



**CERTIFIED RECEIPT REQUESTED**

United States  
Department of  
Agriculture

December 2, 2009

Office of  
Administrative  
Law Judges

Hearing Clerk

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Dear Sir / Madam:

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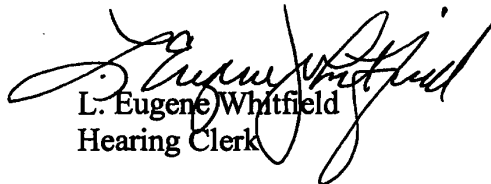
Subject: **In re: Kathy Jo Bauck, an individual, d/b/a Puppy's on Wheels, a.k.a "Puppies on Wheels" and "Pick of The Litter" Respondent- AWA Docket No. D-09-0139**

Enclosed is a date-stamped copy of the decision and order issued by the Judicial Officer on the Secretary's behalf in the above-captioned proceeding.

Judicial review of this decision is available in an appropriate court if an appeal is timely filed. This office does not provide information on how to appeal. Please refer to the governing statute. If you are not currently represented by an attorney, you may choose to seek legal advice regarding an appeal.

Prior to filing an appeal, you may file a petition for reconsideration of the Judicial Officer's decision within 10 days of service of the decision. An original and three copies of the petition for reconsideration must be filed with this office.

Sincerely,

  
L. Eugene Whitfield  
Hearing Clerk

Enclosures

Sent to: Babak Ragoufard, OGC  
Lorna D. Harris, APHIS

caa: 12/2/2009

USA  
OCT 18 2009  
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UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) AWA Docket No. D-09-0139  
)  
Kathy Jo Bauck, an individual, )  
d/b/a Puppy's on Wheels, a/k/a )  
"Puppies on Wheels" and )  
"Pick of the Litter," )  
)  
Respondent ) **Decision and Order**

**PROCEDURAL HISTORY**

The Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], instituted this proceeding on June 22, 2009, by filing an "Order to Show Cause as to Why Animal Welfare License 41-B-0159 Should Not Be Terminated" [hereinafter Order to Show Cause]. The Administrator instituted the proceeding under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [hereinafter the Animal Welfare Act]; the regulations and standards issued under the Animal Welfare Act (9 C.F.R. §§ 1.1-3.142) [hereinafter the Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

The Administrator alleges: (1) Ms. Bauck operates as a “dealer,” as that term is defined in the Animal Welfare Act and the Regulations; (2) Ms. Bauck holds Animal Welfare Act license 41-B-0159; (3) on May 19, 2008, Ms. Bauck pled guilty to practicing veterinary medicine without having first secured a veterinary license or temporary permit, in violation of Minn. Stat. § 156.10;<sup>1</sup> and (4) on March 24, 2009, a jury found Ms. Bauck guilty on four counts of engaging in animal torture and animal cruelty, in violation of Minn. Stat. § 343.21 subdivs. 1 and 7<sup>2</sup> (Order to Show Cause ¶¶ 10, 14, 23-24). The Administrator seeks an order terminating Ms. Bauck’s Animal Welfare Act license and

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<sup>1</sup>Minn. Stat. § 156.10 provides, as follows:

**§ 156.10 Unlawful practice without license or permit; gross misdemeanor**

It is a gross misdemeanor for any person to practice veterinary medicine in the state without having first secured a veterinary license or temporary permit, as provided in this chapter.

<sup>2</sup>Minn. Stat. § 343.21 subdivs. 1 and 7 provide, as follows:

**§ 343.21 Overworking or mistreating animals; penalty**

**Subdivision 1. Torture.** No person shall overdrive, overload, torture, cruelly beat, neglect, or unjustifiably injure, maim, mutilate, or kill any animal, or cruelly work any animal when it is unfit for labor, whether it belongs to that person or another person.

....

**Subdivision 7. Cruelty.** No person shall willfully instigate or in any way further any act of cruelty to any animal or animals, or any act tending to produce cruelty to animals.

disqualifying Ms. Bauck from obtaining an Animal Welfare Act license for no less than 2 years (Order to Show Cause at 8).

On July 15, 2009, Ms. Bauck filed “Kathy Jo Bauck’s Return to Order to Show Cause as to Why Animal Welfare Act License Should Not Be Terminated” [hereinafter the Answer] in which she: (1) requested a hearing; (2) raised the defense of estoppel based upon inspections of her facility by the Animal and Plant Health Inspection Service [hereinafter APHIS] in which her facility was found in compliance with the Animal Welfare Act; (3) admitted she pled guilty, on an *Alford* basis, to practicing veterinary medicine without having first secured a veterinary license or temporary permit, in violation of Minn. Stat. § 156.10; and (4) admitted she was convicted of one count of animal torture, in violation of Minn. Stat. § 343.21 subdiv. 1 (Answer ¶¶ 1-3, 17, 23).

On August 13, 2009, the Administrator filed “Complainant’s Motion for Summary Judgment” [hereinafter Motion for Summary Judgment] in which the Administrator argued Ms. Bauck’s request for a hearing should be denied because the Animal Welfare Act license termination and disqualification from becoming licensed sought by the Administrator are based upon Ms. Bauck’s prior criminal convictions, which she has admitted, and there is no issue of material fact upon which to hold a hearing. On September 15, 2009, Ms. Bauck filed “Respondent’s Return to Complainant’s Motion for Summary Judgment” [hereinafter Response to Motion for Summary Judgment] opposing the Motion for Summary Judgment.

On September 29, 2009, Administrative Law Judge Peter M. Davenport [hereinafter the ALJ] issued a Decision and Order: (1) granting the Motion for Summary Judgment; (2) terminating Ms. Bauck's Animal Welfare Act license; and (3) disqualifying Ms. Bauck from becoming licensed under the Animal Welfare Act for a period of 2 years.

On October 29, 2009, Ms. Bauck appealed the ALJ's Decision and Order to the Judicial Officer, and on November 18, 2009, the Administrator filed a response to Ms. Bauck's appeal petition. On November 20, 2009, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision. Based upon a careful consideration of the record, I affirm the ALJ's Decision and Order.

## **DECISION**

### **Discussion**

The Animal Welfare Act provides that the Secretary of Agriculture shall issue licenses to dealers and exhibitors upon application for a license in such form and manner as the Secretary of Agriculture may prescribe (7 U.S.C. § 2133). The power to require and issue a license under the Animal Welfare Act includes the power to terminate a license and to disqualify a person from becoming licensed.<sup>3</sup> The Regulations specify the bases for denying an initial application for an Animal Welfare Act license (9 C.F.R. § 2.11) and further provide that an Animal Welfare Act license, which has been issued,

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<sup>3</sup>*In re Amarillo Wildlife Refuge, Inc.*, \_\_ Agric. Dec. \_\_, slip op. at 6 (Jan. 6, 2009); *In re Loreon Vigne*, \_\_ Agric. Dec. \_\_, slip op. at 3-4 (Nov. 18, 2008); *In re Mary Bradshaw*, 50 Agric. Dec. 499, 507 (1991).

may be terminated for any reason that an initial license application may be denied (9 C.F.R. § 2.12). The Regulations provide that an initial application for an Animal Welfare Act license will be denied if the applicant has been found to have violated state laws pertaining to the neglect or welfare of animals and the Administrator determines the issuance of the Animal Welfare Act license would be contrary to the purposes of the Animal Welfare Act, as follows:

**§ 2.11 Denial of initial license application.**

(a) A license will not be issued to any applicant who:

....

(6) Has made any false or fraudulent statements or provided any false or fraudulent records to the Department or other government agencies, or has pled *nolo contendere* (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals, or is otherwise unfit to be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act.

9 C.F.R. § 2.11(a)(6).

The purposes of the Animal Welfare Act are set forth in a congressional statement of policy, as follows:

**§ 2131. Congressional statement of policy**

The Congress finds that animals and activities which are regulated under this chapter are either in interstate or foreign commerce or substantially affect such commerce or the free flow thereof, and that regulation of animals and activities as provided in this chapter is necessary to prevent and eliminate burdens upon such commerce and to effectively regulate such commerce, in order—

(1) to insure that animals intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment;

(2) to assure the humane treatment of animals during transportation in commerce; and

(3) to protect owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen.

The Congress further finds that it is essential to regulate, as provided in this chapter, the transportation, purchase, sale, housing, care, handling, and treatment of animals by carriers or by persons or organizations engaged in using them for research or experimental purposes or for exhibition purposes or holding them for sale as pets or for any such purpose or use.

7 U.S.C. § 2131.

The Administrator alleged that Ms. Bauck is unfit to be licensed under the Animal Welfare Act based upon Ms. Bauck's having been found guilty by a Minnesota court on two occasions of criminal charges, the first being pursuant to an *Alford* plea to practicing veterinary medicine without a license or temporary permit, in violation of Minn. Stat. § 156.10<sup>4</sup> and the second, a jury conviction of animal torture and animal cruelty, in violation of Minn. Stat. § 343.21 subdvs. 1 and 7.<sup>5</sup> Ms. Bauck admits being convicted in both cases (Answer ¶¶ 14-17, 21-25).

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<sup>4</sup>*State of Minnesota v. Bauck*, 56-CR-08-1131 (Order to Show Cause Attach. B).

<sup>5</sup>*State of Minnesota v. Bauck*, 56-CR-08-2271 (Order to Show Cause Attach. D-Attach. E).

### Ms. Bauck's Appeal Petition

Ms. Bauck raises eight issues in her "Petition for Judicial Review of Summary Judgment Decision and Order Dated September 29, 2009" [hereinafter Appeal Petition].

First, Ms. Bauck contends she was denied a hearing conducted in accordance with the Rules of Practice (Appeal Pet. at 1-2 ¶¶ 2, 7).

I have repeatedly held summary judgment appropriate in cases involving the termination of an Animal Welfare Act license and disqualification from becoming licensed under the Animal Welfare Act based upon prior criminal convictions.<sup>6</sup> Hearings are futile where, as in the instant proceeding, there is no factual dispute of substance.<sup>7</sup>

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<sup>6</sup>See *In re Animals of Montana, Inc.*, \_\_\_ Agric. Dec. \_\_\_, slip op. at 15 (Mar. 10, 2009) (rejecting Animals of Montana's contention that summary judgment is inappropriate in Animal Welfare Act license termination and disqualification proceedings based upon prior convictions); *In re Amarillo Wildlife Refuge, Inc.*, \_\_\_ Agric. Dec. \_\_\_, slip op. at 6 (Jan. 6, 2009) (affirming the administrative law judge's initial decision granting the administrator's motion for summary judgment to terminate an Animal Welfare Act license based on the conviction of Amarillo Wildlife Refuge, Inc.'s president, director, and agent for violations of the Endangered Species Act notwithstanding Amarillo Wildlife Refuge, Inc.'s request for an oral hearing); *In re Loreon Vigne*, \_\_\_ Agric. Dec. \_\_\_, slip op. at 1-3 (Nov. 18, 2008) (affirming the administrative law judge's initial decision granting the administrator's motion for summary judgment to terminate an Animal Welfare Act license based on the Endangered Species Act conviction of a corporation that Loreon Vigne managed, directed, and controlled); *In re Mark Levinson*, 65 Agric. Dec. 1026, 1028 (2006) (upholding the administrative law judge's initial decision affirming the administrator's denial of Mark Levinson's Animal Welfare Act license application after the administrator demonstrated there was no material fact upon which to hold a hearing).

<sup>7</sup>*In re Animals of Montana, Inc.*, \_\_\_ Agric. Dec. \_\_\_, slip op. at 15 (Mar. 10, 2009) (stating hearings are futile where there is no factual dispute of substance); *Veg-Mix, Inc. v. U.S. Dep't of Agric.*, 832 F.2d 601, 607 (D.C. Cir. 1987) (affirming the Secretary of  
(continued...)



Thus, I reject Ms. Bauck's contention that she is entitled to an oral hearing under the Rules of Practice.

Second, Ms. Bauck argues the Administrator failed to conduct an investigation prior to the institution of the instant proceeding, as required by 7 C.F.R. § 1.133(a)(3) (Appeal Pet. at 1 ¶ 3).

The Administrator asserts he instituted the instant proceeding pursuant to 7 C.F.R. § 1.133(b), not 7 C.F.R. § 1.133(a) (Complainant's Opposition to Respondent's Appeal Pet. at 6). Ms. Bauck does not cite anything in the record indicating the Administrator instituted the instant proceeding pursuant to 7 C.F.R. § 1.133(a), and I find nothing in the record indicating the Administrator instituted the proceeding pursuant to 7 C.F.R. § 1.133(a). Section 1.133(b) of the Rules of Practice (7 C.F.R. § 1.133(b)) does not require that the Administrator conduct an investigation prior to filing a complaint.<sup>8</sup> Therefore, I reject Ms. Bauck's contention that the Administrator was required to conduct an investigation prior to the institution of the instant proceeding.

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<sup>7</sup>(...continued)

Agriculture's use of summary judgment under the Rules of Practice and rejecting Veg-Mix, Inc.'s claim that a hearing was required because it answered the complaint with a denial of the allegations).

<sup>8</sup>The Rules of Practice define the term "complaint" to include an "order to show cause." (7 C.F.R. § 1.132.)

Third, Ms. Bauck argues the Administrator failed to provide her written notice of the facts and a reasonable time to demonstrate compliance, prior to the institution of the instant proceeding, as required by the Rules of Practice (Appeal Pet. at 1-2 ¶ 4).

The Rules of Practice require the Administrator to provide written notice of the facts or conduct concerned and an opportunity to demonstrate or achieve compliance, prior to instituting a proceeding that may affect a license, as follows:

**§ 1.133 Institution of proceedings.**

....

(b) *Filing of complaint or petition for review.*

....

(3) As provided in 5 U.S.C. 558, in any case, except one of willfulness or one in which public health, interest, or safety otherwise requires, prior to the institution of a formal proceeding which may result in the withdrawal, suspension, or revocation of a "license" as that term is defined in 5 U.S.C. 551(8), the Administrator, in an effort to effect an amicable or informal settlement of the matter, shall give written notice to the person involved of the facts or conduct concerned and shall afford such person an opportunity, within a reasonable time fixed by the Administrator, to demonstrate or achieve compliance with the applicable requirements of the statute, or regulation, standard, instruction or order promulgated thereunder.

7 C.F.R. § 1.133(b)(3). In the instant proceeding, the Administrator seeks to terminate Ms. Bauck's Animal Welfare Act license as a result of her willful acts; thus, the Administrator was not required to give Ms. Bauck prior written notice of the facts or conduct concerned and an opportunity to demonstrate or achieve compliance with the Animal Welfare Act and the Regulations.

A willful act is an act in which the violator intentionally does an act which is prohibited, irrespective of evil motive or reliance on erroneous advice, or acts with careless disregard of statutory requirements.<sup>9</sup> Generally, a criminal act involves at least a careless disregard of statutory requirements. In a number of proceedings, I have terminated an Animal Welfare Act license based upon a licensee's criminal conviction without any written notice or opportunity to demonstrate or achieve compliance prior to the institution of the proceeding.<sup>10</sup> The United States Court of Appeals for the District of Columbia Circuit has also held that criminal convictions fall within the willfulness exception of 5 U.S.C. § 558(c) and, thus, has upheld license terminations based on criminal convictions, without any prior written notice and opportunity to demonstrate or achieve compliance.<sup>11</sup>

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<sup>9</sup>*In re D&H Pet Farms, Inc.*, \_\_ Agric. Dec. \_\_\_\_, slip op. at 19 (Oct. 19, 2009); *In re Jewel Bond*, 65 Agric. Dec. 92, 107 (2006), *aff'd per curiam*, 275 F. App'x 547 (8th Cir. 2008); *In re James E. Stephens*, 58 Agric. Dec. 149, 180 (1999); *In re Arab Stock Yard, Inc.*, 37 Agric. Dec. 293, 306 (1978), *aff'd mem.*, 582 F.2d 39 (5th Cir. 1978).

<sup>10</sup>*In re Animals of Montana, Inc.*, \_\_ Agric. Dec. \_\_ (Mar. 10, 2009); *In re Amarillo Wildlife Refuge, Inc.*, \_\_ Agric. Dec. \_\_ (Jan. 6, 2009); *In re Loreon Vigne*, \_\_ Agric. Dec. \_\_ (Nov. 18, 2008); *In re Mark Levinson*, 65 Agric. Dec. 1026 (2006).

<sup>11</sup>*Kleiman & Hochberg, Inc. v. U.S. Dep't of Agric.*, 497 F.3d 681, 691 (D.C. Cir. 2007) (upholding revocation of license without first providing notice and an opportunity to demonstrate compliance on the basis of the violator having pled guilty to bribing a United States Department of Agriculture inspector), *cert. denied sub nom. Hirsch v. Dep't of Agric.*, 128 S.Ct. 1748 (2008); *Coosemans Specialties, Inc. v. U.S. Dep't of Agric.*, 482 F.3d 560, 567-68 (D.C. Cir.) (same), *cert. denied*, 128 S.Ct. 628 (2007).

Ms. Bauck has been the defendant in two criminal prosecutions instituted by the State of Minnesota. In *State of Minnesota v. Bauck*, 56-CR-08-1131, Ms. Bauck pled guilty (in response to six charges against her) to practicing veterinary medicine without having first secured a veterinary license or temporary permit, in violation of Minn. Stat. § 156.10 (Order to Show Cause Attach. A-Attach. B). In the second action, *State of Minnesota v. Bauck*, 56-CR-08-2271, a jury convicted Ms. Bauck on four counts of animal torture and animal cruelty, in violation of Minn. Stat. § 343.21 subdvs. 1 and 7. The Otter Tail County District Court, Criminal Division, Seventh Judicial District of the State of Minnesota, vacated three of the four counts, but found Ms. Bauck guilty of torturing a Mastiff, in violation of Minn. Stat. § 343.21 subd. 1. (Order to Show Cause Attach. C-Attach. E.) Thus, I conclude Ms. Bauck's criminal acts were willful, and the termination of her Animal Welfare Act license falls within the willfulness exception of 5 U.S.C. § 558(c) and 7 C.F.R. § 1.133(b)(3). Accordingly, I reject Ms. Bauck's argument that she must be "give[n] written notice" and a "reasonable time to demonstrate compliance" prior to the institution of the instant proceeding.

Fourth, Ms. Bauck argues a material issue of fact exists which requires a hearing in the instant proceeding. Specifically, Ms. Bauck states the cause of her conviction in *State of Minnesota v. Bauck*, 56-CR-08-2271, for torturing a Mastiff, in violation of Minn. Stat. § 343.21 subd. 1, is at issue. Ms. Bauck asserts she was convicted as a

result of conduct by an animal rights infiltrator, who was seeking to fabricate evidence sufficient to result in Ms. Bauck's prosecution. (Appeal Pet. at 2 ¶¶ 5, 8-9.)

The Regulations provide that an Animal Welfare Act license may be terminated if an Animal Welfare Act licensee has been found to have violated any state law pertaining to the neglect or welfare of animals (9 C.F.R. §§ 2.11(a)(6), .12). Ms. Bauck admits she pled guilty to violating Minn. Stat. § 156.10 and was convicted of violating Minn. Stat. § 343.21,<sup>12</sup> two state laws that, on their face, pertain to animal neglect and welfare. Ms. Bauck's conviction in *State of Minnesota v. Bauck*, 56-CR-08-2271, for violating Minn. Stat. § 343.21 subdiv. 1, is a material fact in the instant proceeding; the cause of Ms. Bauck's conviction is not a material fact in the instant proceeding. Ms. Bauck cannot relitigate her past criminal convictions in this Animal Welfare Act license termination and disqualification proceeding.<sup>13</sup> If Ms. Bauck wishes to contest her conviction in *State of Minnesota v. Bauck*, 56-CR-08-2271, she must turn to the State Courts of Minnesota, as that is proper forum in which to direct her arguments.

Fifth, Ms. Bauck argues the Administrator is barred from instituting the instant proceeding inasmuch as APHIS has inspected her facility and found the facility in compliance with the Animal Welfare Act (Appeal Pet. at 2 ¶ 6).

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<sup>12</sup>Answer ¶¶ 14-17, 21-25.

<sup>13</sup>See *In re Amarillo Wildlife Refuge, Inc.*, \_\_\_ Agric. Dec. \_\_\_, slip op. at 15 (Jan. 6, 2009) (rejecting Amarillo Wildlife's attempt to relitigate a prior criminal conviction in an Animal Welfare Act license termination proceeding).

The only issues in the instant proceeding relate to Ms. Bauck's conviction of Minnesota laws regarding neglect or welfare of animals and the reasonableness of the Administrator's determination that Ms. Bauck's retention of an Animal Welfare Act license is contrary to the purposes of the Animal Welfare Act. The condition of Ms. Bauck's facility, as it relates to the requirements of the Animal Welfare Act and the Regulations, is irrelevant.

Sixth, Ms. Bauck argues the termination of her Animal Welfare Act license deprives her of property without due process, in violation of the Sixth and Fourteenth Amendments to the Constitution of the United States (Appeal Pet. at 2 ¶ 7).

Sixth Amendment rights are explicitly confined to criminal prosecutions and the Sixth Amendment does not include a provision protecting against the deprivation of property, as follows:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

U.S. Const. amend. VI.

The instant proceeding is not a criminal prosecution. Instead, the instant proceeding is a disciplinary administrative proceeding conducted under the Animal Welfare Act, in accordance with the Administrative Procedure Act. It is well settled that

the Sixth Amendment to the Constitution of the United States is only applicable to criminal proceedings and is not applicable to civil proceedings.<sup>14</sup> Thus, I conclude Ms. Bauck's rights under the Sixth Amendment to the Constitution of the United States are not implicated in this administrative proceeding.

The due process clause of the Fourteenth Amendment to the Constitution of the United States, by its terms, is applicable to the states and is not applicable to the federal government. The United States Department of Agriculture is an executive department of the government of the United States;<sup>15</sup> it is not a state. Therefore, as a matter of law, the Administrator could not have violated the due process clause of the Fourteenth Amendment to the Constitution of the United States, as Ms. Bauck contends.<sup>16</sup>

Seventh, Ms. Bauck argues the Secretary of Agriculture has unlawfully delegated authority to entities not under the control of the Secretary of Agriculture. Specifically, Ms. Bauck contends, by providing that an Animal Welfare Act license may be terminated if a licensee has violated state or local laws or regulations, the Secretary of Agriculture

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<sup>14</sup>See *Austin v. United States*, 509 U.S. 602, 609 (1993) (stating the protections provided by the Sixth Amendment are explicitly confined to criminal prosecutions); *United States v. Ward*, 448 U.S. 242, 248 (1980) (stating the protections provided by the Sixth Amendment are explicitly confined to criminal prosecutions); *United States v. Zucker*, 161 U.S. 475, 481 (1895) (stating the Sixth Amendment relates to prosecution of an accused person which is technically criminal in nature).

<sup>15</sup>See 5 U.S.C. §§ 101, 551(1).

<sup>16</sup>*In re Glenn Mealman* (Order Denying Pet. to Reconsider), 64 Agric. Dec. 1987, 1990 (2005); *In re Bodie S. Knapp*, 64 Agric. Dec. 253, 303-04 (2005).

has unlawfully delegated authority to the states and local governments to set the standards for termination of Animal Welfare Act licenses. (Appeal Pet. at 2-3 ¶¶ 10-11.)

Congress explicitly authorized the Secretary of Agriculture to cooperate with state and local governments in carrying out the purposes of the Animal Welfare Act, as follows:

**§ 2145. Consultation and cooperation with Federal, State, and local governmental bodies by Secretary of Agriculture**

....

(b) The Secretary is authorized to cooperate with the officials of the various States or political subdivisions thereof in carrying out the purposes of this chapter and of any State, local, or municipal legislation or ordinance on the same subject.

7 U.S.C. § 2145(b). I find 9 C.F.R. § 2.11(a)(6) entirely consistent with 7 U.S.C.

§ 2145(b), and I reject Ms. Bauck's contention that the Secretary of Agriculture has unlawfully delegated authority to state and local governments.

Eighth, Ms. Bauck argues the Regulations are unconstitutionally void for vagueness. Based upon Ms. Bauck's Appeal Petition, I infer her argument relates to the provision in 9 C.F.R. § 2.11(a)(6) upon which the termination of her Animal Welfare Act license is based; namely, the provision that her license may be terminated if she "has been found to have violated any . . . State . . . law[] . . . pertaining to the transportation, ownership, neglect, or welfare of animals[.]" (Appeal Pet. at 3 ¶ 11.)

A regulation is unconstitutionally vague if the regulation is so unclear that ordinary people cannot understand what conduct is prohibited or required or that it encourages



arbitrary and discriminatory enforcement.<sup>17</sup> I do not find 9 C.F.R. § 2.11(a)(6) so unclear that ordinary people cannot understand what is prohibited or so unclear that it encourages arbitrary and discriminatory enforcement by the Secretary of Agriculture.

### Findings of Fact

1. Ms. Bauck is an individual who has a mailing address in New York Mills, Minnesota.
2. Ms. Bauck operates as a “dealer,” as that term is defined in the Animal Welfare Act and the Regulations.
3. Ms. Bauck holds Animal Welfare Act license number 41-B-0159.
4. On May 19, 2008, Ms. Bauck was found guilty, pursuant to an *Alford* plea, by the Otter Tail County District Court, Criminal Division, Seventh Judicial District of the State of Minnesota, of practicing veterinary medicine without a veterinary license or temporary permit, in violation of Minn. Stat. § 156.10. *State of Minnesota v. Bauck*, 56-CR-08-1131 (Order to Show Cause Attach. B).
5. On March 24, 2009, Ms. Bauck was found guilty by a jury verdict in Otter Tail County District Court, Criminal Division, Seventh Judicial District of the State of Minnesota, of animal torture and animal cruelty, in violation of Minn. Stat. § 343.21

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<sup>17</sup>*Thomas v. Hinson*, 74 F.3d 888, 889 (8th Cir. 1996); *Georgia Pacific Corp. v. Occupational Safety & Health Review Comm’n*, 25 F.3d 999, 1004-05 (11th Cir. 1994); *Throckmorton v. NTSB*, 963 F.2d 441, 444 (D.C. Cir. 1992); *The Great American Houseboat Co. v. United States*, 780 F.2d 741, 746 (9th Cir. 1986); *United States v. Sun & Sand Imports, Ltd.*, 725 F.2d 184, 187 (2d Cir. 1984).

subdivs. 1 and 7. *State of Minnesota v. Bauck*, 56-CR-08-2271 (Order to Show Cause Attach. D).

6. On May 1, 2009, Ms. Bauck was sentenced in *State of Minnesota v. Bauck*, 56-CR-08-2271, to be confined in the county jail for a period of 90 days (with 70 days suspended for a period of 1 year with specified conditions), to pay a fine of \$1,000 (of which \$500 was suspended), to be placed on formal supervised probation, to complete 80 hours of community service, and to allow inspections of her property as long as she was continuing to work with animals (Order to Show Cause Attach. E).

7. On May 1, 2009, three of the four counts for which Ms. Bauck was found guilty in *State of Minnesota v. Bauck*, 56-CR-08-2271, were vacated, leaving only Count 5, which involved Ms. Bauck's torture of a Mastiff on or between May 14, 2008, and May 24, 2008, in Otter Tail County, Minnesota, in violation of Minn. Stat. § 343.21 subdiv. 1 (Order to Show Cause Attach. E).

### **Conclusions of Law**

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Based on the Findings of Fact, I conclude Ms. Bauck is unfit to be licensed under the Animal Welfare Act, within the meaning of 9 C.F.R. § 2.11(a)(6).
3. Based on the Findings of Fact, I conclude the Administrator's determination that Ms. Bauck's retention of an Animal Welfare Act license is contrary to the purposes of the Animal Welfare Act, is reasonable.

For the foregoing reasons, the following Order is issued.

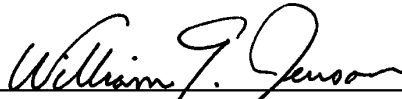
**ORDER**

1. Ms. Bauck's Animal Welfare Act license number 41-B-0159 is terminated.
2. Ms. Bauck is disqualified for 2 years from becoming licensed under the Animal Welfare Act or otherwise obtaining, holding, or using an Animal Welfare Act license, directly or indirectly through any corporate or other device or person.

This Order shall become effective on the 60th day after service of this Order on Ms. Bauck.

Done at Washington, DC

December 2, 2009



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William G. Jenson  
Judicial Officer