



Steven W. Troxler  
Commissioner

North Carolina Department of Agriculture  
and Consumer Services  
*Veterinary Division*

David T. Marshall, DVM  
State Veterinarian

August 1, 2011

**BY HAND DELIVERY**

Ms. Sam Milam  
Happy Tails Pet Resort  
1086 Turnersburg Hwy.  
Statesville, North Carolina 28625

Re: REVOCATION OF BOARDING KENNEL LICENSE  
Happy Tails Pet Resort  
Boarding Kennel License no. 10929

Dear Ms. Milam:

This letter is an Order concerning your operation of an boarding kennel under license issued by the Animal Welfare Section of the North Carolina Department of Agriculture and Consumer Services ("NCDA&CS) pursuant to N.C. Gen. Stat. § 19A-28. Your boarding kennel, Happy Tails Pet Resort, failed inspection conducted by this Section on July 15, 2011. Said inspection was conducted pursuant to the authority and requirements set forth under the NC Animal Welfare Act. You have been provided with the NC Animal Welfare and the rules establishing facility standards there under with your license application.

In the course of today's inspection it was found that your facility demonstrated serious deficiencies in the conditions in which your animals are kept and the care that they receive. These deficiencies are described in detail by the attached inspection report, provided as required by N.C. Gen. Stat. § 19A-30. For the reasons set forth in your last inspection report, your certification of registration is hereby REVOKED for failure to comply with the requirements set forth in N.C. Gen. Stat. § 19A-30(3).

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. Filing the petition will require a payment of twenty dollars to the North Carolina Office of Administrative Hearings (see below, "Filing a Contest Case").

Therefore, you are notified to CEASE AND DESIST operation of a boarding kennel within five (5) days of receipt of this letter, at which time you are required to surrender to this Division all licenses issued to this boarding kennel under the Animal Welfare Act. If you are found operating a boarding kennel after the fifth day following your receipt of this letter, the NCDA&CS has the authority to impose a civil

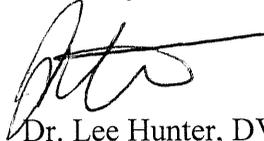
penalty of up to five thousand dollars (\$5,000.00) pursuant to:

**§ 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.

If you believe that you have substantially cured the reasons for having failed your last inspection within five (5) days of your receipt of this Order and are qualified for licensing, please contact this office immediately.

Sincerely,



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

Enclosures

cc: David McLeod, Assistant Commissioner, NCDA&CS  
David Marshall, DVM, State Veterinarian, NCDA&CS  
Barry Bloch, Assistant Attorney General, NCDOJ

I acknowledge that, on \_\_\_\_\_ (date) I received this Order of  
License Revocation from \_\_\_\_\_, Inspector, Animal Welfare  
Section, NCDA&CS.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name, job title)

The Hearings Division provides a forum for an independent hearing before an administrative law judge when a dispute with a state agency involving a person's rights, duties or privileges cannot be resolved through informal procedures. The statutory procedures governing Administrative Hearings before OAH are found in Articles 3 and 3A of Chapter 150B, the Administrative Procedure Act (APA). The regulatory procedures are found in Title 26, Chapter 3 of the North Carolina Administrative Code.

You may be represented by an attorney at your administrative hearing or you may appear on your own behalf, unless you are a corporation. If you are a corporation, you must be represented by an attorney. It is up to you to decide whether you will retain an attorney. OAH cannot advise you on this decision and cannot recommend an attorney. You may not be represented by anyone who is not an attorney.

There are filing fees for certain types of contested cases - see OAH Contested Case Filing Fees for a representative list of fees. You may petition OAH to waive the filing fee in cases of financial hardship prior to filing your case. Once your hearing is scheduled, there is a cancellation fee if you cancel the hearing less than 24 hours before its scheduled time. There is also a fee to obtain a copy of the hearing's transcript or audio recording.

The Office of Administrative Hearings maintains an email notification list to send notice of new Hearings rules or procedures and to send any other information the Chief Administrative Law Judge determines is helpful to the listserv subscribers. To subscribe or unsubscribe to the NC Hearings listserv, please use the web form found at the following link: <http://lists.ncmail.net/mailman/listinfo/hearings.interestedpersons>.

## FILING A CONTESTED CASE

To begin a contested case, a petition must be filed with OAH. Filing fees, if required, must accompany the petition form. An indigent status petition may be filed before the contested case petition to request a waiver of the filing fee. Petition forms are available through this web site by clicking on the word "petition" in the first sentence of this section, or by contacting the Office of Administrative Hearings. It is not required that petitions be filed on this form, but use of the form may assure that you include all necessary information. An **original and one copy** of the petition must be filed at OAH, and a copy **must be served on the opposing party**. In serving a copy of the petition on a state agency, be sure to follow the instruction provided in any notice received from that agency. OAH requires that you file an **original and one copy** of any document filed in your case, and an additional copy must be sent to the opposing party.

The following filing fee schedule is a representative example of the fees for filing a Petition for a Contested Case. The list is not intended to be all inclusive. 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.

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**Department of Agriculture - \$20**

### BEFORE THE HEARING

Once the petition has been filed, it is given a docket number and assigned to an Administrative Law Judge (ALJ). The docket number will appear in the upper right-hand corner of all documents received from OAH. You **must** use this docket number to properly identify all pleadings or correspondence submitted for filing in your contested case file. A "Notice of Contested Case and Assignment" is sent to all parties.

This notice will show the name of the ALJ who has been assigned to the case and will require that the agency submit any document which caused the filing of the contested case.

If you have an attorney, all correspondence or documents will be mailed to your attorney. Attorneys must file a Notice of Representation which indicates the name, address, telephone number and State Bar Number of the attorney representing each party.

If you do not have an attorney, all correspondence or documents will be mailed to you at the address you provide OAH. **YOU MUST KEEP OAH INFORMED OF YOUR CURRENT MAILING ADDRESS AND TELEPHONE NUMBER.**

Soon after filing a petition, you may be notified that your case has been selected for a mediated settlement conference. A mediated settlement conference is a prehearing conference conducted by a neutral person, known as a mediator, who acts to encourage and facilitate settlement of the case. If your case is sent to a mediated settlement conference, you and the other party must agree on a mediator. OAH maintains a **directory of mediators** to assist you with this decision. This directory is available through this web site by clicking on "directory of mediators" in the previous sentence or by contacting the Office of Administrative Hearings. If you are unable to agree, the presiding ALJ will choose a mediator for you. In either circumstance, the petitioner's attorney shall file a **Designation of Mediator** form with the presiding ALJ. This form is normally mailed with the Order of Mediation. A copy is available by clicking on "Designation of Mediator" in the prior sentence. The parties are required to pay the cost of the mediated settlement conference. At the close of the mediated settlement conference, the mediator will file a written report with the presiding ALJ as to whether or not an agreement was reached by the parties. The report is made through a **Report of Mediator** form. This form is available by clicking on "Report of Mediator" in the prior sentence or by contacting the Office of Administrative Hearings. (As an alternative to mediation, you may be notified that an Administrative Law Judge will conduct a settlement conference.)

A prehearing request to the ALJ for any action in a contested case must be made by filing a written motion. If a party files a motion, the other party has ten (10) days to respond. The ALJ will rule on all motions.

Before the contested case hearing, the ALJ may require the parties to file a Final Prehearing Order. This document sets out the issues which are agreed upon by the parties and identifies the witnesses and exhibits which each party will offer at the hearing.

Each party is responsible for arranging for the appearance of their witnesses. If you want to ensure the presence of your witnesses, you must **subpoena** them. Subpoena forms with instructions are available through this web site by clicking on the word subpoena in the previous sentence or by contacting the Office of Administrative Hearings.

Not less than 15 days before the hearing, you will receive a Notice of Hearing. This Notice will be sent by certified mail to all parties and establishes among other things, the time, date and location of the hearing.

A hearing may be continued or postponed but only for good cause. A request for a continuance of a hearing must be made before the hearing by written motion to the ALJ and must be served on all parties.

## **THE HEARING**

The hearing is open to the public except in limited instances.

At the hearing, each party has the right to testify on his or her own behalf. Each party may also offer documents in evidence; have witnesses testify; question an opposing party's witnesses; and explain or rebut evidence. Additional courtroom facilities are available for cases which are held in Raleigh (see Raleigh Courtroom Facilities).

In advance of the hearing you must prepare at least **two copies** of each exhibit which you intend to offer into evidence. Those exhibits admitted into evidence will be retained in the official record.

The hearing is recorded by either a hearing assistant using a 4-track recorder (there is **no** appearance fee for a hearing assistant), or a court reporter, but the party requesting a court reporter **must pay** the reporter's appearance fees.

You may purchase a transcript of the hearing recorded by a hearing assistant, by contacting Associated Court Reporters in Charlotte at 704/364-8382. Depending on the length of the hearing, some transcripts may be expensive, but transcripts become part of the official OAH record on appeal. Copies of the cassette tapes or CD's from which the transcripts are made are also available from OAH at a much lower cost, but these recordings are not considered part of the official record. If your hearing is recorded by a court reporter, requests and payment for copies of the transcript must be made directly with the court reporter.

### **AFTER THE HEARING**

The Administrative Law Judge's Decision is made in writing and contains findings of fact and conclusions of law. The state agency involved will make the Final Agency Decision but must adopt the ALJ's decision unless it is clearly contrary to the preponderance of the evidence.

The ALJ has 45 days from the end of the hearing (or from the date of post-hearing submissions) to issue the ALJ's Decision. The ALJ Decision is sent to the parties and a copy, as well as the Official Record, is sent to the final decision maker.

Before the agency issues a Final Decision, both Parties will be given an opportunity to file exceptions and written arguments with the final decision maker.

### **APPEAL OF A DECISION**

A party may appeal a Final Decision within 30 days after being served with a written copy of the decision by filing a Petition for judicial review in the Superior Court of Wake County or in the Superior Court of the county where the person appealing resides.

**THE MATERIAL PRESENTED AT THIS WEB SITE IS PROVIDED TO THE PUBLIC FOR INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED AS LEGAL ADVICE. NOTHING CONTAINED HEREIN SHALL BE CONSTRUED TO BIND THE PRESIDING ADMINISTRATIVE LAW JUDGE OR OAH TO ANY PRACTICE DESCRIBED HEREIN.**