



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

January 18, 2024

Frankie Maness
County Manager
P. O. Box 425
Troy, NC 27371
Via hand delivery and email:
frankie.maness@montgomerycountync.com

NOTICE of CIVIL PENALTY and NOTICE of WARNING

Re: CIVIL PENALTY ASSESSMENT for VIOLATIONS of TITLE 02 N.C. ADMINISTRATIVE CODE (NCAC) CHAPTER 52J SECTIONS .0101(5) and (6); 0209(7)(a) and (8); and .0210(d) and (h); and NOTICE OF WARNING for VIOLATION of 02 NCAC 52J .0206(a).

AWS-CP-2024-1

**Facility: Montgomery County Animal Services Animal Shelter
Registration Number 403**

Dear County Manager Maness:

Pursuant to NCGS § 19A-40, I am issuing this notice that Montgomery County as the operator of the Montgomery County Animal Services Animal Shelter (“the shelter”) is hereby assessed a civil penalty of \$4,100.00 as provided in the enclosed Notice of Violation.

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 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.

medications for the animals named Mark, Sapphire, Sugar and Cookie; and

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.

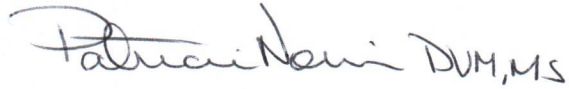
You must serve NCDA&CS by mailing a copy of the petition to:

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

- vi. the administration of ofloxacin to Cookie was not recorded on October 17, 18, 22, and 25, 2023;
 - vii. the administration of trazadone to Cookie was not recorded on October 21, 2023; and
 - viii. the administration of tobramycin to Cookie was not recorded on October 2, 3, 6, and 7, 2023.
- c. the shelter failed to record the time of administration of veterinary care such as vaccinations, diagnostic procedures, and administration of medications and dewormers in violation of 02 NCAC 52J .0101(5). These violations were noted in the shelter records for the animals named Eric, Tuff, Mama Dog, Mark, Shila, Gloria, Sapphire, and Sugar;
 - d. the shelter failed to update records within 48 hours of the occurrence of procedures and administration of medications in violation of 02 NCAC 52J .0101(6);
 - e. the shelter staff relayed that on at least one cold night, the dogs housed outside were denied continuous access to water as the water in the receptacles were frozen solid in violation of 02 NCAC 52J .0206(a);
 - f. the shelter failed to consistently document provision of daily social interactions and enrichment for long-term care animals in violation of 02 NCAC 52J .0209(7). This violation was noted in the review of the records for the animals named Eric, Sadie, Shila, Gloria, Sapphire and Cookie;
 - g. on separate occasions, the shelter failed to confine 3 dogs, Sapphire, Sugar, and Cookie, in primary enclosures in violation of 02 NCAC 52J .0209(8). In the case of Sapphire, Inspector Garner had instructed shelter management to discontinue housing Sapphire in the office when this arrangement was discovered during the November 28, 2023 Facility Compliance Inspection (“FCI”). Despite this directive, Sapphire was still being housed in the office as noted during the December 6, 2023 investigation site visit. Therefore, this violation was deemed to be a willful violation of 02 NCAC 52J .0209(8);
 - h. the shelter failed to provide adequate veterinary care in a timely manner in violation of 02 NCAC 52J .0210(d) to the following animals:
 - i. Tuff was not taken for a veterinary care for a fractured leg until 3 days after intake;
 - ii. Sapphire, who was suffering from a fractured/dislocated hip, did not receive a veterinary examination until 10 days after intake when the injury was noted during the dog’s spay surgery. Sapphire was not provided with a veterinary examination specifically for the fractured/dislocated hip until 8 days after the spay surgery. The surgery to address the injury was not provided until 7 weeks after her intake into the shelter. The post-operative instructions directed that Sapphire be housed in a confined space with restricted movement. Contrary to these veterinary instructions, Sapphire was noted to be loose in the office with no restrictions to her movement on November 28, 2023, just 6 days after her hip surgery and again on December 6, 2023, just 14 days after her hip surgery;
 - iii. Sugar was known to have a long-standing injury at the time of her intake into the shelter. Veterinary care was not provided to Sugar until 5 days after her intake. Shelter management stated that during a verbal consultation with a veterinarian, the veterinarian directed that dog did not need any pain medication for the injury. This conversation was not documented in the animal’s record and could not be independently confirmed;
 - iv. the shelter failed to follow veterinary care directions for the administration of medications for the animals named Mark, Sapphire, Sugar and Cookie; and

- i. the shelter failed to vaccinate Sadie and Shila against rabies within 15 days of intake in violation of 02 NCAC 52J .0210(h).

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 the AWS investigation, AWS concludes that the shelter has violated 02 NCAC 52J .0101(5) and (6); .0206(a); 0209(7)(a) and (8); and .0210(d), and (h).

AWS concludes that the shelter violated the following provisions:

02 NCAC 52J .0101(5) for failure to record the reason for the administration of medication for numerous records as noted on December 6, 2023

02 NCAC 52J .0101(5) for failure to record the administration of medication to the animals named Mark, Sapphire, Sugar, and Cookie as noted on December 6, 2023

02 NCAC 52J .0101(5) for failure to record the time of administration of veterinary care to the animals named Eric, Tuff, Mama Dog, Mark, Shila, Gloria, Sapphire, and Sugar as noted on December 6, 2023

02 NCAC 52J .0101(6) for failure to update records within 48 hours of the occurrence of procedures and administration of medications as noted on December 6, 2023

02 NCAC 52J .0206(a) for failure to provide continuous access to water as relayed to AWS on December 6, 2023

02 NCAC 52J .0209(7)(a) for failure to document provision of daily social interactions and enrichment for long-term care animals named Eric, Sadie, Shila, Gloria, Sapphire, and Cookie as noted on December 6, 2023

02 NCAC 52J .0209(8) for failure to confine 3 dogs, Sapphire, Sugar, and Cookie, in primary enclosures as noted on December 6, 2023. This violation was found to be a willful violation

02 NCAC 52J .0210(d) for failure to provide adequate veterinary care in a timely manner to Tuff, for a fractured leg as noted on December 6, 2023

02 NCAC 52J .0210(d) for failure to provide adequate veterinary care in a timely manner to Sapphire for a fractured/dislocated hip as noted on December 6, 2023

02 NCAC 52J .0210(d) for failure to provide adequate veterinary care in a timely manner to Sugar for a serious injury as noted on December 6, 2023

02 NCAC 52J .0210(d) for failure to provide adequate veterinary care to the dogs named Mark, Sapphire, Sugar and Cookie by failing to follow care instructions issued by a veterinarian as noted on December 6, 2023

02 NCAC 52J .0210(h) for failure to provide rabies vaccinations to Sadie and Shila within 15 days of intake into the shelter as noted on December 6, 2023

Pursuant to NCGS §§ 19A-30 and 19A-40, these violations can result in the suspension, revocation, or refusal to renew a registration for any animal shelter and/or the assessment of a civil penalty of up to \$5,000 per violation.

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.

Accordingly, Montgomery County as the operator of the Montgomery County Animal Services Animal Shelter is hereby assessed a civil penalty for the following violations:

\$200.00 for violation of 02 NCAC 52J .0101(5) for failure to record the reason for the administration of medication for numerous records as noted on December 6, 2023

\$400.00 for violation of 02 NCAC 52J .0101(5) for failure to record the administration of medication to the animals named Mark, Sapphire, Sugar, and Cookie as noted on December 6, 2023

\$200.00 for violation of 02 NCAC 52J .0101(5) for failure to record the time of administration of veterinary care to the animals named Eric, Tuff, Mama Dog, Mark, Shila, Gloria, Sapphire, and Sugar as noted on December 6, 2023

\$200.00 for violation of 02 NCAC 52J .0101(6) for failure to update records within 48 hours of the occurrence of procedures and administration of medications as noted on December 6, 2023

\$200.00 for violation of 02 NCAC 52J .0209(7)(a) for failure to document provision of daily social interactions and enrichment for long-term care animals named Eric, Sadie, Shila, Gloria, Sapphire and Cookie

\$500.00 for violation of 02 NCAC 52J .0209(8) for failure to confine 3 dogs, Sapphire, Sugar, and Cookie, in primary enclosures. This violation was found to be a willful violation

\$500.00 for violation of 02 NCAC 52J .0210(d) for failure to provide adequate veterinary care in a timely manner to Tuff, for a fractured leg as noted on December 6, 2023

\$1,000.00 for violation of 02 NCAC 52J .0210(d) for failure to provide adequate veterinary care in a timely manner to Sapphire for a fractured/dislocated hip as noted on December 6, 2023

\$500.00 for violation of 02 NCAC 52J .0210(d) for failure to provide adequate veterinary care in a timely manner to Sugar for a serious injury as noted on December 6, 2023

\$200.00 for violation of 02 NCAC 52J .0210(d) for failure to provide adequate veterinary care to the dogs named Mark, Sapphire, Sugar and Cookie by failing to follow care instructions issued by a veterinarian

\$200.00 for 2 violations (\$100.00 per violation) of 02 NCAC 52J .0210(h) for failure to provide rabies vaccinations to Sadie and Shila within 15 days of intake into the shelter

\$4,100.00 TOTAL AMOUNT ASSESSED

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 registration 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.

NOTICE of WARNING

As to the remaining violation of 02 NCAC 52J .0206(a) for failure to provide continuous access to water this Warning Letter serves as written notice indicating in which respects the shelter may have violated the NC Animal Welfare Act and the rules issued pursuant thereto.

AWS strongly recommends that the shelter develop and implement written protocols to avoid future violations of these 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 registration 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.

(See Appendix for text of referenced General Statutes and Administrative Code)

January 18, 2024
Date

Patricia Norris, DVM, MS
Patricia Norris, DVM, MS
Director, Animal Welfare Section
North Carolina Department of
Agriculture & Consumer Services

Appendix

REFERENCED LAWS AND REGULATIONS

§ 19A-26. Certificate of registration required for animal shelter.

No person shall operate an animal shelter unless a certificate of registration for such animal shelter shall have been granted by the Director. Application for such certificate shall be made in the manner provided by the Director. No fee shall be required for such application or certificate. Certificates of registration shall be valid for a period of one year or until suspended or revoked and may be renewed for like periods upon application in the manner provided.

§ 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:

- (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
- (6) all records shall be created and/or updated within 48 hours of the occurrence of procedures, including but not limited to intake, change of location, medication or treatment administration and/or disposition. The record shall be accurate; creation of a misleading record or deliberate or non-incidental falsification of a record including medication administration documentation during or after an investigation or inspection shall be considered a violation of this regulation.

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 .0209 CLASSIFICATION AND SEPARATION

Animals housed in the same primary enclosure or confined to an exercise area shall be maintained in compatible groups, with the following additional restrictions:

- (7) Animals in long term care must be provided with human interaction other than interaction for enclosure cleaning, same species social interaction, opportunity for play and exercise, and environmental enrichment daily. The provision of these daily interactions and

enrichment shall be adequate for the animal's species, age, size and behavior needs. In addition:

- (a) The provision of the daily social interactions and enrichment shall be documented in the animal's records and the records maintained for three years; and
- (8) All animals shall be confined in primary enclosures or exercise areas. Primary enclosures and exercise areas shall be inspected by the Animal Welfare Section and in compliance with the rules of this Subchapter before an animal can be confined in the enclosure or area.

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

(h) All animals in a licensed or registered facility shall be in compliance with the North Carolina rabies law, G.S. 130A, Article 6, Part 6. This subsection shall not apply to animals which have been in the facility less than 15 days.

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