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Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

Christina L. Waggett
Assistant Commissioner
for Consumer Protection

Michael Martin, DVM
State Veterinarian

May 9, 2023

American Pet Resort, LLC
Owner
Pet Paradise Resort - Mooresville
1551 Atlantic Blvd, Suite 200
Jacksonville, Florida 32207
Attn: Kate Schmidberger
kates@petparadise.com

NOTICE of WARNING and NOTICE of VIOLATION

Re: Violations of Title 02 N.C. Administrative Code (“NCAC”) Chapter 52J, Sections .0201(d)(1) and (4); .0202(b)(2) and (3); .0203(a)(1) and (b)(1) and (3); .0204(a), (b), and (h); .0206(a); and .0207(a), (c), and (d)(8).

AWS-WL-2023-9

**Boarding Kennel: Pet Paradise Resort - Mooresville
License Number: 11378**

Dear Ms. Schmidberger:

The Animal Welfare Section (“AWS”) of the Veterinary Division of the N.C. Department of Agriculture and Consumer Services (“NCDA&CS”) conducted facility compliance inspections (“FCI”) of the Pet Paradise Resort Mooresville (the “kennel”) on April 5, 2023, and May 1, 2023. Due to the number, severity, and repetitive nature of the violations of the N.C. Animal Welfare Act (“AWA”) and its associated regulations, these FCI reports were noted as “Disapproved.”

During the May 1, 2023 FCI, the following was noted:

- 1) in violation of 02 NCAC 52J .0201(d)(1) and (4), the bedding and clean laundry were not stored in cabinets or sealed containers to adequately protect such supplies against infestation or contamination by vermin and insects. These violations were previously cited in the April 5, 2023 FCI;
- 2) in violation of 02 NCAC 52J .0202(b)(2), the air vents and air filters had not been cleaned or changed as often as necessary to minimize buildup of debris, dust and biological material and as often as necessary to prevent inhibition or restriction of air flow;

- 3) in violation of 02 NCAC 52J .0202(b)(3), the air flow was not adequate to minimize odors and moisture condensation;
- 4) in violation of 02 NCAC 52J .0203(a)(1), the concrete of the primary enclosures and walkways with which the animals come in contact was not sealed and therefore, was not impervious to moisture. This violation was previously cited in the April 5, 2023 FCI;
- 5) in violation of 02 NCAC 52J .0203(b)(1), the concrete of the outdoor exercise areas was not sealed and therefore, was not impervious to moisture. This violation was previously cited in the April 5, 2023 FCI;
- 6) in violation of 02 NCAC 52J .0203(b)(3), the artificial turf was not adequately maintained in good repair as areas were damaged exposing the wood framework. This violation was previously cited in the March 30, 2022, and April 5, 2023 FCIs;
- 7) in violation of 02 NCAC 52J .0204(a), the damaged and missing trough drain covers of the primary enclosures were allowing contamination of the animals by waste and wastewater. This violation was previously cited in the April 5, 2023 FCI;
- 8) in violation of 02 NCAC 52J .0204(a) and (h), the damaged resting surface/beds posed a risk of injury to the dogs, were not impervious to moisture and could not be easily sanitized. These violations were previously cited in the June 15, 2020, March 11, 2021, March 30, 2022 and April 5, 2023 FCIs;
- 9) in violation of 02 NCAC 52J .0206(a) non-potable water was being provided as drinking water to the dogs in the exercise areas. Despite the faucets being clearly marked with signage stating, "Caution Non-potable Water Do not Drink," water from these faucets was used to fill water receptacles for the animals. This violation was previously addressed in detail verbally with kennel management and cited in the April 5, 2023 FCI;
- 10) in violation of 02 NCAC 52J .0207(a), primary enclosures and exercise areas were not being properly cleaned a minimum of two times per day. This violation was previously cited in the April 5, 2023 FCI;
- 11) in violation of 02 NCAC 52J .0207(c), the missing trough drain covers in the primary enclosures allowed access by the dogs to the feces, urine and cleaning wastewater from other primary enclosures. This violation was previously cited in the April 5, 2023 FCI; and
- 12) in violation of 02 NCAC 52J .0207(d)(8), the fans were not kept clean of accumulated debris, dust, and biological material. This violation was previously cited in the April 5, 2023 FCI.

A review of previous FCI reports shows the following:

- 1) violations of 02 NCAC 52J .0203(a); .0204(a); and .0207(a) were cited in the March 30, 2022, FCI report. This inspection report was marked as "Contingently/Conditionally Approved" due to the nature and repetitive nature of the violations; and
- 2) violations of 02 NCAC 52J .0201(d)(1) and (4) and (r); .0202(b)(2); .0203(a)(1) and (b)(1) and (3); .0204(a), (b), (c) and (f); .0206(a); and .0207(a), (c) and (d)(8) were cited in the April 5, 2023 FCI report. This inspection report was marked as "Disapproved" due to the number, severity, and repetitive nature of the violations.

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

This Warning Letter serves as written notice indicating in which respects the kennel has violated the N.C. Animal Welfare Act ("AWA") and the rules issued pursuant thereto. The facility owners are directed to immediately comply with the AWA and its associated rules. Given the extreme risk of illness and harm

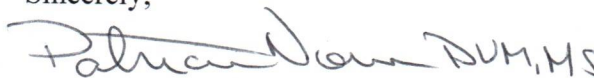
to the animals from the practice of provision of drinking water that is non-potable, AWS requests that the kennel immediately cease this practice, train all kennel staff and management in the proper provision of water to the animals as required by 02 NCAC 52J .0206(a) and provide AWS confirmation that this training has been completed.

The kennel is hereby notified that a boarding kennel license may not be renewed if there is not an "Approved" rating for at least one FCI in the fiscal year preceding the renewal application submission. To date, there has not been an "Approved" rating for this kennel for the 2022-2023 fiscal year. Therefore, should the kennel fail to correct these violations and fail to fully comply with the AWA and its associated rules, and thereby achieve an Approved rating on a FCI in the immediate future, the kennel's boarding kennel license renewal application may be denied.

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 license 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.

Your immediate attention to this matter is appreciated.

Sincerely,



Patricia Norris, DVM, MS
Director of Animal Welfare Section
Veterinary Division

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

Appendix

REFERENCED STATUTES AND REGULATIONS

§ 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 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

(d) Storage of food and bedding:

- (1) food and bedding shall be stored in cabinets and/or sealed containers which adequately protect such supplies against infestation or contamination by vermin and insects;
- (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 .0202 INDOOR FACILITIES

(b) Ventilation of indoor facilities:

- (2) air vents and/or air filters shall be cleaned and/or changed as often as necessary to minimize buildup of debris, dust and biological material and as often as necessary to prevent inhibition or restriction of air flow; and
- (3) air flow shall be adequate to minimize odors and moisture condensation.

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

02 NCAC 52J .0203 OUTDOOR FACILITIES

(a) In outdoor facilities that are subject to the Animal Welfare Act, primary enclosures, common areas and walkways with which an animal comes in contact:

- (1) shall have groundcover constructed of sealed concrete or other surfaces so long as it is impervious to moisture, and/or;

(b) Exercise areas of outdoor facilities:

- (1) shall have flooring or groundcover constructed of sealed concrete or other surfaces impervious to moisture; and/or
- (3) artificial turf may be allowed so long as it is adequately maintained in good repair, is replaced when damaged, and is cleaned and sanitized in accordance with 02 NCAC 52J .0207; 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 .0204 PRIMARY ENCLOSURES

(a) Primary enclosures and exercise areas shall be constructed so as to prevent contamination from waste and wastewater from animals in other enclosures. All surfaces with which an animal comes in contact shall be impervious to moisture excluding the ground cover options of gravel and grass allowed for in Rule .0203 of this Section.

(b) For primary enclosures and exercise areas placed into service on or after January 1, 2005, no wood shall be within the animal's reach. For primary enclosures and exercise areas in use in a licensed or

registered facility prior to January 1, 2005, any damaged wood shall be replaced in a manner that does not permit contact with wood by the animal.

(h) Each primary enclosure and exercise area shall be provided with a solid resting surface or surfaces adequate to comfortably hold all occupants of the primary enclosure and exercise area at the same time. All resting surfaces shall be of a non-porous or easily sanitized material, such as a solid floor, towel, or a disposable material such as newspaper. The resting surface or surfaces shall be elevated in primary enclosures housing two or more cats.

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.

02 NCAC 52J .0207 SANITATION

(a) Waste shall be removed from primary enclosures, exercise areas and common areas to prevent contamination of the dogs or cats contained therein and to reduce disease hazards and odors. Enclosures and exercise areas for dogs and cats shall be properly cleaned a minimum of two times per day. The animal must be able to walk or lie down without coming in contact with any waste or debris.

(c) Cross contamination barriers shall be in place in primary enclosures and be sufficient to prevent feces, urine and cleaning waste water from entering another occupied primary enclosure.

(d) Sanitation shall be as follows:

- (8) fans, including floor fans, ceiling fans, wall fans, vent fans, etc. shall be kept clean of accumulated debris, dust and biological material.

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