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, Transylvania County is assessed a civil penalty of:

- a) \$8100.00 for 81 violations of North Carolina General Statutes §§19A-32.1 (a) and (b) (2)
- b) \$2050.00 for 205 violations of North Carolina Administrative Code 52J .0402

\$10,150.00 TOTAL AMOUNT ASSESSED

9/20/2015

Date



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

Appendix

N.C. General Statutes 19A-32.1 (a) and (b) (2) and N. C. Administrative Codes 52J .0402 and .0418 (9)

§ 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.

§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 .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:

- (9) Improper Record Keeping. Failure to follow proper record keeping procedures as outlined