



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 22, 2024

Melinda Stephen
Owner
Modern Pet Salon Ballantyne
3115 Brayland Ave.
Weddington, North Carolina 28104
and via email
ballantyne@modernpetsalon.com

NOTICE of CIVIL PENALTY and NOTICE of WARNING

Re: CIVIL PENALTY ASSESSMENT for VIOLATIONS of TITLE 02 N.C. ADMINISTRATIVE CODE (NCAC) CHAPTER 52J SECTIONS .0102(4), (5) and (6) and NOTICE of WARNING for VIOLATION OF 02 NCAC 52J .0210(a)(3).

AWS-CP-2024-7

Facility: Modern Pet Salon Ballantyne
License Number: 20508

Dear Ms. Stephen:

Pursuant to NCGS § 19A-40, I am issuing this notice that you as owner and operator of Modern Pet Salon Ballantyne (“the kennel”) is hereby assessed a civil penalty of \$500.00 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 blue ink, appearing to read "Patricia Norris DVM MS".

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 MECKLENBURG

NORTH CAROLINA DEPARTMENT
OF AGRICULTURE AND CONSUMER
SERVICES, VETERINARY DIVISION
ANIMAL WELFARE SECTION

IN THE MATTER OF)
)
MELINDA STEPHEN)
)
OWNER OF MODERN)
)
PET SALON BALLANTYNE)
)
)
)

NOTICE of VIOLATIONS and
ASSESSMENT of CIVIL PENALTY
for VIOLATIONS of TITLE 02 NC
ADMINISTRATIVE CODE (“NCAC”)
CHAPTER 52J SECTIONS .0102 (4), (5),
and (6) and NOTICE of WARNING for
VIOLATION of 02 NCAC 52J .0210(a)(3).

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, Modern Pet Salon Ballantyne (“the kennel”) owned and operated by the Melinda Stephen was a boarding kennel, registered pursuant to NCGS § 19A-28.
2. During the March 9, 2023, Facility Compliance Inspection (“FCI”), AWS Animal Health Technician Chris Bradley (“Inspector Bradley”) discussed the September/October 2022 AWS rule revisions. He specifically noted the need to notify AWS within 48 hours of an escape or animal death at the kennel and the requirements for keeping an incident log pursuant to 02 NCAC 52J .0102(5) and (6).
3. On March 31, 2023, a Golden Retriever named Tuck B died at the kennel. The kennel failed to notify AWS within 48 hours of the death of Tuck B in violation of 02 NCAC 52J .0102(6).
4. During the July 21, 2023 FCI, Inspector Bradley reiterated to the kennel staff the requirements of 02 NCAC 52J .0102 (5) when he noted that the kennel continued to fail to maintain an incident log as required by this rule.
5. During the July 21, 2023 FCI, Inspector Bradley also reiterated to the kennel staff the requirements of 02 NCAC 52J .0102(6) when the kennel staff disclosed to him the death of Tuck B and their failure to notify AWS within 48 hours.
6. On March 18, 2024, AWS received a complaint about the kennel staff bringing a dying dog to the wrong veterinary clinic on March 15, 2024. 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.
7. As part of the complaint investigation, Inspector Bradley conducted an unannounced site visit of the kennel on March 22, 2024. The findings for the site visit included:

- a. records were not being entered at the time of occurrence in violation of 02 NCAC 52J .0102(4) as the deaths of Tuck B and Chase S, a 9-year-old Labrador that died on March 15, 2024 were not yet entered into an incident log;
 - b. an incident file was not being maintained by the kennel in violation of 02 NCAC 52J .0102(5); and
 - c. in violation of 02 NCAC 52J .0210(a)(3), the kennel staff did not take Chase S to the veterinary clinic listed in the kennel's Program of Veterinary Care. The transportation of Chase S to the wrong veterinary clinic resulted in the provision of emergency veterinary care being delayed.
8. A review of AWS records show that the kennel did not report the death of Tuck B on March 31, 2023 or the death of Chase S on March 15, 2024 within 48 hours of the occurrence in violation of 02 NCAC 52J .0102(6).
9. All the FCI reports referenced herein have been provided to the kennel and are available on AWS's website at <https://www.ncagr.gov/divisions/veterinary/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(4) for failure to create records at the time of the occurrence as noted on March 22, 2024

02 NCAC 52J .0102(5) for failure to keep an incident file as noted on March 22, 2024

02 NCAC 52J .0102(6) for failure to notify AWS within 48 hours of the death of of Chase S on March 15, 2024

02 NCAC 52J .0210(a)(3) for failure to implement and follow the written Program of Veterinary Care for the kennel

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, Melinda Stephen, as owner and operator of Modern Pet Salon Ballantyne, is hereby assessed a civil penalty for the following violations:

\$100.00 for violation of 02 NCAC 52J .0102(4) for failure to create records at the time of the occurrence as noted on March 22, 2024

\$200.00 for violation of 02 NCAC 52J .0102(5) for failure to keep an incident file as noted on March 22, 2024

\$200.00 for violation of 02 NCAC 52J .0102(6) for failure to notify AWS within 48 hours of the death of Chase S on March 15, 2024

\$500.00 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 violations of 02 NCAC 52J .0210(a)(3) failure to implement and follow the written Program of Veterinary Care for the kennel, this Warning Letter serves as written notice indicating in which respects the kennel 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)

April 22, 2024

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:

- (4) all records shall be created and/or updated at the time of the occurrence such as intake, medication or treatment administration and/or release. The record shall be accurate; creation of a misleading record or deliberate or non-incidental falsification of a record including medication administration during or after an investigation or inspection shall be considered a violation of this regulation;
- (5) an incident file shall be kept within each facility for animals sustaining injury or illness requiring veterinary care; animal death; and/or any animal escape. Each report shall include date of incident, pet's name, breed or breed type/species, age, owner's name and contact information, description of incident and course of action; and
- (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 .0210 VETERINARY CARE

(a) A written program of veterinary care ('PVC') to include disease control and prevention, vaccination, euthanasia (animal shelters only), disposition of diseased, ill, injured, infirm or deformed animals, and provision of adequate routine and emergency veterinary care shall be established with the assistance of a licensed veterinarian by any person who is required to be licensed or registered under the Animal Welfare Act, Article 3 of Chapter 19A of the General Statutes. The following is required of each PVC:

- (3) The facility shall implement and follow the PVC; and

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