



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

August 14, 2023

Diana Kim Welch
Owner
Pets R Home
896 Mt. Ulla Hwy
Mooresville, Nc 28115

NOTICE of CIVIL PENALTY

Re: CIVIL PENALTY ASSESSMENT for VIOLATIONS of TITLE 02 N.C. ADMINISTRATIVE CODE (NCAC) CHAPTER 52J SECTIONS .0102(6); .0201(d)(4); .0203(b)(2); and .0206(a); and NOTICE of WARNING for VIOLATION of 02 NCAC 52J .0210(h).

AWS-CP-2023-15

**Facility: Pets R Home
License Number: 10537**

Dear Ms. Welch:

Pursuant to NCGS § 19A-40, I am issuing this notice that you as owner and operator of Pets R Home ("the kennel"), are hereby assessed a civil penalty of \$900.00 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,



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)
)
DIANA KIM WELCH)
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OWNER OF)
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PETS R HOME)
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NOTICE of VIOLATION and
ASSESSMENT of CIVIL PENALTY
for VIOLATION of TITLE 02 NC
ADMINISTRATIVE CODE (“NCAC”)
CHAPTER 52J SECTIONS .0102(6);
.0201(d)(4); .0203(b)(2); and .0206(a) and
NOTICE of WARNING for
VIOLATION of 02 NCAC 52J .0210(h).

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, Pets R Home (“the kennel”), owned and operated by Diana Kim Welch, was a boarding kennel, registered pursuant to NCGS § 19A-28.
2. On July 24, 2023, AWS received a complaint concerning the death of a dog named Bandit within 2 hours of leaving the dog at the kennel. 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.
3. As part of the complaint investigation, AWS Animal Health Technicians Christie Shore and Lindsey Harris (“Inspectors Shore and Harris”) conducted an unannounced site visit and inspection of the kennel on July 31, 2023. The findings for the site visit included:
 - a. in violation of 02 NCAC 52J .0102(6), the kennel failed to notify AWS within 48 hours of the death of an animal at the facility. During the February 9, 2023 Facility Compliance Inspection (“FCI”) and the May 17, 2023 FCI, Inspector Shore had discussed this requirement with the kennel owner;
 - b. in violation of 02 NCAC 52J .0201(d)(4), the clean bedding and laundry was not stored in cabinets or in sealed containers. Inspector Shore had discussed this requirement with the kennel owner during the February 9, 2023 FCI and had previously cited the kennel for this violation during the May 17, 2023 FCI. When asked about compliance with this requirement during the July 31, 2023 site visit, the kennel owner stated that she would not comply with the requirement. When asked to confirm that the kennel owner was willfully violating this rule, the kennel owner reiterated that she would not comply with this rule;
 - c. the outdoor exercise areas have areas of bare dirt, large holes dug by the dogs and significant portions with the gravel not maintained at a minimum depth of 6 inches in violation of 02 NCAC 52J .0203(b)(2). Violation of 02 NCAC 52J .0203(b)(2) was cited

- during the February 10, 2022, February 9, 2023, and May 17, 2023 FCI reports;
- d. in violation of 02 NCAC 52J .0206(a), 10 dogs in 3 of the outdoor exercise areas did not have any access to water. The kiddie pool and bowls were completely dry. 3 of the stainless steel bowls were stacked within each other. It was sunny and the outside temperature was 84°F. The kennel owner stated that there was muddy water in the larger exercise area, but there were no dogs in that area. The kennel owner stated that it was her practice to empty the water bowls and pool and then bring the dogs inside for “nap time.” Inspectors Shore and Harris directed the kennel owner to provide water to the dogs immediately. Video was taken of two of the dogs that drank water vigorously once it was provided.
 - e. the kennel owner noted that 3 of the 10 dogs without water were her personal dogs. 02 NCAC 52J .0201(k) states that all animals in a facility are subject to the requirements of the AWA, regardless of ownership; and
 - f. a review of the kennel documents showed that a dog named Roscoe was allowed to board when his rabies vaccination had expired in violation of 02 NCAC 52J .0210(h).
4. The February 10, 2022, February 9, 2023, and May 17, 2023 FCI reports referenced herein have been provided to the kennel and are available 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(6) for failure to notify the AWS within 48 hours of the death of an animal that occurred on July 20, 2023

02 NCAC 52J .0201(d)(4) for failure to store clean bedding and laundry in cabinets or sealed containers as noted on July 31, 2023

02 NCAC 52J .0203(b)(2) for failure to maintain gravel at a minimum depth of 6 inches as noted on July 31, 2023

02 NCAC 52J .0206(a) for failure to provide 10 animals in 3 exercise areas with continuous access to fresh potable water as noted on July 31, 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, Diana Kim Welch, as owner and operator of Pets R Home is hereby assessed a civil penalty for the following violations:

\$100.00 for violation of 02 NCAC 52J .0102(6) for failure to notify the AWS within 48 hours of the death of an animal that occurred on July 20, 2023

\$100.00 for violation of 02 NCAC 52J .0201(d)(4) for failure to store clean bedding and laundry in cabinets or sealed containers as noted on July 31, 2023

\$100.00 for violation of 02 NCAC 52J .0203(b)(2) for failure to maintain gravel at a minimum depth of 6 inches as noted on July 31, 2023

\$600.00 for 3 violations (\$200.00 per violation) of 02 NCAC 52J .0206(a) for failure to provide 10 animals in 3 exercise areas with continuous access to fresh, potable water as noted on July 31, 2023

\$900.00 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.


NOTICE of WARNING

As to the remaining violation of 02 NCAC 52J .0210(h) for failure to have all animals in the kennel in compliance with the NC rabies law NCGS § 130A, Article 6, Part 6, this Warning Letter serves as written notice indicating in which respects the shelter may have violated the NC Animal Welfare Act and the rules issued pursuant thereto.

Continued or future violation of these statutes or regulations 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 registration pursuant to N.C. General Statute § 19A-30 and/or the assessment of a civil penalty of up to \$5,000.00 per violation under N.C. General Statute § 19A-40.

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

August 14, 2023
Date



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:

- (6) in the event of either an animal death or escape, the licensee shall notify the Animal Welfare Section within 48 hours.

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

02 NCAC 52J .0201 GENERAL

(d) Storage of food and bedding:

- (4) clean bedding and laundry shall be: stored in cabinets and/or sealed containers; stored separately from soiled laundry and materials; and stored separately from general housing areas for animals; and

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 .0203 OUTDOOR FACILITIES

(b) Exercise areas of outdoor facilities:

- (2) use gravel for groundcover so long as it is maintained at a minimum depth of six inches and kept in a sanitary manner; and/or

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

02 NCAC 52J .0210 VETERINARY CARE

(h) All animals in a licensed or registered facility shall be in compliance with the North Carolina rabies law, G.S. 130A, Article 6, Part 6. This subsection shall not apply to animals which have been in the facility less than 15 days.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. March 23, 2009; January 1, 2005; Readopted Eff. September 1, 2022.