

STATE OF NORTH CAROLINA

COUNTY OF WAKE

N.C. DEPARTMENT OF AGRICULTURE)
AND CONSUMER SERVICES)
VETERINARY DIVISION, ANIMAL)
WELFARE SECTION,)
Complainant)
v.)
ROBESON COUNTY ANIMAL SHELTER)
Respondent.)

**CONSENT
AGREEMENT**

RECITALS

The North Carolina Department of Agriculture and Consumer Services (the “Complainant”) and Robeson County Animal Shelter (the “Respondent”) desire to fully and finally settle this and all other disputes and controversies surrounding the Complainant’s suspension of the Respondent’s certification privilege as a facility entitled to euthanize animals, and desire to affect a full and final settlement solely in order to avoid the burden and expense of continued litigation.

WHEREAS, on January 13, 2011, the fifth (5th) business date after Respondent received its Cease and Desist Order and Civil Penalty Assessment, Complainant suspended Respondent’s registration privilege to euthanize animals and assessed the Respondent a civil penalty in the amount of two thousand dollars (\$2,000.00) upon discovery of evidence indicating that the Respondent failed to exercise that privilege in accordance with applicable statutes and regulations, and issued the Respondent an Order to that effect and a Notice of Violation describing in detail the evidence supporting that conclusion, which are attached hereto and incorporated by reference.

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

NOW THEREFORE, the parties agree as follows:

1. Complainant agrees that, upon receiving the signed original of this Agreement from the Respondent, it will stay its suspension of the Respondent's registration euthanization privileges and restore all of the rights and privileges thereof, subject to the limitations set forth in this agreement. This stay shall remain in place for twelve months beginning on that day. Complainant shall notify the Respondent by faxed memorandum that it has received said signed original of this Agreement.

2. Before resuming routine euthanization of its animals, Respondent shall submit the names, addresses and telephone numbers of the Certified Euthanization Technicians and/or veterinarians whom it intends to employ to euthanize its animals. Further, Respondent shall not resume routine euthanization of animals using the services of those named Certified Euthanization Technicians and/or veterinarians before receiving acknowledgement and written consent from the Complainant.

3. Complainant further agrees to stay the enforcement of one-half of its civil penalty, the sum of one thousand dollars (\$1,000.00), against the Respondent so long as Respondent a) complies with this Agreement and b) Respondent commits no new violation of G.S. Article 19A and the regulations promulgated thereunder during the twelve months following Respondent's agreement to and execution of this Agreement. For purposes of this agreement, a new violation is understood to mean a violation of G.S. Article 19A and the regulations promulgated thereunder that has detrimentally affected the health and/or welfare of the animals held in Respondent's facility and cannot, in the sole discretion of the Complainant, be easily remedied by the Respondent in the course of daily operations of the facility. The Complainant reserves the right to forego declaring the Respondent to be in breach of this agreement upon receiving evidence of any violation of G.S 19A or the regulations promulgated there under, or any other breach of this agreement, as a matter within its sole discretion. The parties further understand and agree that Complainant's decision not to declare the Respondent to be in breach of this agreement does not amount to a waiver of that right.

4. Respondent agrees to pay the sum of one thousand dollars (\$1,000.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of its acceptance of this Agreement;

5. Respondent agrees that if Respondent fails to pay the total agreed upon sum of one thousand dollars (\$1,000.00) within thirty (30) days of its acceptance of this agreement, said failure shall constitute a material breach of this Agreement and Complainant shall be entitled to receive the entire penalty of two thousand (\$2,000.00) dollars for violations of the above-stated North Carolina Animal Welfare Act and its Regulations;

6. The parties further agree that, if Respondent complies fully with this Agreement for twelve months following Complainant's receipt of the signed and executed original, the aforementioned suspension shall be lifted and dissolved.

7. The Respondent hereby acknowledges it's right to submit a petition for a formal hearing to the North Carolina Office of Administrative Hearings to resolve this matter and waives said right by consenting to the terms of this Agreement. The parties further agree that Respondent's waiver applies fully to the Suspension and Notice of Civil Penalty Complainant issued on January 13, 2011, and to any decision Complainant's Director of Animal Welfare makes subsequent to the execution of this Agreement as provided under paragraph 3, above.

8. The persons signing this Agreement represent 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.

9. At all times the Respondent shall comply with the provisions of the North Carolina Animal Welfare Act, N.C. Gen. Stat. Chapter 19A, and the regulations promulgated there under. Should the Complainant find substantial and credible evidence while this Agreement is in effect that Respondent or individuals working under its direction and control have committed violations of the North Carolina Animal Welfare Act, N.C. Gen. Stat. Chapter 19A, or its regulations, Complainant's Director of Animal Welfare may, as a matter within his sole discretion, deem the Respondent to be in material breach of this Agreement and immediately lift any stay of the suspension and/or stay of the civil penalty, or any portion thereof, and impose any other sanction upon the Respondent as he is authorized to impose by law. In the event that Complainant's Director lifts the stay of any sanction against the Respondent, such decision may

not be subjected to a petition to the North Carolina Office of Administrative Hearings, as Respondent has fully waived that right under this Agreement. However, Respondent may petition the North Carolina Office of Administrative Hearings for review of any new sanction imposed by Complainant's Director of Animal Welfare. The parties expressly agree that, for purposes of this Agreement, a new sanction shall be any sanction imposed on the Respondent by the NCDA&CS subsequent to Respondent's execution of this Agreement, except for the Director of Animal Welfare's decision to lift the stays provided under paragraphs one (1) and three (3) of this Agreement.

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

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

12. It is understood between the parties that this Agreement 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.

13. The effective date of this Agreement will be the date on which it has been executed by the Respondent as shown on the signature lines below. However, the Complainant expressly retains the right to cancel this Agreement if, from the time this document is provided to Respondent, to the time this signed original Agreement is returned to and arrives in the Complainant's office, Complainant finds evidence of new violations of the North Carolina Animal Welfare Act have been committed by the Respondent.

14. 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:



Date: 1-13-11

RESPONDENT



Date: 1/24/2011

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



Date: 1/24/2011

Dr. Lee Hunter, DVM
Director, Animal Welfare Section
North Carolina Department of Agriculture & Consumers Services
FOR COMPLAINANT