



Steven W. Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

David T. Marshall, DVM
State Veterinarian

February 14, 2014

Rowan County Animal Shelter
Attn: Mr. Clai Martin, Director
Attn: Mr. David Yaninas, ACO
1465 Julian Road
Salisbury, North Carolina 28146

UPS

NOTICE OF SUSPENSION OF CERTIFICATION AS A EUTHANASIA TECHNICIAN AND CIVIL PENALTIES

RE: CIVIL PENALTY ASSESSMENT FOR VIOLATIONS OF ANIMAL WELFARE ACT, N.C. GENERAL STATUTE §§ 19A-24(a)(5), 19A-32.1 AND TITLE 2, N.C. ADMINISTRATIVE CODE, CHAPTER 52J, SECTIONS .0419, .0602 & .0609

Dear Mr. Martin and Mr. Yaninas:

Pursuant to N.C. Gen. Stat. §§ 19A-24 and -40 I am issuing this notice to you that:

- a) Mr. Yaninas' certification as a euthanasia technician is suspended for a period of one year as provided in the enclosed Notice of Violations and Order;
- b) Mr. Yaninas is assessed a civil penalty in the amount of \$1,000.00, as provided in the enclosed Notice of Violations and Order;
- c) Rowan County Animal Shelter is assessed a civil penalty of \$1,000.00, as provided in the enclosed Notice of Violations and Order.

If you wish to appeal the suspension imposed by the Order, you must appeal to North Carolina Office of Administrative Hearings (NCOAH) within 5 days from the date of receipt of this Order.

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 in the NCOAH to appeal the penalty assessment.

Pursuant to N.C. Gen. Stat. § 150B-22, either party to a dispute may initiate informal settlement negotiations at any time. To negotiate a settlement of this assessment, present your offer to Dr. Lee Hunter, Director, Animal Welfare Section, who may be contacted by telephone at (919) 715-7111. 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. David T. Marshall
State Veterinarian
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. Gen. Stat. § 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. 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 919/733-0926. 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,



Lee Hunter, DVM, MPH
Director, Animal Welfare Section

Attachment: Assessment Document

cc: Mr. Barry Bloch, Assistant Attorney General
Ms. Tina Hlabse, Legal Affairs
David T. Marshall, DVM, State Veterinarian

STATE OF NORTH CAROLINA
COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF
AGRICULTURE AND CONSUMER SERVICES, VETERINARY
DIVISION

IN THE MATTER OF
ROWAN COUNTY ANIMAL
SHELTER &
DAVID YANINAS

) NOTICE OF VIOLATIONS,
) ASSESSMENT OF CIVIL
) PENALTY & SUSPENSION
) OF CERTIFICATION AS A
) EUTHANASIA TECHNICIAN
) For Violations Of:
) Animal Welfare Act
) N.C. General Statute §§ 19A-24
) & 19A-32.1
) 2 N.C. Administrative Code 52J
) .0419, .0602, & .0609

Acting pursuant to N.C. Gen. Stat. §§ 19A-24 and -40, Dr. Lee Hunter, Director, Animal Welfare Section, North Carolina Department of Agriculture and Consumer Services (NCDA&CS) makes the following:

FINDINGS OF FACT

1. At all times pertinent to this matter David Yaninas (Mr. Yaninas) was employed by Rowan County Health Department as an animal control officer and Mr. Yaninas is a euthanasia technician certified by the North Carolina Department of Agriculture & Consumer Services, Animal Welfare Section pursuant to N.C. Gen. Stat. § 19A-24.
2. Rowan County Animal Shelter ("RCAS") is an animal shelter registered pursuant to N.C. Gen. Stat. § 19A-26.
3. On January 9, 2014, Mr. Yaninas responded to stray dog call, intake no. 58345, on South Salisbury Avenue, Granite Quarry, NC, where he found male black and white Pitbull mix dog severely injured by the road from an apparent automobile collision.
4. Mr. Yaninas submitted a written report of this event, stating that he found the dog at this location, and approached a woman who was standing behind the dog and who identified herself as the dog's owner. Mr. Yaninas recommended that she take the dog to the emergency veterinarian or allow him to take the dog to the animal shelter and humanely euthanize it. The woman verbally gave permission to him to remove the dog to RCAS and euthanize it. Mr. Yaninas did not ask the woman for proof of ownership or get her written consent to euthanize the dog before the end of the statutory 72 hour period.
5. Mr. Yaninas' report states that he gave the woman a "door hanger" and requested that she call RCAS with her information for the report.
6. Mr. Yaninas used a catch pole to lift the dog onto the truck. He stated he did so because the dog weighed approximately fifty pounds and it was necessary to do so to avoid personnel (sic) injury.
7. Mr. Yaninas' report states that he contacted RCAS Manager Staton, explained the dog's condition and received authorization to humanely euthanize the dog. The report does not reflect whether Mr. Yaninas informed Mr. Staton that he intended to use carbon monoxide to euthanize the dog.

8. Mr. Yaninas reported that he humanely euthanized the dog using the carbon monoxide chamber located at RCAS at 8:20 p.m. At that time he was the sole person present at RCAS.
9. Mr. Yaninas report states that euthanasia by lethal injection is “not allowed in the County Policy and Procedures for RCAC for injured animals.”
10. Review of RCAS documents of this matter revealed that Mr. Yaninas had not secured written authorization from the dog’s owner to permit RCAS to euthanize the dog less than 72 hours after RCAS received the dog.
11. Ms. Keisha Woodard submitted a written complaint to Rowan County Health Department stating, in part:
 - a. The dog was unable to move his back end, his right eye was hanging out of the socket and he had blood coming out of his mouth, but appeared calm;
 - b. Mr. Yaninas arrived and asked, “Are y’all the owners?” and “Do you want the dog or not?”
 - c. The dog’s owner stated, “I don’t think there is anything that can be done for him.”
 - d. Mr. Yaninas then “took a pole with a loop and yanked that poor dog up off the asphalt and slung him into the cage! The dog was hollering, the lady started screaming and crying, her husband was trying to get her turned around to get her in the truck so she didn’t have to witness anything further.”
 - e. Mr. Yaninas “acted as if (he) was doing them a favor by not charging them to put the dog down.”
12. On February 7, 2014, Mr. Yaninas submitted a written statement to RCAS Animal Control Supervisor Clai Martin recounting his report and reflecting that:
 - a. Based upon his observation of the dog, it was injured and not near death;
 - b. He euthanized the dog without a second person present because he could not stand to see the dog continuing to suffer anymore.
13. On January 9, 2014, RCAS manager Tommy Staton completed and signed a “Reason for Early Euthanasia Report” for animal no. 58345, stating that it was injured, “hit by car, eyeball hanging out could not use back legs.”
14. On or about February 7, 2014, RC Animal Control Supervisor Martin issued Mr. Yaninas a written warning, ordered him to go through retraining and undertake sensitivity training.
15. Review of RCAS’ euthanasia manual in use on January 9, 2014, revealed that it did include a copy of 02 NCAC Chapter 52J, section .0601 et seq.
16. Review of RCAS’ euthanasia manual in use on January 9, 2014, revealed that it did not authorize the use of carbon monoxide to euthanize animals that are severely injured and/or near death.

As a result of this investigation, the North Carolina Department of Agriculture and Consumer Services, Veterinary Division, Animal Welfare Section, alleges that RCAS, and Mr. Yaninas, either by act or omission, violated the following provisions of the N.C. General Statute:

- a) N.C. Gen. Stat. § 19A-24
- b) N.C. Gen. Stat. § 19A-32.1
- c) North Carolina Administrative Code 52J .0419
- d) North Carolina Administrative Code 52J .0602
- e) North Carolina Administrative Code 52J .0609

§ 19A-24. Powers of Board of Agriculture.

(a) The Board of Agriculture shall:

(1) Establish standards for the care of animals at animal shelters, boarding kennels, pet shops, and public auctions. A boarding kennel that offers dog day care services and has a ratio of dogs to employees or supervisors, or both employees and supervisors, of not more than 10 to one, shall not as to such services be subject to any regulations that restrict the number of dogs that are permitted within any primary enclosure.

(2) Prescribe the manner in which animals may be transported to and from registered or licensed premises.

(3) Require licensees and holders of certificates to keep records of the purchase and sale of animals and to identify animals at their establishments.

(4) Adopt rules to implement this Article, including federal regulations promulgated under Title 7, Chapter 54, of the United States Code.

(5) Adopt rules on the euthanasia of animals in the possession or custody of any person required to obtain a certificate of registration under this Article. An animal shall only be put to death by a method and delivery of method approved by the American Veterinary Medical Association, the Humane Society of the United States, or the American Humane Association. The Department shall establish rules for the euthanasia process using any one or combination of methods and standards prescribed by the three aforementioned organizations. The rules shall address the equipment, the process, and the separation of animals, in addition to the animals' age and condition. If the gas method of euthanasia is approved, rules shall require

(i) that only commercially compressed carbon monoxide gas is approved for use, and

(ii) that the gas must be delivered in a commercially manufactured chamber that allows for the individual separation of animals. Rules shall also mandate training for any person who participates in the euthanasia process.

(1977, 2nd Sess., c. 1217, s. 5; 1987, c. 827, s. 62; 2004-199, s. 12; 2005-276, s. 11.5(b); 2005-345, s. 22; 2008-198, s. 2(a).)

§ 19A-32.1. Minimum holding period for animals in animal shelters; public viewing of animals in animal shelters; disposition of animals.

...

(g) An animal that is surrendered to an animal shelter by the animal's owner may be disposed of before the expiration of the minimum holding period in a manner authorized under subsection (f) of this section if the owner provides to the shelter (i) some proof of ownership of the animal and (ii) a signed written consent to the disposition of the animal before the expiration of the minimum holding period.

(h) If the owner of a dog surrenders the dog to an animal shelter, the owner shall state in writing whether the dog has bitten any individual within the 10 days preceding the date of surrender.

§ 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 .0419 GROUNDS FOR DISCIPLINE - CERTIFIED EUTHANASIA TECHNICIANS

The Department may refuse to issue, renew, or reinstate the certification of a Euthanasia Technician, or may deny, revoke, suspend, sanction, or place on probation, impose other forms of discipline, and enter into consent agreements and negotiated settlements with Certified Euthanasia Technician pursuant to the procedures set forth in G.S. 150B, Article 3, for any of the following reasons:

- (1) Failure to Carry Out Duties. Failure to carry out the duties of a Certified Euthanasia Technician; ...
- (7) Unethical or Unprofessional Conduct. Unethical or unprofessional conduct means to knowingly engage in conduct of a character likely to deceive or defraud the public. Such conduct includes working in conjunction with any agency or person illegally practicing as a Certified Euthanasia Technician; failing to provide sanitary facilities or apply sanitary procedures for the euthanizing of any animal; euthanizing animals in a manner that endangers the health or welfare of the public; gross ignorance, incompetence or inefficiency in the euthanizing of animals as determined by the practices generally and currently followed and accepted as approved by the American Veterinary Medical Association, the Humane Society of the United States or the American Humane Association; intentionally performing a duty, task or procedure involved in the euthanizing of animals for which the individual is not qualified; and swearing falsely in any testimony or affidavits relating to practicing as a Certified Euthanasia Technician; ...
- (9) Improper Record Keeping. Failure to follow proper record keeping procedures as outlined in the rules in this Subchapter;

*History Note: Authority G.S. 19A-24;
Eff. March 23, 2009.*

02 NCAC 52J .0602 PROHIBITED USES

Carbon monoxide may not be used to euthanize animals in certified facilities in any manner inconsistent with guidelines for the use of carbon monoxide approved by the entities referenced in 02 NCAC 52J .0401. Additionally, carbon monoxide shall not be used to euthanize the following animals in certified facilities:

- (1) Animals that appear to be less than 16 weeks of age;
- (2) Animals that are pregnant;
- (3) Animals that are near death.

*History Note: Authority G.S. 19A-24(5);
Eff. March 23, 2009.*

02 NCAC 52J .0609 PERSONS REQUIRED TO BE PRESENT

A euthanasia chamber in a certified facility shall not be operated unless a Certified Euthanasia Technician or a veterinarian licensed in North Carolina and one other adult are present at the time of its use.

*History Note: Authority G.S. 19A-24;
Eff. March 23, 2009.*

II. CONCLUSIONS OF LAW

- A. By virtue of Mr. Yaninas' acts or omissions, RCAS violated N.C. Gen. Stat. §§ 19A-24 and 19A-32.1 and 2 N.C. Administrative Code 52J .0419, .0602, and .0609; thus RCAS may be assessed a civil penalty of up to \$5,000.00 per violation pursuant to N.C. Gen. Stat. § 19A-40.
- B. By virtue of his acts or omissions, Mr. Yaninas violated N.C. Gen. Stat. §§ 19A-24 and 19A-32.1 and 2

N.C. Administrative Code 52J .0419, .0602, and .0609; thus he may have his euthanasia technician certification revoked or suspended and may be assessed a civil penalty of up to \$5,000.00 per violation.

- C. The Director of the Animal Welfare Section, pursuant to N.C. Gen. Stat. §§ 19A-30 and -40, has the authority to suspend an animal shelter's certification and to assess civil penalties in this matter.

III. DECISION

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.

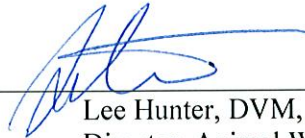
Accordingly, RCAS is assessed a civil penalty of: \$1,000.00 for violating N.C. General Statute §§ 19A-24 and 19A-32.1 and 2 North Carolina Administrative Code 02 NCAC 52J 0419, .0602, and .0609.

Accordingly, Mr. Yaninas' certification as a euthanasia technician is suspended for one year from the date this Order is served upon him and he is assessed a civil penalty of: \$1,000.00 for violating N.C. General Statute § 19A-24 and 19A-32.1 and 2 North Carolina Administrative Code 52J 0419, .0602, and .0609.

\$2000.00 TOTAL AMOUNT ASSESSED

17 Feb 2014

Date



Lee Hunter, DVM, MPH
Director, Animal Welfare Section
North Carolina Department of
Agriculture & Consumer Services