STATE OF NORTH CAROLINA
COUNTY OF MOORE

NORTH CAROLINA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, VETERINARY DIVISION

IN THE MATTER OF MR. FRANK RINGELBERG	)))))))))	SETTLEMENT AGREEMENT For Violations Of: Animal Welfare Act N.C. General Statute § 19A-24 2 N.C. Administrative Code 52J .0701

RECITALS

Frank Ringelberg (the "CET) and the North Carolina Department of Agriculture and Consumer Services (the "Department") desire to fully and finally settle this and all other disputes and controversies surrounding the Petitioner's exercise of his privileges as a Certified Euthanasia Technician employed at the registered animal shelter operated by Moore County, North Carolina. The CET and the Department desire to affect a full and final settlement solely in order to avoid the burden and expense of continued litigation.

Whereas, the Department has found credible evidence of the following facts:

1. At all times pertinent to this matter the CET was a certified euthanasia technician employed by the Moore County, N.C., Health Department.

2. On August 16, 2011, the CET responded to a call that two stray dogs were confined inside a tennis court at Mid South golf course in Pinehurst, N.C.

3. The CET reported that, upon arriving at the tennis courts, he attempted to catch the dogs with a leash, dog treats and a catch pole, without success.

4. The CET reported that, instead of leaving the tennis court to retrieve a tranquilizer from the animal shelter to use to catch the dogs, he chose instead to put the dogs down by shooting each with a .22 caliber rifle.

5. The CET stated that, had he left the tennis court, he believes that someone would have freed the dogs in his absence, and, because he was working alone, he had no one to call to bring him a tranquilizer or otherwise assist him in catching the dogs.

6. The CET stated that he shot each dog once in the chest, and that each dog died immediately after being shot.

7. The CET stated that he arrived at Mid South golf course between 8:35 and 8:45 a.m., and he shot the dogs around 9:00 a.m.

8. The CET prepared and filed an incident report with Animal Center of Moore County; the incident report states, in part, that the CET "talked to the guard at the gate at 8:15 a.m., located the dogs inside the tennis court at 8:20 a.m.

9. The incident report states that the CET attempted to catch the dogs by catch pole and to lure the dogs with food, with no luck, and after 20 minutes, at 9:05 a.m., field euthanized both dogs to ensure public safety.

10. The CET stated that he believed what he did by field euthanizing the two dogs was consistent with state law and Moore County's animal control ordinance.

11. The security log for the gate at Mid South golf course indicates that the CET was admitted to the grounds at 8:54 a.m. on the morning of August 16, 2011.

12. The Mid South golf course security guard on duty during the morning of August 16, 2011, Mr. Barry Hemphill, called his supervisor at 9:14 a.m. to report that Moore County animal

control had returned to the gate and reported to him that the stray dogs had been put down.

13. Colonel Candace Abbott, U.S. Army-Retired, was near the practice green at Mid South golf course on the morning of August 16, 2011. COL Abbott reported that at around 9:00 a.m., she heard a gunshot, the sound of a dog yelping and, a few seconds later, another shot and yelping.

14. COL Abbott stated that she and Pat Hagan went to the tennis courts where they saw two dogs on the ground, bleeding, and an animal control officer standing over one of the dogs.

15. COL Abbott stated that she did not see a weapon in the animal control officer's hands at that time.

16. Ms. Brenda B. White, Moore County Deputy Attorney, wrote in a report that the approximate distance on the road from the Mid South golf course security gate to the tennis court is 0.6 miles, and it requires approximately 1 minute 40 seconds to cover that distance in a car travelling approximately 25 to 30 mile per hour.

17. Ms. White also wrote that there are homes located approximately 75 to 80 yards from one side of the tennis court with an earthen berm between the courts and the homes that would probably have protected the homes from a rifle shot that missed its target.

18. Ms. White wrote that there are homes to the North of the tennis courts, approximately 60 to 75 yards away, without a berm to protect them; the tennis courts are approximately one minute's walking time from the swimming pool on the grounds.

19. The CET's statement that the dogs were likely to have been let out if he left and retrieved a tranquilizer indicates that the dogs were confined on tennis courts that were enclosed by a fence, and, at that time, were of no immediate threat to anyone not in the tennis courts with them.

20. The CET's statement indicates that he made no effort to secure assistance from anyone to catch the dogs before he euthanized them.

21. The Department subsequently suspended the CET's euthanasia privileges for a period of six months and assessed him a civil penalty of five hundred dollars ($500.00) upon concluding that he, either by act or omission, violated N.C. Gen. Stat. § 19A-24 and North Carolina Administrative Code 52J .0701 and .0702:

§ 19A-24. Powers of Board of Agriculture.

(a) The Board of Agriculture shall: …

(5) Adopt rules on the euthanasia of animals in the possession or custody of any person required to obtain a certificate of registration under this Article. An animal shall only be put to death by a method and delivery of method approved by the American Veterinary Medical Association, the Humane Society of the United States, or the American Humane Association. The Department shall establish rules for the euthanasia process using any one or combination of methods and standards prescribed by the three aforementioned organizations. The rules shall address the equipment, the process, and the separation of animals, in addition to the animals' age and condition….

(b) In addition to rules on the euthanasia of animals adopted pursuant to subdivision (5) of subsection (a) of this section, the Board of Agriculture may adopt rules on the euthanasia of animals for:

(1) Written and practical examinations for persons who perform euthanasia.

(2) Issuance of certification to persons who have successfully completed both training and examinations to become a euthanasia technician.

(3) Recertification of euthanasia technicians on a periodic basis.

(4) Standards and procedures for the approval of persons who conduct training of euthanasia technicians.

(5) Approval of materials for use in euthanasia technician training.

(6) Minimum certification criteria for persons seeking to become euthanasia technicians including, but not limited to: age; previous related experience; criminal record; and other qualifications that are related to an applicant's fitness to perform euthanasia.

(7) Denial, suspension, or revocation of certification of euthanasia technicians who either violate any provision of the Animal Welfare Act pursuant to Article 3 of Chapter 19A of the General Statutes or otherwise become ineligible for certification.

(8) Provision of the names of persons who perform euthanasia at animal shelters and for the animal shelter to notify the Department when those persons are no longer affiliated, employed, or serving as a volunteer with the shelter.

(9) Certified euthanasia technicians to notify the Department when they are no longer employed by or are serving as a volunteer at an animal shelter.

(10) The duties, responsibilities, and standards of conduct for certified euthanasia technicians.

(1977, 2nd Sess., c. 1217, s. 5; 1987, c. 827, s. 62; 2004-199, s. 12; 2005-276, s. 11.5(b); 2005-345, s. 22; 2008-198, s. 2(a).)

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.

02 NCAC 52J .0701 METHODS OF EUTHANASIA PERMITTED UNDER EXTRAORDINARY CIRCUMSTANCES AND SITUATIONS

For purposes of this Section, extraordinary circumstance or situation includes a situation which is offsite from the shelter, in which an animal poses an immediate risk to animal, human or public health and in which no alternative, less extreme measure of euthanasia is feasible. It also includes circumstances or situations in which it would be inhumane to transport an animal to another location to perform euthanasia.

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

02 NCAC 52J .0702 GUNSHOT OR OTHER METHODS

Under extraordinary circumstances and situations which occur offsite from the shelter, a shelter employee may use gunshot or other extreme method of euthanasia as set forth in the American Veterinary Medical Association, Humane Society of the United States or American Humane Association Guidelines incorporated by reference in 02 NCAC 52J .0401.

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

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

NOW THEREFORE, the parties agree as follows:

1. The CET agrees that, upon signing this negotiated Settlement Agreement, he thereby waives his right to appeal the Department's decision to suspend his euthanasia privileges and to impose a civil penalty of four hundred dollars ($400.00) 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 him, the Department and the Department's exercise of its lawful authority.

2. The CET hereby agrees to and accepts the suspension of his "extraordinary" euthanasia privileges, meaning all euthanasia outside the shelter facility operated by Moore County or any shelter facility as may subsequently employ him while said privilege is suspended. This suspension shall run for a term of six months, with the term beginning on the 27th day of December 2011, the date on which Animal Control Officer Ringelberg received notice of the suspension of his euthanasia privileges and voluntarily suspended such actions.

3. The Department shall stay suspension of the CET's remaining, non-extraordinary privileges for routine, in-facility euthanasia, except that the CET may not euthanize an animal without another CET being present, for six month period as set in paragraph 2;

4. If the Department receives information that the CET has committed another violation of the North Carolina Animal Welfare Act, whether relating to his employment with Moore County or any subsequent employer who operates an animal shelter, or information that the CET has otherwise failed to comply with this settlement agreement, the Department may, as a matter within its sole discretion, lift the stay of the suspension of CET's privileges. If the

Department suspends the CET's euthanasia privileges, it may impose a suspension of up to two years, as merited by the seriousness of and degree of harm caused by the offense. Should the Department decline to lift the stay upon receiving information tending to show that the CET has committed another violation or otherwise failed to comply with this settlement agreement, such decision shall not constitute a waiver by the Department;

5. After six months the suspension of the CET's extraordinary euthanasia privileges will be lifted and the stayed suspension of his other euthanasia privileges will be dissolved unless the Department has exercised its authority under paragraph 4, above;

6. The CET acknowledges that, upon acceptance and execution of this settlement agreement by the Department, the settlement agreement shall become 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.

7. The CET denies that he is guilty of any willful violation of the North Carolina Law or Regulations and his consent to the terms of this Agreement is made in order to timely resolve this matter and shall not be constituted as an admission of guilt, as to any of the violations alleged herein;

8. The CET shall pay or caused to be paid to the North Carolina Department of Agriculture the sum of four hundred dollars ($400.00) which shall be mailed to the Department accompanied by this executed Settlement Agreement.

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

10. The parties agree to bear their own attorneys fees and costs.

11. It is understood between the parties that this Order 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.

12. The effective date of this Order will be the date on which it has been executed by all parties as shown on the signature lines below and the Administrative Law Judge assigned to adjudicate this matter.

13. 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:

Frank Ringelberg, CET

Date: 04/25/2012

FOR THE DEPARTMENT:

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

Date: 05/04/2012

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

Date: 5/11/12

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For Moore County:

T. Cary McSwain Date: 5/1/2012

T. Cary McSwain, County Manager

Carrie H. Neal Date: 5/1/12

Carrie H. Neal, Chief Financial Officer