



Steven W. Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

R. Douglas Meckes, DVM
State Veterinarian

July 11, 2017

Ed and Vi Finkenbinder
Kennel Owners
Cozy Country Kennels
4787 NC Hwy 49
Liberty, NC 27298

NOTICE OF CIVIL PENALTY

Re: CIVIL PENALTY ASSESSMENT FOR VIOLATIONS OF TITLE 02 N.C. ADMINISTRATIVE CODE, CHAPTER 52J SECTIONS .0102(3) and .0210(c).

AWS-CP-2017-9

**Facility: Cozy Country Kennel
License No. 10544**

Dear Mr. and Mrs. Finkenbinder:

Pursuant to N.C. General Statute § 19A-40, I am issuing this notice that Ed and Vi Finkenbinder, individually and DBA Cozy Country Kennel, are hereby assessed a civil penalty of \$1,100.00 as detailed in the enclosed Notice of Violations. This amount is based on the degree and extent of the harm caused by the violation and is consistent with those previously issued by Animal Welfare Section ("AWS") for similar violations.

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 N.C. General Statute § 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 civil 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 filed in writing within 60 days and in the form prescribed by N.C. General Statute § 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 ("OAH"). 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 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', with a long horizontal flourish extending to the right.

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
Joe Reardon, 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
ED AND VI FINKENBINDER,
INDIVIDUALLY AND DBA
COZY COUNTRY KENNEL

) NOTICE OF VIOLATIONS
) ASSESSMENT OF CIVIL PENALTY
) FOR VIOLATIONS OF 02 NCAC
) 52J .0102(3) and .0210(c)
)

Acting pursuant to N.C. General Statute § 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 Cozy Country Kennel (License No. 10544) ("the kennel") was a boarding kennel licensed pursuant to N.C. General Statute § 19A-28.
2. On June 13, 2017, AWS received a complaint concerning the care of a dog named "Sampson" boarding at the kennel.
3. Based on the information received, AWS opened an investigation. The investigation included review of the documentation provided by Sampson's owner, review of the veterinary medical records for Sampson provided by the treating veterinarian, a site visit to the kennel by AWS Animal Health Technician Christie Shore ("Inspector Shore"), a site visit to the boarding kennel ("Kennel #1") at which Sampson's owner had originally boarded the dog, a review of relevant records at both kennels and interview of the kennel owners of both kennels.
4. On June 2, 2017, Sampson was taken to Kennel #1 for boarding. Medication was left by Sampson's owner to be administered to Sampson during the boarding period.
5. On June 5, 2017, the owner of Kennel #1, with consent from Sampson's owner, transferred Sampson to the kennel to finish out the boarding period which was scheduled to end on June 12, 2017. The remaining medication was transferred to the kennel at that time.
6. On June 12, 2017, Sampson's owner picked up his dog from the kennel. He immediately took the dog to the treating veterinary clinic because Sampson was unable to stand and had a significant number of maggots in multiple areas of his body. The veterinary medical record notes, on June 12, 2017, "Due to Sampson's very poor condition and suffering," Sampson was euthanized.
7. During the June 12, 2017 interview with Inspector Shore, Mr. Finkenbinder, the kennel owner, stated that he was not given enough medication to properly medicate Sampson for the boarding period. Mr. Finkenbinder also stated that he bought a special mat for Sampson to lay on when he was unable to stand or control his bladder, he washed Sampson as needed to remove the urine, that he sprayed fly spray around but not on Sampson to control the flies and that he administered what medication he was

given for Sampson. Mr. Finkenbinder also noted that he pilled Sampson instead of placing the medication in the food because Sampson had stopped eating. Mr. Finkenbinder could not produce documentation of these actions. No medication log documenting the administration of the medications was kept by the kennel as required by 02 NCAC 52J .0102(3).

8. The written Program of Veterinary Care submitted by the kennel for the 2017 Boarding Kennel application states:
- (a) "Any animal thought to be sick or contagious, is immediately removed to attending Veterinarian treatment Area. Off of premises" (sic); and
 - (b) "Veterinarian is called at first notice of Emergency."
9. Despite the dog not being able to stand, not eating, not receiving medications necessary for a medical condition, having visible wounds from prolonged recumbency and having maggots present, the kennel owner did not follow the kennel's written Program of Veterinary Care and take Sampson to the veterinarian for care. Provision of veterinary care to sick or diseased, injured, lame or blind dogs and cats is required by 02 NCAC 52J .0210(c).

CONCLUSIONS

The investigation revealed that the kennel did not provide veterinary care to the dog, Sampson, as required by 02 NCAC 52J .0210(c). The investigation also revealed that the record of medication administered to this dog was not maintained as required by 02 NCAC 52J .0102(3).

As a result of this investigation, the North Carolina Department of Agriculture and Consumer Services, Veterinary Division, Animal Welfare Section, finds that Ed and Vi Finkenbinder, individually and DBA as Cozy Country Kennel, either by act or omission, violated the provisions the North Carolina Administrative Code 52J .0102(3) and .0210(c).

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

CIVIL PENALTIES

As required by N.C. General Statute § 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, Ed and Vi Finkenbinder, individually and DBA Cozy County Kennel, are assessed a civil penalty for the following violations:

- 1) \$100.00 for violation of North Carolina Administrative Code 52J .0102(3); and
- 2) \$1,000.00 for violation of North Carolina Administrative Code 52J .0210(c)

\$1100.00 TOTAL AMOUNT ASSESSED

July 11, 2017
Date

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

Appendix

RELEVANT LAWS AND REGULATIONS

§ 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 .0102 RECORDS; BOARDING KENNELS

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

(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;
Amended Eff. January 1, 2005.

02 NCAC 52J .0210 VETERINARY CARE

(c) Each dog and cat shall be observed daily by the animal caretaker in charge, or by someone under his direct supervision. Sick or diseased, injured, lame, or blind dogs or cats shall be provided with veterinary care or be euthanized, provided that this shall not affect compliance with any state or local law requiring the holding, for a specified period, of animals suspected of being diseased. If euthanasia is performed at a certified facility, a list of personnel approved to perform euthanasia shall be maintained in a Policy and Procedure Manual as described in 02 NCAC 52J .0800. Diseased or deformed animals shall be sold or adopted only under the policy set forth in the "Program of Veterinary Care." Full written disclosure of the medical condition of the animal shall be provided to the new owner.

History Note: Authority G.S. 19A-24;
Eff. April 1, 1984;
Amended Eff. March 23, 2009; January 1, 2005.