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December 19, 2023

Andrew Benton
Owner
Happy Paws Daycare and Kennel
15402 Saxon Trace Court
Huntersville, NC 28078
ajbenton@live.com

NOTICE of WARNING and NOTICE of VIOLATION

Re: Violations of Title 02 N.C. Administrative Code (“NCAC”) Chapter 52J, Sections .0102(1) and (5); .0201(e) and (r); .0202(b)(2) and (e)(3); .0203(b)(3) and (f); .0204(a), (b), (d), and (h); .0205(i) and (j); .0206(a) and (d); .0207(a), (d)(1), (3)(B), (5), and (8), and (e); and 0210(a)(3) and (j).

AWS-WL-2023-16

**Boarding Kennel: Happy Paws Daycare and Kennel
License Number: 10896**

Dear Mr. Benton:

The Animal Welfare Section (“AWS”) of the Veterinary Division of the N.C. Department of Agriculture and Consumer Services (“NCDA&CS”) conducted a facility compliance inspection (“FCI”) of the Happy Paws Daycare and Kennel (the “kennel”) on December 8, 2023. Due to the number and severity of the violations of the N.C. Animal Welfare Act (“AWA”) and its associated regulations, this FCI report was noted as “Disapproved.”

During the December 8, 2023 FCI, the following was noted:

- 1) in violation of 02 NCAC 52J .0102(1), the signature of the person leaving the animal was not being maintained by the kennel;
- 2) in violation of 02 NCAC 52J .102(5), the kennel failed to create and keep an incident log at the kennel;
- 3) in violation of 02 NCAC 52J .0201(e), the kennel failed to provide for the daily removal of food waste and debris from the facility;
- 4) in violation of 02 NCAC 52J .0201(r) the kennel failed to develop and maintain a plan of action for the continuity of care in the event of a natural or manmade disaster;
- 5) in violation of 02 NCAC 52J .0202(b)(2), the kennel failed to clean or change the air vents and air filters as often as necessary to minimize buildup of debris, dust and biological material;

- 6) in violation of 02 NCAC 52J .0202(e)(3), the kennel failed to maintain the drainage system barriers in good repair;
- 7) in violation of 02 NCAC 52J .0203(b)(3), the kennel failed to clean and sanitize the artificial turf in accordance with 02 NCAC 52J .0207;
- 8) in violation of 02 NCAC 52J .0203(f), the kennel failed to properly clean and sanitize outdoor common areas as set forth in 02 NCAC 52J .0207;
- 9) in violation of 02 NCAC 52J .0204(a) the kennel failed to maintain surfaces impervious to moisture in primary enclosures;
- 10) in violation of 02 NCAC 52J .0204(b), the kennel failed to prevent animals access to wood due to the failure to replace the damaged FRP in primary enclosures;
- 11) in violation of 02 NCAC 52J .0204(d), the kennel failed to provide sufficient space in some of the primary enclosures in order for the dogs to be able to walk, turn about freely, and stand with their tails erect, sit or lie in a natural position with their limbs extended without touching the side or top covering of the enclosure;
- 12) in violation of 02 NCAC 52J .0204(h), the kennel failed to provide a solid resting surface in some of the primary enclosures;
- 13) in violation of 02 NCAC 52J .0205(i), the kennel failed to discard uneaten food within food receptacles within 24 hours;
- 14) in violation of 02 NCAC 52J .0205(j), the kennel failed to discard disposable food receptacles after each feeding;
- 15) in violation of 02 NCAC 52J .0206(a), the kennel failed to provide continuous access to water for 14 of the 15 dogs present during this FCI;
- 16) in violation of 02 NCAC 52J .0206(d), the kennel failed to keep the water receptacles clean and sanitized;
- 17) in violation of 02 NCAC 52J .0207(a), the kennel failed to properly clean primary enclosures and common areas a minimum of two times per day;
- 18) in violation of 02 NCAC 52J .0207(d)(1), the kennel failed to sanitize previously occupied primary enclosures prior to the introduction of new dogs;
- 19) in violation of 02 NCAC 52J .0207(d)(3)(B), the kennel failed to remove visible organic matter and properly clean and sanitize the primary enclosures and common areas;
- 20) in violation of 02 NCAC 52J .0207(d)(5), the kennel failed to sanitize water receptacles daily;
- 21) in violation of 02 NCAC 52J .0207(d)(8), the kennel failed to keep fans clean of accumulated debris, dust and biological material;
- 22) in violation of 02 NCAC 52J .0207(e), the kennel failed to control weeds in the areas with artificial turf and failed to keep the premises free of accumulations of trash, junk and discarded matter;
- 23) in violation of 02 NCAC 52J .0210(a)(3), the kennel failed to implement and follow its Program of Veterinary Care; and
- 24) in violation of 02 NCAC 52J .0210(j), the kennel failed to administer "Post Op" medication in accordance with the prescription label directions.

The FCI report noted in this Notice of Warning has been made available to the kennel and is 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.

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 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:

- (1) name and address of owner or person responsible for animal, the date of entry and signature of the person leaving the animal; and the date of release and signature and address of individual to whom animal is released;
- (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

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

02 NCAC 52J .0201 GENERAL

- (e) The facility shall provide for the daily removal and disposal of animal and food waste, soiled bedding and debris from the facility in accordance with local ordinances, to assure the facility will be maintained in a clean and sanitary manner.
- (r) All licensed and registered facilities must develop and maintain a plan of action for the continuity of care and/or evacuation of animals in the event of a natural or manmade disaster.

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

(e) Drainage of indoor housing facility:

- (3) the drainage system shall be constructed with barriers adequate to protect the animals from cross-contamination with urine and fecal material from animals housed in adjacent and/or nearby enclosures and/or exercise areas.

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

(b) Exercise areas of outdoor facilities:

- (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

(f) Outdoor common areas used for play, enrichment and elimination shall be maintained in good repair and be properly cleaned and sanitized as set forth in 02 NCAC 52J .0207 to protect the animals from injury and/or illness.

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.

(d) Primary enclosures shall be constructed so as to provide space to allow each dog or cat to walk, turn about freely, and to stand with their tails erect, sit, or lie in a natural position with their limbs extended without touching other animals within the enclosure or the sides or top covering of the enclosure.

(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 .0205 FEEDING

(i) Uneaten food within food receptacles shall be discarded within 24 hours or sooner if spoiled or contaminated.

(j) Damaged food receptacles shall be replaced. Disposable food receptacles may be used but shall be discarded after each feeding.

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

(d) Watering receptacles shall be durable and kept clean and sanitized.

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.

(d) Sanitation shall be as follows:

- (1) prior to the introduction of dogs or cats into empty primary enclosures previously occupied, enclosures and accessories shall be sanitized in the manner provided in Subparagraph (d)(3) of this Rule;
- (3) primary enclosures, cages, rooms, hard-surfaced or artificial turf exercise areas, pens, and runs shall be sanitized by:
 - (B) removal of visible organic matter, precleaning all soiled surfaces with a detergent or degreaser solution, followed by the application, at the correct concentration, of an animal-safe disinfectant labeled to be effective against common pathogens. The disinfectant is to be left on the surfaces for the time indicated by the manufacturer. After such time, all surfaces shall be thoroughly rinsed to remove all residual chemicals and then the area dried prior to returning the animal(s) to this area; or
- (5) food and water receptacles shall be sanitized daily with hot water, detergent, and disinfectant. The disinfectant shall be used consistent with the manufacturer's directions;
- (8) fans, including floor fans, ceiling fans, wall fans, vent fans, etc. shall be kept clean of accumulated debris, dust and biological material.

(e) Premises (buildings and grounds) shall be kept clean and in good repair in order to protect the animals from injury and to facilitate the prescribed husbandry practices set forth in this Rule. Premises shall remain free of accumulations of trash, junk, waste products, and discarded matter. Weeds, grasses, and bushes must be controlled so as to facilitate cleaning of the premises and to improve pest control, and to protect the health and well-being of the 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.

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

(j) Boarding kennels shall not administer a prescription medication, tranquilizer, sedative, or any pharmaceutical drug designed to calm an animal unless the medication or drug is administered under the direction of or by prescription from the animal's veterinarian, and written permission from the animal's owner. In the event a boarding kennel agrees to administer such medications or substances, the medications shall be in the original container issued by the veterinarian or pharmacy and administered according to label directions. The administration of these medications or substances shall be documented as required by 02 NCAC 52J .0102.

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