



Steven W. Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

Christina L. Waggett
Assistant Commissioner
for Consumer Protection

Douglas Meckes, DVM
State Veterinarian

July 28, 2021

Caitlin and Russel Owens,
Owners
The Barker Lounge - East
5100 Furman Pl
Charlotte, North Carolina 28210

NOTICE of CIVIL PENALTY and NOTICE of WARNING

Re: CIVIL PENALTY ASSESSMENT for VIOLATION of TITLE 02 N.C. ADMINISTRATIVE CODE (NCAC) CHAPTER 52J SECTION .0204(e) and NOTICE of WARNING for VIOLATIONS of 02 NCAC 52J .0102(1); .0204(a) and .0208.

AWS-CP-2021-11

Facility: The Barker Lounge - East
License No. 11430

Dear Mr. and Mrs. Owens:

Pursuant to NCGS § 19A-40, I am issuing this notice that Caitlin and Russel Owens, as owners of The Barker Lounge – East, are hereby assessed a civil penalty of \$500.00 as provided in the enclosed Notice of Violation.

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 with the N.C. Office of Administrative Hearings to appeal the penalty assessment.

Pursuant to NCGS § 150B-22, either party to a dispute may initiate informal settlement negotiations at any time. To negotiate a settlement of this assessment, you may contact me 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 NCGS § 150B-23. The petition must be filed with the N.C. Office of Administrative Hearings ("OAH") within 60 days from the date of this document. Additionally, the petition must be accompanied by a filing fee of twenty dollars (\$20.00). 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 at 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, DVM, MS". The signature is fluid and cursive, with the first name "Patricia" written in a stylized script and the last name "Norris" in a more legible, slightly cursive font. The credentials "DVM, MS" are written in a simpler, more upright script at the end of the signature.

Patricia Norris, DVM, MS
Director, Animal Welfare Section

Attachment: Notice of Violations, Assessment of Civil Penalty

cc: R. Douglas Meckes, DVM, State Veterinarian
Tina Hlabse, General Counsel, NCDA&CS
Christina L. Waggett, Assistant Commissioner, NCDA&CS
Christopher R. McLennan, Assistant Attorney General

STATE OF NORTH CAROLINA
COUNTY OF WAKE

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

IN THE MATTER OF	)	NOTICE OF VIOLATION and
	)	ASSESSMENT of CIVIL PENALTY
CAITLIN and RUSSEL OWENS	)	for VIOLATION of 02 N.C.
	)	ADMINISTRATIVE CODE ("NCAC")
OWNERS of	)	CHAPTER 52J SECTION .0204(e) and
	)	NOTICE of WARNING for VIOLATION
THE BARKER LOUNGE – EAST	)	of 02 NCAC 52J .0102(1); .0204(a) and .0208
	)	

Acting pursuant to NCGS § 19A-40, Dr. Patricia Norris, Director, Animal Welfare Section ("AWS"), North Carolina Department of Agriculture and Consumer Services ("NCDA&CS") makes the following:

FINDINGS OF FACT

1. At all times pertinent to this matter, The Barker Lounge – East located at 4336 Monroe Road, Charlotte, NC ("the kennel") was a boarding kennel, licensed pursuant to NCGS § 19A-28.
2. On February 19, 2020, AWS Animal Health Technician Jay Blatche ("Inspector Blatche") conducted a Facility Compliance Inspection ("FCI") of the kennel. The FCI report was marked as "Disapproved" due to repetitive nature of the violations. The February 19, 2020 FCI found that 1 play area had a supervising employee ratio to dogs of 1 to 13 and a second play area had a ratio of 1 to 11 in violation of 02 NCAC 52J .0204(e). Inspector Blatche noted in the General Comments section of the February 19, 2020 FCI that the 1:10 ratio must be maintained at all times and that he would re-inspect at a later date to check the supervision ratio.
3. On July 20, 2021 Inspector Blatche conducted a FCI of the kennel. The FCI report was marked as "Disapproved" due to severity and repetitive nature of the violations. The findings of the July 20, 2021 FCI include:
 - a. The kennel did not maintain records of the date of entry and signature and address of the individual to whom the animal is released and the date of release in violation of 02 NCAC 52J .0102(1);
 - b. Inspector Blatche noted the kennel floors needed repainting and sealing as they were not impervious to moisture in kennels 114, 115, 116, 117, 118, 119, 205, 210 and 311 in violation of 02 NCAC 52J .0204(a);
 - c. Rusting crates were in use to house animals in violation of 02 NCAC 52J .0204(a). Inspector Blatche directed the kennel to sand and repaint or replace the rusting crates;
 - d. The outside play areas had a supervising employee ratio to dogs of 1 to 15; 1 to 14; and 1 to 12 in violation of 02 NCAC 52J .0204(e);
 - e. At no time during the FCI, did the kennel staff move dogs out of the play areas to bring the supervision ratio into compliance with 02 NCAC 52J .0204(e);
 - f. In violation 02 NCAC 52J .0208, the kennel did not have a sufficient number of employees to comply with 02 NCAC 52J .0204(e) for the number of dogs the kennel allowed to comeingle.

4. The FCIs referenced in this Notice were made available to the kennel owners and can be found on the AWS website at: <http://www.ncagr.gov/vet/aws/>.

CONCLUSIONS

To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels. Based on the findings of this investigation, AWS concludes that the kennel violated the following provisions:

02 NCAC 52J .0102(1) for failing to maintain records of the date of entry and signature an address of the individual to whom the animal is released and the date of release;

02 NCAC 52J .0204(a) for failing to maintain primary enclosures surfaces with which an animal come in contact impervious to moisture;

02 NCAC 52J .0204(e) for failing to comply with the 1:10 supervising employee to dog ratio for the three outside play yards on July 20, 2021; and

02 NCAC 52J .0208 for failing to employ a sufficient number of employees to maintain the prescribed level of husbandry practices set forth in the AWA and its associated rules.

(See Appendix for text of referenced General Statutes and Administrative Code)

CIVIL PENALTIES

As required by NCGS § 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. AWS notes that failure to provide adequate supervision of comingling dogs represents a significant risk to the safety of the employees and the comingling dogs. AWS investigations have found that most of the severe injury and deaths suffered by comingling dogs in boarding kennels resulted from inadequate number of supervising employees for the number of comingling dogs.

Accordingly, Caitlin and Russel Owens, as owners of The Barker Lounge – East are hereby assessed a civil penalty for the following violation:

\$500.00 for violation of 02 NCAC 52J .0204(e) by failing to provide at least one person supervising each 10 dogs housed within a common area.

\$500.00 TOTAL AMOUNT ASSESSED

NOTICE of WARNING

As to the remaining violations of 02 NCAC 52J .0102(1); .0204(a) and .0208, this Warning Letter serves as written notice indicating in which respects the kennel may have violated the NC Animal Welfare Act and the rules issued pursuant thereto.

Continued or future violation of the statutes or regulations referenced in this letter will be considered a willful disregard or violation of the N.C. Animal Welfare Act and the rules issued pursuant thereto. Such

willful disregard or violation may result in action against your facility's license pursuant to NCGS § 19A-30 and/or the assessment of a civil penalty of up to \$5,000.00 per violation under NCGS § 19A-40.

July 28, 2021
Date

Patricia Norris, DVM, MS
Patricia Norris, DVM, MS
Director, Animal Welfare Section
North Carolina Department of
Agriculture & Consumer Services

Appendix

REFERENCED LAWS AND REGULATIONS

§ 19A-28. License required for public auction or boarding kennel.

No person shall operate a public auction or a boarding kennel unless a license to operate such establishment shall have been granted by the Director. Application for such license shall be made in the manner provided by the Director. The license period shall be the fiscal year and the license fee shall be seventy-five dollars (\$75.00) for each license period or part thereof beginning with the first day of the fiscal year.

§ 19A-30. Refusal, suspension or revocation of certificate or license.

The Director may refuse to issue or renew or may suspend or revoke a certificate of registration for any animal shelter or a license for any public auction, kennel, pet shop, or dealer, if after an impartial investigation as provided in this Article he determines that any one or more of the following grounds apply:

- (1) Material misstatement in the application for the original certificate of registration or license or in the application for any renewal under this Article;
- (2) Willful disregard or violation of this Article or any rules issued pursuant thereto;
- (3) Failure to provide adequate housing facilities and/or primary enclosures for the purposes of this Article, or if the feeding, watering, sanitizing and housing practices at the animal shelter, public auction, pet shop, or kennel are not consistent with the intent of this Article or the rules adopted under this Article;
- (4) Allowing one's license under this Article to be used by an unlicensed person;
- (5) Conviction of any crime an essential element of which is misstatement, fraud, or dishonesty, or conviction of any felony;
- (6) Making substantial misrepresentations or false promises of a character likely to influence, persuade, or induce in connection with the business of a public auction, commercial kennel, pet shop, or dealer;
- (7) Pursuing a continued course of misrepresentation of or making false promises through advertising, salesmen, agents, or otherwise in connection with the business to be licensed;
- (8) Failure to possess the necessary qualifications or to meet the requirements of this Article for the issuance or holding of a certificate of registration or license.

The Director shall, before refusing to issue or renew and before suspension or revocation of a certificate of registration or a license, give to the applicant or holder thereof a written notice containing a statement indicating in what respects the applicant or holder has failed to satisfy the requirements for the holding of a certificate of registration or a license. If a certificate of registration or a license is suspended or revoked under the provisions hereof, the holder shall have five days from such suspension or revocation to surrender all certificates of registration or licenses issued thereunder to the Director or his authorized representative.

A person to whom a certificate of registration or a license is denied, suspended, or revoked by the Director may contest the action by filing a petition under G.S. 150B-23 within five days after the denial, suspension, or revocation.

Any licensee whose license is revoked under the provisions of this Article shall not be eligible to apply for a new license hereunder until one year has elapsed from the date of the order revoking said license or if an appeal is taken from said order of revocation, one year from the date of the order or final judgment sustaining said revocation. Any person who has been an officer, agent, or employee of a licensee whose license has been revoked or suspended and who is responsible for or participated in the

violation upon which the order of suspension or revocation was based, shall not be licensed within the period during which the order of suspension or revocation is in effect.

§ 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.

02 NCAC 52J .0102 RECORDS; BOARDING KENNELS

Operators of boarding kennels shall maintain records of all dogs and cats showing the following:

- (1) name and address of owner or person responsible for animal, the date of entry and signature and address of individual to whom animal is released and the date of release;
- (2) description of animal including breed, sex, age and color marking; and
- (3) veterinary care provided while boarded, which shall include date, times, description of medication (including name and dosage) and initials of person administering product or procedure.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984;

02 NCAC 52J .0204 PRIMARY ENCLOSURES

(a) Primary enclosures shall be constructed so as to prevent contamination from waste and wastewater from animals in other enclosures. All surfaces with which an animal comes in contact shall be impervious to moisture. For primary enclosures placed into service on or after January 1, 2005, no wood shall be within the animal's reach. For primary enclosures in use in a licensed or registered facility prior to January 1, 2005, any damaged wood must be replaced in a manner that does not permit contact with wood by the animal.

(e) If more than four dogs are housed in a common area or enclosure, then there must be at least one person supervising each 10 dogs housed within each enclosure or common area.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. January 1, 2005; April 1, 1985.

02 NCAC 52J .0208 EMPLOYEES

A sufficient number of employees shall be utilized to maintain the prescribed level of husbandry practices set forth in this Rule. Such practices shall be under the supervision of an animal caretaker who has a background in animal husbandry or care.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984.