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

Lourdes Felmet
Owner
The Barkington
10153 Morecamble Blvd.
Unit 4
Leland, North Carolina 28451
and via email
Lmpm1365@gmail.com

NOTICE of CIVIL PENALTY

Re: CIVIL PENALTY ASSESSMENT for VIOLATIONS of TITLE 02 N.C. ADMINISTRATIVE CODE (NCAC) CHAPTER 52J SECTIONS .0204(j).

AWS-CP-2024-6

Facility: The Barkington
License Number: 20564

Dear Ms. Felmet:

Pursuant to NCGS § 19A-40, I am issuing this notice that you as owner and operator of The Barkington ("the kennel") is hereby assessed a civil penalty of $2,000.00 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 NEW HANOVER	NORTH CAROLINA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, VETERINARY DIVISION ANIMAL WELFARE SECTION
IN THE MATTER OF LOURDES FELMET OWNER OF THE BARKINGTON	) NOTICE of VIOLATION and) ASSESSMENT of CIVIL PENALTY) for VIOLATION of TITLE 02 NC) ADMINISTRATIVE CODE ("NCAC")) CHAPTER 52J SECTIONS .0204(j).)))

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, The Barkington ("the kennel") owned and operated by the Lourdes Felmet (formerly Lourdes Perez-Montes) was a boarding kennel, registered pursuant to NCGS § 19A-28.

2. On March 22, 2023, AWS assessed a Civil Penalty to Ms. Felmet as owner and operator of the kennel for 4 violations of 02 NCAC 52J .0204(k) for failure to provide adequate supervision of comingling dogs as observed during a complaint investigation conducted on March 6, 2023.

3. On October 12, 2023, AWS assessed a Civil Penalty to Ms. Felmet as owner and operator of the kennel for 3 violations of 02 NCAC 52J .0204(j) for failing to supervise 3 groups of comingling dogs and for a second violation of 02 NCAC 52J .0204(k) for failure to provide adequate supervision of another group of comingling dogs.

4. During the January 26, 2024 Facility Compliance Inspection ("FCI"), a group of 7 dogs were comingling in an exercise area with no employee supervision in violation of 02 NCAC 52J .0204(j). The requirements for supervision of comingling groups of dogs were discussed again with the kennel staff during this FCI.

5. On March 25, 2024, AWS received a complaint alleging the kennel was failing to properly supervise the dogs that were confined in the exercise areas. 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.

6. As part of the complaint investigation, AWS Animal Health Technician Christina Tolley ("Inspector Tolley") conducted an unannounced site visit of the kennel on March 27, 2024. The findings for the site visit included:

a. in the large play yard, 7 dogs were comingling with no supervision from kennel employees; and
b. in the middle play yard, 9 dogs were comingling with no supervision by kennel employees.

7. As part of the investigation, past Facility Compliance Inspection ("FCI") reports for the kennel were reviewed. The review of the January 5, 2023 FCI report shows, on January 5, 2023, one indoor exercise area was noted as housing 7 dogs with no employee within the area supervising the dogs. The requirement for supervision of comingling dogs was discussed with the kennel employees and management at that time.

8. On April 10, 2024, due the kennel's repeated violations of animal supervision requirements, AWS sent a Notice of Intent to Suspend Boarding Kennel License to the kennel which allowed the kennel the opportunity to show compliance with all lawful requirements for the retention of the boarding kennel license.

9. On April 11, 2024, the kennel owner responded to the Notice of Intent to Suspend stating that:
   a. the kennel has implemented a new "reception sheet" to note when no additional day care dogs may be added depending on staffing levels;
   b. the kennel now has a notice posted reminding staff of the supervision requirements; and
   c. the kennel has replaced the kennel's management and some of the daycare staff members.

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 provision:

> 02 NCAC 52J .0204(j) for confining more than 4 dogs in the same exercise area without supervision. This violation was observed in 2 exercise areas on March 27, 2024. The kennel has a history of violating this provision, including two previous Civil Penalty assessments and additional violations of 02 NCAC 52J .0204(j) noted during FCIs conducted on January 5, 2023 and January 26, 2024

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. Inadequate supervision has been shown to cause a significantly increased risk of injury or death to animals within a facility as well as creating a danger to the safety of facility staff.

Accordingly, Lourdes Felmet as owner and operator of The Barkington is hereby assessed a civil penalty for the following violations:

> $2,000.00 for the 2 violations ($1,000.00 per violation) of 02 NCAC 52J .0204(j) for confining more than 4 dogs in the same exercise area without supervision as observed on March 27, 2024. The kennel has a history of violating this provision, including two previous Civil Penalty assessments and additional violations of 02 NCAC 52J .0204(j) noted during FCIs conducted on January 5, 2023 and January 26, 2024.

$2,000.00 TOTAL AMOUNT ASSESSED

Despite the history of this kennel's repeated noncompliance with 02 NCAC 52J .0204(j), AWS has elected not to impose a suspension of the boarding kennel license of this kennel at this time. 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 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 .0204 PRIMARY ENCLOSURES

(j) Not more than four adult dogs shall be housed or confined in the same primary enclosure or exercise area without supervision. Dogs younger than six months of age shall not be housed or confined or comingled with adult dogs other than their dams without supervision; this includes any animals owned by the staff or operator of the facility.

(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.