



Steven W. Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

Christina L. Waggett
Assistant Commissioner
for Consumer Protection

Michael Martin, DVM
State Veterinarian

April 13, 2023

David Cantara
Carolina Air Canine, LLC
4553 Walpole Road
High Point, North Carolina 27265

NOTICE of CIVIL PENALTY

Re: CIVIL PENALTY ASSESSMENT for VIOLATIONS of TITLE 02 N.C. ADMINISTRATIVE CODE (NCAC) CHAPTER 52J SECTIONS .0201(h); .0204(k); and .0206(a).

AWS-CP-2023-6

**Facility: Carolina Air Canine, LLC
License Number: 10653**

Dear Mr. Cantara:

Pursuant to NCGS § 19A-40, I am issuing this notice that you as owner and operator of Carolina Air Canine, LLC ("the kennel") is hereby assessed a civil penalty of \$1,100.00 as provided in the enclosed Notice of Violation.

With regard to the civil penalty, within 60 days from the date of this letter, 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:

Mr. Jonathan Lanier
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 that reads "Patricia Norris, DVM, MS". The signature is written in a cursive style with a horizontal line above the name.

Patricia Norris, DVM, MS
Director, Animal Welfare Section

Attachment: Notice of Violations, Assessment of Civil Penalty

cc: Michael Martin, DVM, State Veterinarian
Jonathan Lanier, General Counsel, NCDA&CS
Christina L. Waggett, Assistant Commissioner, NCDA&CS
Christopher R. McLennan, Special Deputy 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)
)
DAVID CANTARA)
)
OWNER OF)
)
CAROLINA AIR CANINE, LLC)
)
)
)
)
)

NOTICE of VIOLATION and
ASSESSMENT of CIVIL PENALTY
for VIOLATION of TITLE 02 NC
ADMINISTRATIVE CODE (“NCAC”)
CHAPTER 52J SECTION .0201(h); .0204(k);
and .0206(a).

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, Carolina Air Canine, LLC (“the kennel”) owned and operated by David Cantara was a boarding kennel, registered pursuant to NCGS § 19A-28.
2. On March 20, 2023, AWS received a complaint alleging failure to provide animals with continuous access to water. Based on this information, AWS opened an investigation. The investigation centered on possible violation(s) of the N.C. Animal Welfare Act (“AWA”) as these statutes and associated regulations are the extent of the jurisdiction of AWS.
4. As part of the complaint investigation, AWS Animal Health Technicians Christie Shore and Chris Bradley (“Inspectors Shore and Bradley”) conducted an unannounced site visit of the kennel on March 30, 2023. The findings for the site visit included:
 - a. in violation of 02 NCAC 52J .0201(h), upon arrival at the kennel the Inspectors noted that dogs were present in the outdoor play area beside the parking lot and the play area surrounding the outbuilding without employee supervision. A separate 5-foot perimeter fence is not present around these yards. The kennel had previously been cited for this violation in the April 9, 2021, May 18, 2021, and February 18, 2022, Facility Compliance Inspection (“FCI”) reports;
 - b. in violation of 02 NCAC 52J .0204(k), 8 dogs were noted in the front play yard without supervision. The kennel had been previously cited for this violation in the March 14, 2020, July 15, 2020, and April 9, 2021 FCI reports; and
 - c. in violation of 02 NCAC 52J .0206(a) the only dog in the kennel area did not have any access to water as there was no water receptacle in the dog’s primary enclosure. The kennel owner stated that when the dogs were brought inside for their food breaks, the dogs were not provided with water. The kennel owner also stated that unless it was bad weather and the dogs were being housed inside completely, the kennel only provides water to the dogs while they are out in the play areas. The kennel owner also stated that once the dogs are brought inside for the night at 6 PM, they are not provided with water until they go

back into the play yards the next morning at 6 AM. He stated that he had been “doing it that way for 30 years.” The kennel had previously been cited for this violation in the July 15, 2020, April 9, 2021, and March 7, 2023, Facility Compliance Inspection (“FCI”) reports.

5. The FCI reports noted in this Notice of Civil Penalty have been made available to the kennel and are posted on the AWS website.

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 .0201(h) for failure to provide a separate 5 ft perimeter fence while allowing unsupervised access by dogs to the outdoor play area beside the parking lot and to the play area surrounding the outbuilding on March 30, 2023

02 NCAC 52J .0204(k) for failure to provide supervision of the 8 comingling dogs in front play yard on March 30, 2023

02 NCAC 52J .0206(a) for failure to provide continuous access to water to the dog housed in the kennel area on March 30, 2023

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.

Accordingly, David Cantara as owner and operator of Carolina Air Canine, LLC is hereby assessed a civil penalty for the following violations:

\$400.00 for 2 violations (\$200.00 per violation) of 02 NCAC 52J .0201(h) for failure to provide a separate 5 ft perimeter fence while allowing unsupervised access by dogs to the outdoor play area beside the parking lot and to the play area surrounding the outbuilding on March 30, 2023

\$200.00 for violation of 02 NCAC 52J .0204(k) for failure to provide supervision of the 8 comingling dogs in front play yard on March 30, 2023

\$500.00 for violation of 02 NCAC 52J .0206(a) for failure to provide continuous access to water to the dog housed in the kennel area on March 30, 2023

\$1,100.00 TOTAL AMOUNT ASSESSED

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.

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

April 13, 2023
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 .0201 GENERAL

(h) A separate five-foot tall perimeter fence is required if any animal(s) has/have unsupervised access to an outdoor primary enclosure, common area, and/or exercise area. Supervision of animals is required for any animal(s) within any outdoor enclosure, common area, or exercise area without a separate five-foot tall perimeter fence.

*History Note: Authority G.S. 19A-24; 19A-30(3);
Eff. April 1, 1984;
Amended Eff. January 1, 2005;
Readopted Eff. October 1, 2022.*

02 NCAC 52J .0204 PRIMARY ENCLOSURES

(k) If more than four dogs including animals owned by the staff or operator of the facility are housed or confined in an exercise area or primary enclosure, then there shall be at least one person constantly supervising each 10 dogs housed or confined within each primary enclosure or exercise area. This supervision shall be conducted from within the exercise area or primary enclosure such that the person(s) has/have immediate access to the animals in the event of an emergency, aggression or fight between animals.

*History Note: Authority G.S. 19A-24;
Eff. April 1, 1984;
Amended Eff. January 1, 2005; April 1, 1985;
Readopted Eff. September 1, 2022.*

02 NCAC 52J .0206 WATERING

(a) Animals shall have continuous access to fresh, potable water, except as might otherwise be required to provide adequate veterinary care.

*History Note: Authority G.S. 19A-24;
Eff. April 1, 1984;
Amended Eff. January 1, 2005;
Readopted Eff. September 1, 2022.*