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Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

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Assistant Commissioner
for Consumer Protection

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February 20, 2023

Renee Paschal
Interim County Manager
Cumberland County
117 Dick Street
Fayetteville, NC 28301

NOTICE of WARNING

Re: Violations of Title 02 N.C. Administrative Code (“NCAC”) Chapter 52J, Section .101(1) and (5); .0201(l); and .0210(d) and (k).

AWS-WL-2023-3

Facility: Cumberland County Animal Shelter
Registration Number: 14

Dear County Manager Paschal:

On February 2, 2023, the Animal Welfare Section (“AWS”) of the Veterinary Division of the N.C. Department of Agriculture and Consumer Services (“NCDA&CS”) received a complaint concerning the injury to a privately-owned dog during the insertion of a microchip by shelter personnel at the Cumberland County Animal Services Shelter (the “shelter”). AWS initiated an investigation based on the information contained in the complaint. 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.

- 1) On February 6, 2023, AWS Animal Health Technician Elizabeth Garner (“Inspector Garner”) conducted an unannounced site visit as part of the complaint investigation. The February 6, 2023, site visit noted the following:
 - a. in conversation and written statements from the shelter staff involved in this incident, the staff relayed that, in accordance with shelter protocol, the staff inserted a microchip into a privately-owned dog named Fonzie, a French Bulldog, so that he could be released to his owner to serve out the remainder of his bite quarantine at home. Fonzie was being released early because of his aggressive behavior at the shelter and the risk he posed to the staff attempting to handle him;
 - b. the staff relayed that Fonzie was very fractious during this procedure and multiple different methods and procedures were attempted to safely restrain him. They also relayed that by the end of the procedure Fonzie was bleeding from his nose/mouth when they returned him to his

- owner. At no point during these attempts did the staff offer the owner the option of having the microchip inserted by a NC licensed veterinarian; and
- c. the staff also relayed that, other than attempting to wipe the blood off his face, staff did not seek veterinary care from their veterinary staff for Fonzie for his injury or provide options/information to the owner for veterinary care by a local veterinarian.
- 2) A review of the shelter documentation relevant to this incident revealed the following:
 - a. the animal record did not have the information pertaining to the owner of Fonzie as required by 02 NCAC 52J .0101(1);
 - b. the injury to Fonzie was not recorded in his animal record; and
 - c. the insertion of the microchip was not documented in Fonzie's animal record as required by 02 NCAC 52J .0101(5).
 - 3) The insertion of a microchip is a veterinary medical procedure. The NC Veterinary Practice Act prohibits the practice of veterinary medicine on publicly owned animals without a NC Veterinary License. None of the staff members involved in the microchipping of Fonzie have a license to practice veterinary medicine in the state of NC. Therefore, the insertion of the microchip into Fonzie, a privately-owned animal, by non-licensed personnel may be considered a violation of the NC Veterinary Practice Act. 02 NCAC 52J .0201(l) requires that a shelter to comply with all state laws and rules relating to or affecting the welfare of dogs and cats in its facility. Violation of the NC Veterinary Practice Act and/or its associated rules is considered to be a violation of 02 NCAC 52J .0201(l).
 - 4) The Shelter Director, who is a Registered Veterinary Technician, registered by the NC Veterinary Medical Board, and therefore aware of the NC Veterinary Practice Act, stated that the insertion of the microchips of privately-owned animals was mandated by a county ordinance concerning the release of animals to their owners from a stay at the shelter or from a bite quarantine and had been occurring for many years. Review of that ordinance shows that it requires the animal to receive a microchip but doesn't not specify a protocol by which this is to occur. The ordinance does not dictate that the shelter staff are to insert the microchip and thereby violate state statutes and rules. If a privately-owned animal must be microchipped to abide by county ordinance, then it must be microchipped by a NC licensed veterinarian to abide by state statutes and rules.
 - 5) The Shelter Director also stated that she interpreted the definition of Surgical Procedures [02 NCAC 52J .0104(23)] in the October 2022 revision of the AWA rules granted the shelter implied permission to continue this practice that had been ongoing for years. This definition is relevant to 02 NCAC 52J .0210(j) where the rules for surgical procedures are found. The exclusion of the insertion of a microchip needs to be considered in the context of these rules. The exclusion was made so that shelter veterinarians could insert microchips into shelter-owned animals in an area other than the surgical facility [02 NCAC 52J .0210(j)(3)]. In addition, 02 NCAC 52J .0210(k) makes it very clear that nothing in the rules allows the practice of veterinary medicine in NC beyond what is otherwise authorized by the NC Veterinary Medical Board pursuant to the NC Veterinary Practice Act. Therefore, the Shelter Director, who as Registered Veterinary Technician under the jurisdiction of the NC Veterinary Medical Board, knew or should have known that the insertion of the microchip into a privately-owned animal violated the NC Veterinary Practice Act prior to as well as after the October 2022 AWA rule revisions; and

- 6) The shelter staff stated that they were following the shelter SOP concerning the insertion of microchips. In conversation with the Shelter Director, she noted that the original SOP concerning the insertion of microchips had been in place since 2018 and was reviewed and updated yearly. As Shelter Director during this period and a Registered Veterinary Technician under the jurisdiction of the NC Veterinary Medical Board, she had the opportunity and responsibility to ensure that the SOPs were in compliance with state statutes and rules so that the shelter was not in violation of 02 NCAC 52J .0201(l).

Based on the findings of this complaint investigation, the shelter may have violated 02 NCAC 52J .0101(1) and (5); .0201(l); .0210(d) and (k).

This Warning Letter serves as written notice indicating in which respects the shelter may have violated the N.C. Animal Welfare Act ("AWA") and the rules issued pursuant thereto. The shelter is directed to immediately comply with the AWA and its associated rules. The shelter is also strongly encouraged to review their SOPs and ensure that they are in compliance with all state statutes and rules including the NC Veterinary Practice Act and its rules.

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-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.

(b) In addition to rules on the euthanasia of animals adopted pursuant to subdivision (5) of subsection (a) of this section, the Board of Agriculture shall adopt rules for the certification of euthanasia technicians. The rules may provide for:

- (1) Written and practical examinations for persons who perform euthanasia.
- (2) Issuance of certification to persons who have successfully completed both training and examinations to become a euthanasia technician.
- (3) Recertification of euthanasia technicians on a periodic basis.
- (4) Standards and procedures for the approval of persons who conduct training of euthanasia technicians.
- (5) Approval of materials for use in euthanasia technician training.
- (6) Minimum certification criteria for persons seeking to become euthanasia technicians including, but not limited to: age; previous related experience; criminal record; and other qualifications that are related to an applicant's fitness to perform euthanasia.
- (7) Denial, suspension, or revocation of certification of euthanasia technicians who:
 - a. Violate any provision of this Article or rules adopted pursuant to this Article;
 - b. Have been convicted of or entered a plea of guilty or nolo contendere to:
 1. Any felony;
 2. Any misdemeanor or infraction involving animal abuse or neglect; or

3. Any other offense related to animal euthanasia, the duties or responsibilities of a euthanasia technician, or a euthanasia technician's fitness for certification;
 - c. Make any false statement, give false information, or omit material information in connection with an application for certification or for renewal or reinstatement of certification as a euthanasia technician; or
 - d. Otherwise are or become ineligible for certification.
- (8) Provision of the names of persons who perform euthanasia at animal shelters and for the animal shelter to notify the Department when those persons are no longer affiliated, employed, or serving as a volunteer with the shelter.
- (9) Certified euthanasia technicians to notify the Department when they are no longer employed by or are serving as a volunteer at an animal shelter.
- (10) The duties, responsibilities, and standards of conduct for certified euthanasia technicians.

(c) Regardless of the extent to which the Board exercises its authority under subsection (b) of this section, the Department may deny, revoke, or suspend the certification of a euthanasia technician who has been convicted of or entered a plea of guilty or nolo contendere to a felony involving the illegal use, possession, sale, manufacture, distribution, or transportation of a controlled substance, drug, or narcotic.

(d) Persons seeking certification as euthanasia technicians, or a renewal of such certification, shall provide the Department a fingerprint card in a format acceptable to the Department, a form signed by the person consenting to a criminal record check and the use of the person's fingerprints, and such other identifying information as may be required by the State or national data banks. The Department may deny certification to persons who refuse to provide the fingerprint card or consent to the criminal background check. Fees required by the Department of Public Safety for conducting the criminal background check shall be collected by the Department and remitted to the Department of Public Safety along with the fingerprint card and consent form.

§ 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 .0101 RECORDS; ANIMAL SHELTERS, ETC.

Operators of all animal shelters, pet shops, public auctions, and dealers shall maintain records on all dogs and cats showing the following:

- (1) origin of animals (including names and addresses of consignors) and date animals were received;
- (5) record of veterinary care including medications, treatments, procedures, and immunizations. The record shall include: diagnosis(es), diagnostic testing and results, date and time of administration or procedure, description of medication and initials of person administering any product, medication or procedure. The description of the medication shall include the name, strength or concentration, dosage, and dosing regimen. The dosage regimen shall include the frequency, duration to include the number of dosages or days to be given and the reason for the administration; and

*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 .0104 DEFINITIONS

As used in this Subchapter:

- (23) "Surgical procedure" for the purposes of this Subchapter means any invasive procedure performed on an animal to include, but not be limited to: procedures to spay or neuter, any procedure that invades a body cavity and/or requires suturing or repairing of tissues; and/or any treatment of injuries or disorders of the body by incision, manipulation or alteration of organs or tissues with the hands or with instruments. For the purposes of this Subchapter, insertion of a microchip is not considered to be a surgical procedure.

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

02 NCAC 52J .0201 GENERAL

(1) A licensee or registrant shall comply with all federal, state and local laws, rules and ordinances relating to or affecting the welfare of dogs and cats in its facility.

*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 .0210 VETERINARY CARE

(d) Each dog and cat shall be observed daily by the animal caretaker who has been adequately trained or is experienced in animal care or is under the direct supervision of a person who has such training or experience. Sick or diseased, injured, lame, or blind dogs or cats shall be provided with adequate veterinary care in a timely manner or be euthanized, provided that the euthanasia shall not affect compliance with any state or local law requiring the holding, for a specified period, of animals suspected of being diseased. If an animal cannot be euthanized due to a required holding period and does not meet the criteria of G.S. 19A-32.1(b)(2), then adequate veterinary care shall be provided to the animal.

- (i) If surgical procedures are performed at the registered/licensed facility, the facility shall:
- (1) only perform surgical procedures on animals owned by the facility. The facility shall not perform surgery on animals owned by the public unless the practice of veterinary medicine at that facility falls under the jurisdiction of the North Carolina Board of Veterinary Medicine;
 - (2) appoint a North Carolina ('NC') licensed veterinarian to be the supervising veterinarian to direct, oversee and be responsible for the performance of all surgical procedures and for the condition of the surgical facility;
 - (3) ensure all surgical procedures are performed by a NC licensed veterinarian and performed within the designated surgical area;
 - (4) ensure that the designated surgical area meets the minimum standards for surgery in 21 NCAC 66 .0207(b)(9), the drug procedures meet the minimum standards in 21 NCAC 66 .0207(b)(11) and the recordkeeping procedures meet the minimum standards in 21 NCAC 66 .0207(b)(12);
 - (5) ensure that the minimum standards for after-hours emergency service in 21 NCAC 66 .0207(b)(19) for the provision of after-hours emergency veterinary care for an animal receiving surgical procedure(s) are met; and

(6) ensure that surgical procedures are not performed until the inspection of the surgical facility and supporting procedures noted in this section has occurred and all deficiencies have been corrected.

(k) Nothing in these rules allows the practice of veterinary medicine in North Carolina beyond what is otherwise authorized by the NC Veterinary Medical Board pursuant to the NC Veterinary Practice Act.

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