



Steven W. Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

R. Douglas Meckes, DVM
State Veterinarian

April 11, 2016

James and Donna Fowler
Kennel Owners
Heavensown Kennel
6415 Marvin Fowler Road
Waxhaw, NC 28173

NOTICE OF CIVIL PENALTY

**Re: CIVIL PENALTY ASSESSMENT FOR VIOLATIONS OF TITLE 02 N. C.
ADMINISTRATIVE CODE, CHAPTER 52J, SECTIONS .0102(1) and (2) and .0210(c).
AWS-CP-2016-3**

Facility: Heavensown Kennel

Dear Mr. and Mrs. Fowler:

Pursuant to N. C. General Statute § 19A-40 I am issuing this notice to you that Heavensown Kennel is assessed a civil penalty of \$1,100.00 as provided in the enclosed Notice of 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 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 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, DVM, MS". The signature is fluid and cursive, with the initials "DVM, MS" written in a slightly larger, more legible font at the end.

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)
)
HEAVENSOWN KENNEL)
BOARDING KENNEL)
)
)

NOTICE OF VIOLATIONS
ASSESSMENT OF CIVIL PENALTY
FOR VIOLATIONS OF 02 NCAC
52J .0102(1) and (2) and .0210(c).

Acting pursuant to N.C. Gen. Stat. § 19A-30, 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 Heavensown Kennel ("the kennel") is a boarding kennel licensed pursuant to N.C. General Statute §19A-28.
2. On February 26, 2016, AWS received a complaint concerning the kennel alleging that a dog named Sig, boarded at the kennel from December 15, 2015 until January 24, 2016, suffered a significant amount of weight loss during his time at the kennel. The complaint also alleged that the dog returned from the stay at the kennel with several untreated infected wounds.
3. AWS opened an investigation and on March 1, 2015, AWS Animal Health Technician Jay Blatche ("Inspector Blatche") conducted a site visit of the kennel. The kennel owner, due to a death in the family, stated that she did not have time for a site visit. Inspector Blatche agreed to postpone the facility inspection but asked the kennel owner for the records for this dog. The kennel owner acknowledged that the dog had been boarded there but stated she did not retain the records of the stay.
4. Inspector Blatche returned to conduct the facility inspection on March 15, 2016. At this visit, the kennel owner reiterated that she did recall the dog being boarded at the facility but she did not have any records pertaining to the dog.
5. A review of the medical records of the dog revealed the following:
 - a) Sig weighed 62.0 pounds on November 19, 2015.
 - b) Sig was examined and treated by a veterinarian on January 26, 2016.
 - c) The veterinary record notes the presence of an infected wound on the left front leg, a wound on the left side of the rectum, decubital ulcers, emaciation and severe dehydration.
 - d) Notations were made in the medical record by the veterinarian that neglect was suspected and that the dog had lost over 20 pounds.
 - e) Bloodwork analysis on January 26, 2016 only showed a mild elevation in ALT (133 U/L, normal range 10-125) and a slight decrease in amylase (490 U/L, normal range 500-1500).
 - f) Fecal parasite check found no evidence of intestinal parasites.
6. An interview with the attending veterinarian revealed the following:
 - a) Dr. Pressly of Pressly Animal Hospital had seen Sig prior to his stay at the kennel and had noted that he was "gorgeous" and in great health and body condition.

- b) Dr. Pressly examined Sig on January 26, 2016 and said he was distressed at the condition of the dog on that day.
- c) He stated that the dog had gone from 62 pounds down to 39 pounds and that his body condition score on the day of examination was 1 (BCS of 1 of 9 indicates emaciation).
- d) Dr. Pressly stated that the dog was emaciated and had several lick granulomas and untreated infected wounds.
- e) Dr. Pressly stated that he has been able to follow Sig's recovery and noted that it took "just antibiotics for the wounds and the provision of adequate food" for the dog to regain his previous good condition.
- f) Dr. Pressly stated that he felt that the failure to provide veterinary care and the lack of sufficient "basic nutrition" while at the boarding kennel caused serious harm to this dog.
- g) When asked, Dr. Pressly said that any reasonable person would have gotten care for this dog.

7. The owner of the dog states Sig was "in good condition" when he was left at the kennel and noted in a text on January 24, 2016 that Sigmund was "terribly thin."

CONCLUSIONS

As a result of this investigation, the North Carolina Department of Agriculture and Consumer Services, Veterinary Division, Animal Welfare Section, finds that the kennel either by act or omission, violated the provisions the North Carolina Administrative Code 52J .0102(1) and (2) and .0210(c).

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

CIVIL PENALTIES

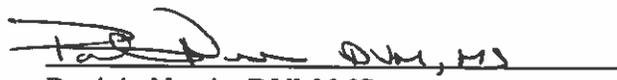
As required by N.C. Gen. Stat. § 19A-40, in determining the amount of the civil penalty, I have considered the degree and extent of harm caused by the violations listed above.

Accordingly Heavensown Kennel is assessed a civil penalty for the following violations:

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

\$1,100.00 TOTAL AMOUNT ASSESSED

4/11/2016
Date


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:

- (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

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.