

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
DIVISION OF PARI-MUTUEL
WAGERING,

Petitioner,

vs.

Case Nos. 14-0898PL
14-0907PL

JAMES E. O'DONNELL,

Respondent.

_____ /

RECOMMENDED ORDER

These cases came before Administrative Law Judge F. Scott Boyd for final hearing by video teleconference on October 29 and 30, 2014, with sites in Miami and Tallahassee, Florida.

APPEARANCES

For Petitioner: Richard McNelis, Esquire
Louis Trombetta, Esquire
Department of Business and
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Division of Pari-Mutuel Wagering
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For Respondent: Hilton Napoleon, II, Esquire
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STATEMENT OF THE ISSUES

Whether Respondent failed to keep proof of vaccination on file for racing greyhounds in his kennel, had a hypodermic

needle on premises where racing greyhounds were lodged or kept, or stored cleaning supplies in the same area as bedding intended for racing greyhounds, as alleged in the Administrative Complaint, and if so, what is the appropriate sanction.

PRELIMINARY STATEMENT

On January 28, 2014, Petitioner, Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering ("Department" or "Petitioner"), filed an Administrative Complaint against Respondent, Mr. James E. O'Donnell. The complaint alleged 96 counts^{1/} of failure to maintain proof of vaccination of racing greyhounds, in violation of Florida Administrative Code Rule 61D-6.009(9)(b).^{2/}

On January 31, 2014, the Department filed a second Administrative Complaint against Mr. O'Donnell. This complaint alleged two counts of violation of rule 61D-6.004(2)(a), for having a hypodermic needle on the grounds of a permit holder where racing animals are lodged or kept; and one count of violation of rule 61D-2.023(1), for failing to store cleaning supplies in areas separate from food and bedding intended for racing animals.

Mr. O'Donnell requested an administrative hearing in each case, and they were forwarded to the Division of Administrative Hearings ("DOAH") for assignment of an Administrative Law Judge. The first Administrative Complaint was assigned as DOAH Case

No. 14-0898PL. The second complaint was assigned DOAH Case No. 14-0907PL. The two cases were consolidated on March 5, 2014, and after several continuances, came on for hearing on October 29 and 30, 2014.

The parties stipulated to certain facts, which were accepted at hearing and are included among those set forth below. The Department presented the testimony of four witnesses: Mr. Tyrell Smith, an investigator with the Department; Dr. Ann Romano, a veterinarian; Mr. Charles Taylor, an investigative specialist with the Department; and Mr. O'Donnell, Respondent. Petitioner offered three exhibits, P-7 through P-9, which were admitted into evidence. Mr. O'Donnell testified and presented the testimony of one other witness, Mr. Dennis Smith, a trainer employed by Mr. O'Donnell. Mr. O'Donnell offered no exhibits. Official recognition was given to the death certificate for Dr. Emilio Vega as well as several statutes and administrative rules.

The first volume of the two-volume Transcript of the hearing was filed at DOAH on November 26, 2014, and the second on December 22, 2014, although both parties had the full Transcript by the November date. Pursuant to Respondent's unopposed motion, the deadline for filing proposed recommended orders was extended to December 12, 2014. Respondent's second motion to extend time to file proposed recommended orders, filed

on December 12, 2014, was opposed by Petitioner. On December 15, 2014, an Order was issued granting Respondent's motion in part, allowing Respondent to file a proposed recommended order by 10:00 a.m. on December 16, 2014, and Petitioner to respond to that filing the same day. Both proposed recommended orders were considered.

FINDINGS OF FACT

1. The Department is the state agency charged with regulating pari-mutuel wagering in the state of Florida, pursuant to chapter 550, Florida Statutes.

2. Mr. O'Donnell owns racing greyhounds. He keeps his dogs, along with some leased dogs of other owners, in kennels that he leases for that purpose.

3. At all times material to this case, Mr. O'Donnell held a pari-mutuel wagering business occupational license, number 441699, issued by the Department.

4. At all times material to this case, Mr. O'Donnell held a pari-mutuel wagering professional individual license, number 330177, issued by the Department.

5. A "permitholder" is a person or entity which holds an annual license to conduct pari-mutuel operations at the location specified in the permit. The licenses held by Mr. O'Donnell do not allow him to operate a pari-mutuel track or to conduct pari-

mutuel operations at specified locations. Mr. O'Donnell is not a permitholder.

6. Mr. O'Donnell employed a licensed trainer, Mr. Dennis Smith, who was responsible for day-to-day activities involving the dogs. Mr. O'Donnell personally kept responsibility for setting up vaccinations for the dogs. Mr. O'Donnell was not always physically present when vaccinations were given.

7. Dr. Emilio L. Vega was a licensed veterinarian that Mr. O'Donnell employed to vaccinate his racing dogs. Dr. Vega came to Mr. O'Donnell's kennels for many years to vaccinate the dogs. Dr. Vega died on September 4, 2010, at the age of 80 years.

8. On September 14, 2011, Investigator Tyrell Smith of the Department was reviewing operations of licensees who own or train greyhounds at the Florida Kennels Compound in Hialeah, Florida. At kennel number 45, leased by Mr. O'Donnell, he asked a kennel helper to let him inspect the vaccination records for the dogs.^{3/} Fifty-two vaccination records that had been signed in 2011 were produced for dogs in that kennel, and the helper indicated that Mr. O'Donnell was keeping vaccination records for other dogs. Investigator Smith noted that the name in the veterinarian's signature block on the forms was Dr. Vega. He was not aware at that time that Dr. Vega was deceased and could not have signed the forms in 2011.

9. On September 23, 2011, Investigator Smith asked a kennel helper at Steubenville Kennel, numbers 36 and 37, which are also leased by Mr. O'Donnell, for vaccination records for the dogs. The kennel helper provided four records that contained the name of Dr. Vega in the veterinarian's signature block, dated in 2011.

10. After talking with other trainers at the track, Investigator Smith learned that Dr. Vega had died in 2010. On September 30, 2011, Investigator Smith and other employees of the Department visited two animal clinics where Dr. Vega had formerly worked. The clinics did not have vaccination records for dogs in any of Mr. O'Donnell's kennels. Investigator Smith was able to view copies of some other vaccination records, and the signature appeared to Investigator Smith to be the same signature that appeared on the forms that had been given to him for the dogs in Mr. O'Donnell's kennels.

11. On October 4, 2011, Investigator Smith visited kennel number 39 in Hialeah and asked Mr. O'Donnell for the vaccination records for those dogs. Mr. O'Donnell told him that the records had been stolen. Investigator Smith asked Mr. O'Donnell if he had filed a police report. Mr. O'Donnell said he had not. He indicated that he would just re-do the vaccinations.

12. Investigator Smith returned to kennel number 39 on October 14, 2011. The vaccination records were not available.

Mr. O'Donnell gave Investigator Smith the telephone number of Dr. Ann Romano, a veterinarian, and was told that she would be able to give him the vaccination information. Investigator Smith called Dr. Romano, but had only a very brief conversation with her, because communication was poor and because she was leaving on vacation.

13. On October 25, 2011, Investigator Smith returned to kennel number 39 and again requested to see vaccination records for the dogs. He was provided records signed on October 24, 2011, by Dr. Romano. He later talked to Dr. Romano, who confirmed that she had vaccinated the dogs on October 24, 2011, but had not ever vaccinated any of Mr. O'Donnell's dogs before that date.

14. The rule provides no "grace period" for enforcement of the requirement to keep proof of vaccination on file.

15. Mr. Charles Taylor is an investigation specialist for the Department. Investigator Taylor was asked by his supervisor to go to the Orange Park Kennel Club ("Orange Park") and examine dog vaccination records for dogs in Mr. O'Donnell's kennels to see if any had been signed by Dr. Vega. Investigator Taylor visited the Orange Park facility on December 21, 2011. In the racing secretary's office, he found 56 National Greyhound Association papers, with vaccination records attached, for dogs in Mr. O'Donnell's kennels. The National Greyhound Association

is an association that registers racing greyhounds. Examining these 56 vaccination records, he found that 21 of them contained the name of Dr. Vega in the veterinarian's signature block, with dates ranging from January 15, 2011, to September 16, 2011. He also found one undated, blank record with Dr. Vega's name in the veterinarian's signature block. Investigator Taylor made copies of these vaccination records. He did not contact either Mr. O'Donnell or the trainer of record about these vaccination records.

16. Dr. Vega was deceased and did not sign any vaccination forms in 2011. Any forms purporting to contain his signature with a 2011 date were invalid and did not constitute proof of vaccination. The Department had visited the workplaces of Dr. Vega, and no other proof of vaccination could be obtained through the treating veterinarian.

17. On August 27, 2013, Mr. O'Donnell occupied or had the right to occupy kennel number 45, at the Florida Kennels Compound, 7218 West Fourth Avenue, Hialeah, Florida, 33014.

18. Mr. Luis Miranda is the facility manager of the Florida Kennel Compound. He conducts regular walk-through inspections of the kennels. Mr. Miranda points out any violations he observes to Investigator Smith when he comes to inspect the kennels. On August 27, 2013, Mr. Miranda told

Investigator Smith that Mr. Miranda had found that kennel 45 was dirty during his walk-through inspection.^{4/}

19. Investigator Smith went to kennel 45. There was no one there. A kennel is never locked, because it must remain open for safety of the dogs; however, there is a security gate and guard on duty at the entrance to the facility, and only licensees can gain entrance. Inspector Smith testified that kennel 45 did not appear dirty. He looked in the medicine cabinet in the kitchen area of the kennel, which is only about five feet from the dogs. He saw a syringe with a hypodermic needle attached. He confiscated it, took a picture, and placed it in a storage container. He never asked Mr. O'Donnell about the needle.

20. On October 10, 2013, Mr. O'Donnell occupied or had the right to occupy kennel numbers 36 and 37, at the Florida Kennels Compound.

21. On October 10, 2013, Inspector Smith conducted an inspection of kennel numbers 36 and 37, the Steubenville Kennel. He found the vaccination records all in order. He found a bottle of Clorox bleach and spray bottles containing unknown substances sitting on top of a crate that had a dog sleeping inside. He asked kennel workers about the chemicals. They told him they had just put them up there for cleaning and would move them in a few minutes. He found a hypodermic needle with syringe in kennel 36.

He photographed these items. Kennel helpers removed the bleach and spray chemicals. Mr. O'Donnell was not there when Investigator Smith arrived, but came later while Investigator Smith was still there.

22. While the Department showed that a bottle of Clorox cleaning solution was on top of a crate that had a dog sleeping inside, it did not clearly show that the Clorox cleaning solution was being "stored" there. The word "store" is defined as "to take in or hold supplies, goods, or articles, as for future use" or "to deposit or receive in a storehouse or warehouse for safekeeping" or "to put something that is not being used in a place where it is available, where it can be kept safely, etc." See Random House Dictionary, Random House, Inc. (2014), online at <http://dictionary.reference.com/browse/store>; American Heritage Dictionary of the English Language, 5th ed. (2014), by Houghton Mifflin Harcourt, at www.ahdictionary.com/word/search.html?q=store; and Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/store>. If the helpers only placed the Clorox on the crate while they were using it, as claimed, the Clorox and other cleaning materials were not "stored" there. There was no clear evidence to refute the helpers' admissions.

23. The Department showed by clear and convincing evidence that Mr. O'Donnell failed to keep proof of vaccination for 52 of his racing greyhounds on September 14, 2011.

24. The Department showed by clear and convincing evidence that Mr. O'Donnell failed to keep proof of vaccination for his racing greyhounds on October 4, 2011.

25. The Department showed by clear and convincing evidence that Mr. O'Donnell failed to keep proof of vaccination for 21 of his racing greyhounds on December 21, 2011.

26. The Department showed by clear and convincing evidence that on August 27, 2013, and October 10, 2013, Mr. O'Donnell had hypodermic needles with syringes on premises which he had a right to occupy on the grounds of a racing permitholder where racing greyhounds were kept.

27. Mr. O'Donnell has been involved with racing greyhounds for over 60 years. Prior to the incidents involved in this case, Mr. O'Donnell had never received a notice of violation from the Department.

CONCLUSIONS OF LAW

28. DOAH has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes (2014).

29. A proceeding to suspend, revoke, or impose other discipline upon a license is penal in nature. State ex rel.

Vining v. Fla. Real Estate Comm'n, 281 So. 2d 487, 491 (Fla. 1973). Petitioner must therefore prove the charges against Respondent by clear and convincing evidence. Fox v. Dep't of Health, 994 So. 2d 416, 418 (Fla. 1st DCA 2008) (citing Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996)).

30. The clear and convincing standard of proof has been described by the Florida Supreme Court:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Davey, 645 So. 2d 398, 404 (Fla. 1994) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

31. Whether Respondent committed the charged offenses is a question of ultimate fact to be decided by the trier-of-fact in the context of each alleged violation. McKinney v. Castor, 667 So. 2d 387, 389 (Fla. 1st DCA 1995); Langston v. Jamerson, 653 So. 2d 489, 491 (Fla. 1st DCA 1995).

32. As noted in endnote 1, the Administrative Complaint in Case No. 14-0898PL contained several minor errors. These are construed in Respondent's favor in each instance. The

allegations were clear, and Respondent was in no way prejudiced by the miscounting of dogs or duplication of charges. An administrative complaint must only state the acts complained of with sufficient specificity to allow an applicant a fair chance to prepare a defense. Davis v. Dep't of Prof'l Reg., 457 So. 2d 1074 (Fla. 1st DCA 1984).

33. Section 550.0251(3), Florida Statutes, requires the Division of Pari-mutuel Wagering to adopt reasonable rules for the control, supervision, and direction of all applicants, permittees, and licensees, and for the holding, conducting, and operating of all racetracks, race meets, and races held in this state.

Case No. 14-0898PL

34. Florida Administrative Code Rule 61D-6.009(9) provided in relevant part:

(a) All racing animals shall be inoculated for infectious, contagious, and epizootic diseases including the following, and given boosters as recommended by veterinarians:

1. CANINE: Each of the following, once per year: Distemper, Adenovirus (Hepatitis), Leptospirosis, Para-Influenza, Parvo, Bordetella bronchiseptica and Rabies.

* * *

(b) Proof of vaccination for each active or inactive racing greyhound must be kept on file by the kennel owner/operator, trainer of record or designee and be subject to inspection by the division, provided,

however, that failure to possess such proof shall not be the basis for disciplinary action if proof of inoculation can be secured through the treating veterinarian.

35. Respondent argues that many of his dogs were up for adoption, and, therefore, not "racing" dogs. However, under section 550.002(29), a "racing greyhound" means a greyhound that is or was used in racing, and rule 61D-6.009(9) expressly requires proof of vaccination of racing greyhounds, whether they are active or inactive. It does not matter for purposes of the rule if the dogs in Respondent's kennels were inactive dogs that were up for adoption, brood matrons, or stud dogs. Vaccination records still needed to be maintained on them.

36. Respondent argues that because the statute requires not only the kennel owner/operator, but also the trainer of record or designee to be responsible for keeping proof of vaccination on file, Petitioner was required to request records from each of these parties to prove that the records were not kept. While this argument might have merit under some circumstances, it is rejected under the facts here. The alleged violations on September 14, 2011, and December 21, 2011, were based not upon an absence of records, but upon the fact that the records that were kept were invalid, and so failed to meet the rule's requirement. The alleged violation on October 4, 2011,

was based on Respondent's own statement that the records had been stolen.

37. Respondent correctly points out that Petitioner did not adduce testimony or other evidence that the vaccination records that were supplied to Petitioner were those of the specific dogs named in the Administrative Complaint. Respondent argues that, as a result, none of charges in the Administrative Complaint have been proved. This argument is rejected. The Transcript reflects Mr. O'Donnell's testimony:

Q: Were the dogs named in the complaint in your kennels from September through December of 2011?

A: I'm positive--I'm pretty positive.

Other evidence clearly showed that Mr. O'Donnell leased kennels 45 and 39. Testimony from Investigator Smith clearly indicated that he was provided vaccination records for 52 dogs in kennel 45 on September 14, 2011, that had been signed by Dr. Vega and were dated in 2011. It was also clearly shown that on December 21, 2011, Investigator Taylor received 21 vaccination records for dogs in Mr. O'Donnell's kennels at the Orange Park facility that were signed by Dr. Vega and dated in 2011.

38. While presenting evidence at hearing as to the names of the specific dogs on the vaccination forms might have been advisable, it was not required. Even in criminal cases, failure

to prove specific facts alleged in a charging document is permitted so long as those facts are not essential elements of the charged offense. Mitchell v. State, 888 So. 2d 665, 668 (Fla. 1st DCA 2004) (conviction affirmed because language in the information identifying the specific means by which the defendant put the victim in fear was not an essential element of the offense and proof that victim was put in fear by another means was sufficient); Ingleton v. State, 700 So. 2d 735 (Fla. 5th DCA 1997) (conviction affirmed although language charged that defendant was murdered "by strangling" when evidence showed murder was committed through cocaine overdose, because method by which murder was committed was surplusage and not an essential element of the offense); In the Interest of W.M., 491 So. 2d 1263 (Fla. 4th DCA 1986) (conviction for aggravated assault affirmed upon proof that defendant used a BB gun, despite charge that weapon used was a handgun, because the type of weapon used was not an element of aggravated assault); Mas v. State, 222 So. 2d 250 (Fla. 3d DCA 1969) (conviction for violation of a statute prohibiting the throwing of a missile that could produce death or great bodily harm affirmed even though the information charged that the particular missile was a fire-bomb, but no such proof was adduced at trial, because language as to the specific missile thrown was surplusage and not an essential element of the offense). An administrative hearing does not require more.

39. The names of the dogs listed in the Administrative Complaint were surplusage, and it was not necessary for Petitioner to prove that these particular dogs were the ones without proof of vaccination.

40. Rule 61D-6.009(9)(b) expressly provides that failure to keep proof of vaccination on file shall not be the basis for disciplinary action if proof of inoculation can be secured through the treating veterinarian. The rule is not entirely clear as to who has this responsibility, but the restriction is set forth in the same sentence which creates the basis for disciplinary action, so it does not appear to be an affirmative defense. Further, any ambiguity must be construed in favor of Respondent. Djokic v. Dep't of Bus. & Prof'l Reg., 875 So. 2d 693 (Fla. 4th DCA 2007). It was clearly shown that no proof of inoculation could be secured with respect to the invalid records supplied by Respondent. Dr. Vega was long since deceased, and Petitioner had determined that his workplaces had no records. With respect to the October 4, 2011, inspection, in which no records were found, Respondent referred Petitioner to Dr. Romano and said that she would be able to give information on the vaccinations. However, Dr. Romano did not give any immunizations until October 24, 2011. Petitioner clearly demonstrated that proof of inoculation could not be secured through the treating veterinarian.

41. Petitioner proved by clear and convincing evidence that Respondent violated rule 61D-6.009(9)(b) on September 14, 2011, by failing to keep proof of vaccination on file, as alleged in counts 1 through 52 of the Administrative Complaint in Case No. 14-0898PL.

42. Petitioner has conceded that counts 53 through 57 of Petitioner's Administrative Complaint in Case No. 14-0898PL were not proven by clear and convincing evidence.

43. Petitioner proved by clear and convincing evidence that Respondent violated rule 61D-6.009(9)(b) on October 4, 2011, by failing to keep proof of vaccination on file, as alleged in count 58 of the Administrative Complaint in Case No. 14-0898PL.

44. Petitioner has conceded that counts 59 through 74 of Petitioner's Administrative Complaint in Case No. 14-0898PL were not proven by clear and convincing evidence.

45. Petitioner proved by clear and convincing evidence that Respondent violated rule 61D-6.009(9)(b) on December 21, 2011, by failing to keep proof of vaccination on file, as alleged in counts 75 through 95 of the Administrative Complaint in Case No. 14-0898PL.

Counts 1 and 2, Case No. 14-0907PL

46. Rule 61D-6.004(2), entitled "Prohibited Devices, Medications, and Procedures; Exceptions," provided in relevant part:

(a) No licensee within the grounds of a racing permitholder where racing animals are lodged or kept shall have in or upon the premises which that person occupies or has the right to occupy, or in that licensee's personal property or effects, the following:

* * *

2. Any hypodermic needle, injectable vial, syringe capable of accepting a hypodermic needle or which may accept a volume greater than 6 ounces, tube device for naso-gastric or gastric intubation;

47. Petitioner proved by clear and convincing evidence that Respondent violated rule 61D-6.004(2)(a)2. on August 27, 2013, and October 10, 2013, as alleged in counts 1 and 2 of the Administrative Complaint in Case No. 14-0907PL.

Count 3, Case No. 14-0907PL

48. Rule 61D-2.023, entitled "Animal Welfare," provided in relevant part:

(1) A permitholder shall ensure that:

* * *

(d) All of the permitholder's cleaning supplies and pesticides are stored in areas separate from food and bedding intended for racing animals;

49. Petitioner has conceded that it did not prove by clear and convincing evidence that Respondent violated rule 61D-2.023(1)(d), as alleged in count 3 of Petitioner's Administrative Complaint in Case No. 14-0907PL.

Penalty

50. Section 550.105(5)(b) provides in part that the Division of Pari-mutuel Wagering may deny, suspend, revoke, or declare ineligible any occupational license if the applicant for or holder thereof has violated the provisions of this chapter or the rules of the Division of Pari-mutuel Wagering governing the conduct of persons connected with racetracks and frontons.

51. Section 550.105(5)(e) provides in part that the Division of Pari-mutuel Wagering may impose a civil fine of up to \$1,000 for each violation of the rules of the Division of Pari-mutuel Wagering in addition to or in lieu of any other penalty provided for in that section.

52. Rule 61D-2.021, entitled "Aggravating and Mitigating Circumstances," provides:

Circumstances which may be considered for the purposes of mitigation or aggravation of any penalty shall include, but are not limited to, the following:

- (1) The impact of the offense to the integrity of the pari-mutuel industry.
- (2) The danger to the public and/or racing animals.

- (3) The number of repetitions of offenses.
- (4) The number of complaints filed against the licensee or permitholder, which have resulted in prior discipline.
- (5) The length of time the licensee or permitholder has practiced.
- (6) The deterrent effect of the penalty imposed.
- (7) Any efforts at rehabilitation.
- (8) Any other mitigating or aggravating circumstances.

53. Under the circumstances of this case, failure to keep proof of vaccination created a danger to the health of racing animals and the potential for rapid spread of disease throughout the entire greyhound racing industry. The number of repetitions of offenses was significant and showed a pattern or practice rather than mere oversight. On the other hand, there was no evidence of prior discipline, and Respondent has been involved with the greyhound racing industry for over 60 years.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED:

That the Department of Business and Professional Regulation, Division of Pari-mutuel Wagering, enter a final order: (1) finding Mr. James E. O'Donnell guilty of 74 counts of violating Florida Administrative Code Rule 61D-6.009(9) and two

counts of violating Florida Administrative Code Rule 61D-6.004(2)(a); and (2) imposing an administrative fine of \$76,000.

DONE AND ENTERED this 24th day of December, 2014, in Tallahassee, Leon County, Florida.



F. SCOTT BOYD
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of December, 2014.

ENDNOTES

^{1/} There are several minor errors in numbering the counts in the Administrative Complaint in DOAH Case No. 14-0898PL. The portion of the complaint entitled "Counts 1-52" actually lists the names of 62 dogs. The portion of the complaint entitled "Counts 53-57" lists the names of only four dogs, not five. The failure to have proof of vaccination on these four dogs was also already charged as part of counts 1 through 52. The portion of the complaint entitled "Counts 59-74" lists the names of only 15 dogs, not 16. The portion of the complaint entitled "Counts 75-96" lists the names of only 21 dogs, not 22. The complaint is construed in Respondent's favor in each instance.

^{2/} References to statutes and rules throughout this Recommended Order are to versions in effect at the time of the alleged violations, except as otherwise indicated.

^{3/} The testimony that Investigator Smith was visiting Mr. O'Donnell's kennels because he had been told by the trainer at another kennel that he had seen Mr. O'Donnell falsifying his

vaccination records was used only to explain Investigator Smith's actions. The trainer of the other kennel was not called as a witness and the statement attributed to him was hearsay, which cannot be used as proof of the truth of that assertion.

^{4/} Mr. Miranda did not testify. Again, Investigator Smith's testimony as to what Mr. Miranda told him he observed in kennel 45 was hearsay. This hearsay testimony was not used to show that a syringe was actually in the kennel, but only as the information that prompted Investigator Smith to examine kennel 45 on August 27, 2013.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.