

A G R E E M E N T

This agreement (the "Agreement") is made and entered into effective as of this 13th day of November 2015 by and between the North Carolina Department of Agriculture and Consumer Services, Veterinary Division, Animal Welfare Section (hereinafter referred to as either the "Department of Agriculture," the "Department" or the "Animal Welfare Section of the Veterinary Division of the Department of Agriculture"), and Michelle Starnes, Petitioner (hereinafter referred to as the "Petitioner or Ms. Starnes").

R E C I T A L S

WHEREAS, on February 18, 2015, the Department assessed the Petitioner a civil penalty in the amount of One Thousand, Five Hundred Dollars (\$1,500.00) as a result of the Department's discovery of evidence leading the Department to conclude that the Petitioner had in multiple instances violated Title 2 North Carolina Administrative Code 02 NCAC 52J .0418 and .0419; and

WHEREAS, on February 18, 2015, the Department issued the Petitioner a written Civil Penalty Assessment which, among other things, described in detail the evidence referred to in the preceding paragraph of this Agreement; and

WHEREAS, a true and correct copy of the February 18, 2015 written Civil Penalty Assessment is attached hereto as Exhibit 1 and is incorporated by reference in this Agreement; and

WHEREAS, the Petitioner disputes the February 18, 2015 written Civil Penalty Assessment; and

WHEREAS, the Petitioner filed a petition for a contested case hearing in the North Carolina Office of Administrative Hearings challenging the February 18, 2015 written Civil Penalty Assessment; and

WHEREAS, the Administrative Law Judge dismissed Petitioner's contested case petition in a June 25, 2015 Final Decision Order of Dismissal; and

WHEREAS, the Petitioner filed a July 23, 2015 petition for judicial review; Michelle Starnes, Petitioner, vs. Patricia Norris, DVM, Director Animal Welfare Division, North Carolina Department of Agriculture & Consumer Services, Respondent; 15 CVS 01854, in the Union County Superior Court in which she petitioned the Court to reverse or remand the Administrative Law Judge's decision; and

WHEREAS, the parties recognize that continued litigation over the February 18, 2015 written Civil Penalty Assessment would be expensive and time-consuming; and

WHEREAS, the Petitioner and the Department desire to fully and finally compromise and settle this and all other disputes and controversies between them involving the Department's February 18, 2015 assessment of a civil penalty against the Petitioner; and

WHEREAS, the Petitioner and the Department desire to enter into such a compromise and settlement solely in order to avoid the burden and expense of continued litigation.

NOW THEREFORE, for and in consideration of, among other things, the promises contained herein, the representations, covenants and warranties contained herein, the obligations created hereby and the release(s) contained herein, as well as for other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the Department of Agriculture and the Petitioner agree as follows:

1. The Recitals set forth above in this Agreement are hereby incorporated into this Agreement by this reference as if fully set forth herein.

2. By no later than November 13, 2015, the Petitioner shall file a Dismissal with Prejudice of the case entitled, *Michelle Starnes, Petitioner, vs. Patricia Norris, DVM, Director Animal Welfare Division, North Carolina Department of Agriculture & Consumer Services, Respondent*; 15 CVS 01854, in the Office of the Union County, North Carolina, Clerk of Superior Court. On the same date, the Petitioner shall serve a file-stamped copy of said Dismissal With Prejudice on counsel for the Department.

3. Upon its counsel's receipt from the Petitioner of her Dismissal With Prejudice of *Michelle Starnes, Petitioner vs. Patricia Norris, DVM, Director Animal Welfare Division, North Carolina Department of Agriculture & Consumer Services, Respondent*; 15 CVS 01854, as provided in paragraph 2 of this Agreement above, and upon the Petitioner's full compliance with the other terms of this Agreement, the Department shall stay its enforcement of the civil penalty assessment (in the amount of \$1,500.00); provided that, upon any future violation by the Petitioner of the Animal Welfare Act, N.C. Gen. Stat. §19A-20, *et seq.*, the full amount of the civil penalty assessment (in the amount of \$1,500.00) shall be reinstated.

4. Notwithstanding the Petitioner's signature below, the Petitioner denies any and all liability relating to the written Civil Penalty Assessment and denies the allegations and other statements contained in the written Civil Penalty Assessment.

5. By their respective signatures below, the Petitioner and the Respondent each acknowledge that they have entered into this Agreement voluntarily and that they have done so after having ample opportunity to review this Agreement with any individual, advisor and counsel they desired.

6. The persons signing this Agreement below represent and warrant 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.

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 associated with this Agreement and with the matters referred to in this Agreement.

9. The parties acknowledge that this Agreement contains the entire agreement between them regarding the matters set forth and described in it, and that it supersedes all previous negotiations, discussions and understandings between them regarding such matters.

10. The 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 parties acknowledge and agree that any and all disputes arising out of or under this Agreement, whether sounding in contract, tort or otherwise and including, among all others, the validity, construction, interpretation and enforcement of this Agreement, shall be governed by North Carolina law. Despite the foregoing, the parties further acknowledge and agree that this Agreement shall not be interpreted in favor of or against any party based upon which party drafted or participated in drafting this Agreement.

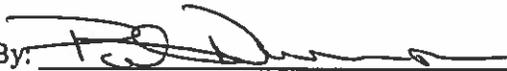
12. If any of the provisions of this Agreement are later determined to be invalid or unenforceable by a court of competent jurisdiction, the provisions found to be invalid or unenforceable shall be treated as being severable from the other provisions of this Agreement and this Agreement shall be construed and enforced as if any such invalid or unenforceable provision(s) had not been included in the Agreement.

13. This Agreement shall be binding in perpetuity upon and shall inure to the benefit of the parties, their agents, officers, employees, successors, assigns, heirs, executors and administrators.

Agreement continues on the following pages.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and signed as of the day and year indicated by their signatures below.

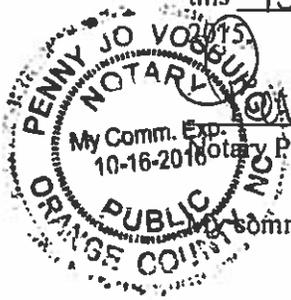
THE NORTH CAROLINA DEPARTMENT OF
AGRICULTURE AND CONSUMER SERVICES,
VETERINARY DIVISION, ANIMAL WELFARE
SECTION

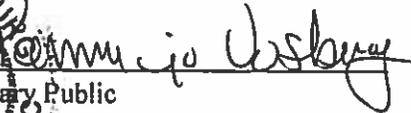
By: 

Patricia Norris

Director, Animal Welfare Section, North Carolina
Department of Agriculture and Consumer Services

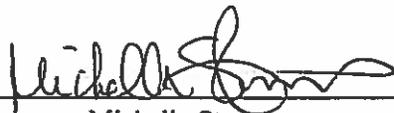
Subscribed and sworn to before me
this 13th day of November




Notary Public

My commission expires: Oct. 16, 2016

MICHELLE STARNES, PETITIONER

By: 

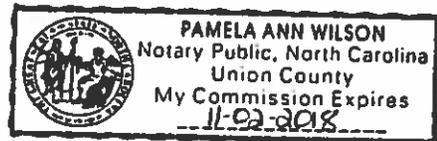
Michelle Starnes

The Petitioner

Subscribed and sworn to before me
this 6th day of November
2015.



Notary Public

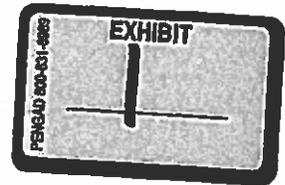


My commission expires: 11-02-2018

11-02-2018

Exhibit 1

**(February 18, 2015 Written Notice of Civil Penalty
Assessment)**



STATE OF NORTH CAROLINA
COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF
AGRICULTURE AND CONSUMER SERVICES,
VETERINARY DIVISION

IN THE MATTER OF
MICHELLE STARNES

) NOTICE OF VIOLATIONS,
) ASSESSMENT OF CIVIL
) PENALTY
)
) For Violations Of:
) 2 N.C. Administrative Code 52J
) .0418 and .0419

Acting pursuant to N.C. Gen. Stat. §§ 19A-24 and -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 Michelle Starnes ("Starnes") was a certified euthanasia technician ("CET") registered with the Animal Welfare Section, Veterinary Division, NCDA&CS ("AWS"), and on record as being employed by Union County Animal Services pursuant to N.C. Gen. Stat. §19A-24(b)(8).
2. On December 3, 2014, AWS Inspector Jay Blatche ("Ins. Blatche") conducted a euthanasia inspection at the animal shelter operated by Humane Society of Concord and Greater Cabarrus County ("HSC&GCC").
3. In the course of this inspection Ins. Blatche was informed that:
 - a. Before June 30, 2014, Dr. A. M. McClone, DVM, had performed all euthanasias at HSC&GCC;
 - b. From June 30, 2014, to July 31, 2014, HSC&GCC contracted with a local veterinarian who provided a veterinary technician, Mindy Joyner, an employee of Cabarrus Animal Hospital, to euthanize animals in the facility; and
 - c. From August 21, 2014, to December 3, 2014 (the date of the inspection), animals in the facility were euthanized by "several employees" who were CETs, who were from Union County, who were not under contract with HSC&GCC.
4. On December 22, 2014, Ins. Blatche and Outreach Coordinator Joe Blomquist ("OC Blomquist") visited HSC&GCC to ask additional questions regarding the names of the persons who are euthanizing animals at that facility.
5. HSC&GCC's representative, Ms. Judy Simms, told Ins. Blatche and OC Blomquist that all animal euthanasia at the facility is done by Cabarrus County in a room set aside for that purpose.
6. Ms. Simms stated that Starnes and Chris Royal were euthanizing animals for Cabarrus County but she did not know who hired them, who paid them or what arrangement they had with Cabarrus County.

7. On the same day Ins. Blatche and OC Blomquist met with Cabarrus County's animal control manager, LT David Taylor, who told them that:
 - a. Starnes and Chris Royal euthanize the animals at HSC&GCC's facility;
 - b. Starnes and Chris Royal are not employees of HSC&GCC or of Cabarrus County Animal Control;
 - c. There is no written agreement between Cabarrus County and Union County regarding Starnes euthanizing animals at HSC&GCC;
 - d. There is no written agreement between "Dr. Brent" and Cabarrus County Animal Control regarding Chris Royal euthanizing animals at HSC&GCC;
 - e. Starnes and Chris Royal euthanize animals at HSC&GCC in the morning before the facility opens;
 - f. Union County gave permission to Starnes to euthanize animals at HSC&GCC;
 - g. He did not know whether Dr. Brent gave permission to Chris Royal to euthanize animals at HSC&GCC;
 - h. No one in Cabarrus County Animal Control had informed AWS that Starnes or Chris Royal were euthanizing animals at HSC&GCC;
 - i. No veterinarian was present when Starnes and Chris Royal euthanized animals at HSC&GCC;
 - j. He believed that both Starnes and Chris Royal were certified as euthanasia technicians by AWS; and
 - k. Starnes and Chris Royal used Cabarrus County Animal Control's euthanasia drugs and LT Taylor or one of his officers was present to provide the drugs and hold the animals, when necessary, while animals were being euthanized.
8. LT Taylor stated that Starnes and Chris Royal were employed and paid by Dr. Brent E. Glenn, DVM ("Dr. Glenn"), to euthanize animals at HSC&GCC for Cabarrus County.
9. Starnes told Ins. Blatche that she began euthanizing animals at Cabarrus County Animal Shelter ("CCAS") in August 2014, using injected euthanasia drugs provided under Cabarrus County's DEA license.
10. Starnes told Ins. Blatche that she euthanized approximately 20 animals each week for Cabarrus County Animal Control at HSC&GCC.
11. Starnes told Ins. Blatche that she was paid to euthanize animals for Cabarrus County Animal Control at HSC&GCC by Dr. Glenn.
12. Starnes stated that Dr. Glenn does not withhold taxes from her pay but would provide her with a W-9 form at the end of the year.
13. Starnes admitted that her certification did not authorize her to euthanize animals for Cabarrus County Animal Control at HSC&GCC.
14. Starnes stated that she did not represent to Cabarrus County Animal Control that she was certified to euthanize animals at HSC&GCC; rather, she did so as Dr. Glenn's employee.
15. Starnes stated that while she was euthanizing animals for Cabarrus County Animal Control at HSC&GCC, she saw Chris Royal also euthanizing animals for Cabarrus County Animal Control at HSC&GCC.
16. Starnes stated that Chris Royal was also paid by Dr. Glenn to euthanize animals for Cabarrus

County Animal Control at HSC&GCC.

17. Dr. Patricia Norris, Director of Animal Welfare Section, NCDA&CS, spoke by telephone with Dr. Glenn on February 2, 2015.
18. Dr. Glenn told Dr. Norris that he had never been to the animal shelter facility operated by Cabarrus County.
19. Dr. Glenn stated that he believes that Cabarrus County Animal Control asked Starnes to euthanize animals in their facility.
20. Dr. Glenn stated that Starnes came to him to ask him to "run the money through him."
21. Dr. Glenn said that Starnes told him that she and Chris Royal were certified to perform euthanasia and could euthanize at Cabarrus County Animal Shelter.
22. Dr. Glenn stated that he made arrangements to bill for and accept payments from Cabarrus County, keeping ten percent of payments received and paying the rest of the money to Starnes.
23. Dr. Glenn stated that Cabarrus County provided the euthanasia drugs to Starnes and Chris Royal.
24. Dr. Glenn stated that Starnes and Chris Royal euthanized the animals and completed the records and paperwork.
25. At no time has CCAS ever reported to AWS that it employs Starnes as a CET in its facility.
26. Starnes knew or should have known that, from August 21, 2014, to December 3, 2014, Chris Royal was not certified by AWS to euthanize animals in North Carolina.
27. Chris Royal's certification as a euthanasia technician in North Carolina was cancelled when she left employment at Iredell County Animal Shelter on April 18, 2013.

As a result of this investigation, NCDA&CS, Veterinary Division, AWS alleges that Starnes, either by act or omission, violated the following provisions of the N.C. Administrative Codes: North Carolina Administrative Code 52J .0418(6) and .0419(1), (4) and (7). See Appendix for cited NC 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.)

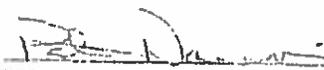
III. DECISION

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, Starnes is assessed a civil penalty of: \$1,500.00 for violating Title 2 North Carolina Administrative Code 02 NCAC 52J .0418 and .0419.

\$1,500.00 TOTAL AMOUNT ASSESSED

2/18/2015
Date



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

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COUNTY OF WAKE

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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, Starnes is assessed a civil penalty of: \$1,500.00 for violating Title 2 North Carolina Administrative Code 02 NCAC 52J .0418 and .0419.

\$1,500.00 TOTAL AMOUNT ASSESSED

2/18/2015
Date



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