

**OHIO DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF WILDLIFE**

**MARY CARRELLI,  
Appellant**

**v.**

**DIVISION OF  
WILDLIFE,  
Appellee**

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**In Re: Denial of an Application for  
Category II Permit and  
Letter Authority for  
Wildlife Rehabilitation**

**GARY E. BROWN, ESQ.  
Hearing Officer**

**REPORT OF THE HEARING OFFICER**

**STATEMENT OF THE CASE**

On or about June 9, 2008, Mary C. Carrelli, the Appellant herein, filed an application with the Division of Wildlife, Ohio Department of Natural Resources, for a Category II wildlife rehabilitator permit along with a request for a letter permit to rehabilitate whitetail fawns, bobcat and black bear cubs.

On June 16, 2008, David M. Graham, Chief of the Division of Wildlife, Ohio Department of Natural Resources, issued an order denying Carrelli's June 9, 2008 application.

On or about June 23, 2008, Carrelli, through her attorney, filed a request for a hearing regarding the denial of her application for a Category II wildlife rehabilitation permit.

By certified mail dated June 26, 2008, Chief Graham acknowledged receipt of Carrelli's request for a hearing and notified her that, pursuant to R.C. 119.07, he was setting this matter for hearing.

Between June 26, 2008, and November 6, 2008, various continuances were requested and properly granted. A status conference was conducted by this Hearing Officer on August 14, 2008. Discovery was conducted and completed and the parties filed pre-hearing statements with the Hearing Officer.

On November 6 and 7, 2008, an administrative hearing was held pursuant to R.C. Chapter 119. During this hearing the Division of Wildlife presented the testimony of four (4) witnesses: (1) Carolyn B. Caldwell, Wildlife Biology Program Administrator; (2) Alan Wright, State Wildlife Officer, Department of Natural Resources; (3) James R. Tunnell, Investigator, Division of Wildlife; and (4) David M. Graham, Chief, Division of Wildlife. The Division also submitted twenty-eight (28) exhibits which were admitted into evidence. The Appellant, Mary Carrelli, presented the testimony of herself along with the testimony of Mr. Richard C. Carrelli, her husband and partner in her wildlife rehabilitation operation. The Appellant submitted ten (10) exhibits which were admitted into evidence.

Thereafter, upon the court reporter's completion of the four (4) volume transcript, counsel for the parties filed post hearing briefs and reply briefs. The case is now joined.

### **FINDINGS OF FACT**

1. Mary Carrelli is the Appellant in this matter and she is ably represented by Attorney Robert B. Newman.
2. The Ohio Department of Natural Resources, Division of Wildlife, is the Appellee in this matter and the Appellee is ably represented by Assistant

Attorneys General Rachel H. Stelzer and Raymond J. Studer.

3. Mary Carrelli has been issued numerous and various wild animal permits, including Category II rehabilitator permits, by the Division of Wildlife, since the early 1990s. (See Carrelli Exhibits 4 and 5)
4. From 1990 until Ms. Carrelli relinquished her most recently held wildlife rehabilitation permits, she has rehabilitated or supervised the rehabilitation of over nine thousand (9,000) animals . (M. Carrelli, Vol. 4, p.129, lines 16-19 and Carrelli Exhibit 3)
5. Mary Carrelli has authored numerous articles and delivered numerous lectures in the field of wildlife rehabilitation. (See Carrelli Exhibit 8)
6. Mary Carrelli has authored an extensive rehabilitation manual that is widely used by animal rehabilitators throughout Ohio and elsewhere. (See Carrelli Exhibit 1; M. Carrelli, Vol. 4, p. 130, lines 19-25; Vol. 4, p. 142)
7. Mary Carrelli has received extensive training as a wildlife rehabilitator. (Carrelli Exhibit 8; M. Carrelli, Vol. 4, pp. 128-129)
8. Mary Carrelli was the primary founder of a nonprofit 501(c)(3) corporation known as "Second Chance Wildlife." Second Chance Wildlife is an all volunteer nonprofit organization devoted to rehabilitating orphaned, injured and abandoned wildlife. It is an organization consisting of over 2,000 members of which 22-23 members hold wildlife rehabilitation permits. (M. Carrelli, Vol. 4, pp. 133-134;

R. Carrelli, Vol. 3, pp. 87-88) Mary Carrelli is one of the members of this organization who also held wildlife rehabilitation permits.

9. Mary Carrelli also called her personal rehabilitation operation “Second Chance Wildlife”. Mary Carrelli, with the help of her husband, actually conducted this animal rehabilitation operation personally on their 100 acre farm located in Brown County, Ohio. (M. Carrelli, Vol. 4, pp. 186-189; R. Carrelli, Vol. 3, p. 118)  
Thus, there are, in fact, two distinct Second Chance Wildlife entities.
10. During calendar year 2008 there were 85 persons holding wildlife rehabilitation permits issued by the Division of Wildlife. (Carolyn Caldwell, Wildlife Biology Program Administrator, Division of Wildlife, Vol. 1, p. 15, line 11)
11. The total number of wildlife rehabilitation permit holders in Ohio in any given year ranges between 80 and 85. (Caldwell, Vol. 1, p. 15, lines 11-12)
12. The Ohio Division of Wildlife considers wildlife rehabilitation permit holders to be “representatives” of the Division of Wildlife even though permit holders perform their services on a volunteer basis. ( Chief Graham, Vol. 2, p. 239)
13. Mary Carrelli is a member of the Ohio Wildlife Rehabilitation Association and has continuously been a member since the Association was founded in 1991.  
M. Carrelli, Vol. 4, pp. 128 and 134-135.

#### **A. Mary Carrelli’s June 2008 Application And Its Background**

14. In a letter dated July 5, 2007, Ms. Carrelli relinquished her then existing Category II rehabilitator permit as well as her letter permit to handle whitetail

fawns, both of which were scheduled to expire March 15, 2008. (See Division Exhibit 14)

15. In a letter dated July 6, 2007, David Graham, Chief of the Division of Wildlife, accepted the early termination of Ms. Carrelli's above referenced permits. (See Division Exhibit 15)
16. On or about June 9, 2008, Mary Carrelli submitted an application to the Division of Wildlife for a new Category II rehabilitator permit and for an additional letter permit to rehabilitate whitetail fawns, bobcat, and black bears. (See Division Exhibit 7)
17. The 2008 rehabilitator permit application form, filled out and filed by Ms. Carrelli, stated in bold font that: "**completing the application does not ensure you will be issued a Rehabilitation Permit from the Ohio Division of Wildlife.**" (See Division Exhibit 2, p. 2 and Exhibit 7, p. 2)
18. Ms. Carrelli's June 9, 2008 permit application was denied by Chief Graham in a letter dated June 16, 2008. (See Division Exhibit 16)
19. Prior to this denial of Ms. Carrelli's June 9, 2008 application for a rehabilitator permit, there was one other such permit application denied in calendar year 2002. That permit application was denied because the person applying for this permit had "violated a wildlife law" and had unlawfully held a mammal species without a permit. (Caldwell, Vol. 1, pp. 70-71)

20. Ms. Carrelli, through her attorney in a letter dated June 23, 2008, requested an administrative hearing on the subject of the Chief's denial of her application. (See Division Exhibit 17)

21. Ms. Carrelli's hearing request was granted and Notice of the hearing date was sent to Ms. Carrelli via certified mail on June 26, 2008. (See Division Exhibit 18)

### **B. Second Chance Wildlife**

22. Mary and Richard Carrelli are wife and husband and operate Second Chance Wildlife from their Brown County farm. Ms. Carrelli testified that Second Chance Wildlife's corporate address is Mary and Richard Carrelli's farm in Fayetteville, Ohio ( M. Carrelli, Vol. 4, p. 189, line 14; see also, R. Carrelli, Vol. 3 p. 118)

23. Richard Carrelli testified that he is the treasurer of Second Chance Wildlife. (Vol. 3, p. 122, line 14)

24. Richard Carrell has never held a rehabilitator permit issued by the Division and has, instead, worked under his wife's permit. (Vol. 3, p. 117, line 22)

25. Ms. Carrelli testified that she considers Richard Carrelli a partner in her rehabilitation operation stating "It's something we do together." (Vol. 4, p. 191, lines 7-19)

### **C. 2007 Bobcat Incident**

26. On June 25, 2007, 10 days before relinquishing her permits to the Division, Ms. Carrelli accepted a wild bobcat kitten, an endangered species, for rehabilitation from Kim Brown, another wildlife rehabilitator in Ohio.

(M. Carrelli, Vol. 4, p. 166, line 8; Caldwell, Vol. 1, page 36, lines 11-16; see also Division Exhibit 24)

27. Ms. Carrelli was aware that bobcats are an endangered species in Ohio.

(M. Carrelli, Vol. 4, p. 182, line 25)

28. In June, 2007, Ms. Carrelli held a Category II rehabilitator permit and a letter permit to rehabilitate whitetail fawns. (See Division Exhibits 3 and 5) The Division granted Ms. Carrelli these permits after reviewing her renewal application dated March 26, 2007. Mary Carrelli's signature on the first page of that renewal application certified that "any rehabilitation conducted under this permit will be in accordance with [the] Ohio Revised Code, Division Administrative Rules, Minimum Standards for Wildlife Rehabilitation in Ohio, and conditions of this permit." (See Division Exhibit 4)

29. The Category II rehabilitator permit and the letter permit Ms. Carrelli held on June 25, 2007 did not allow her to rehabilitate a bobcat, an endangered species, without approval by the Chief. (See Division Exhibits 3 and 5)

30. Ms. Carrelli was aware that she needed to request approval in a writing addressed to the Chief in order to rehabilitate species outside those authorized by her Category II permit. In the past, she had applied in writing for letter permit authority to rehabilitate whitetail fawns no less than four times. (M. Carrelli, Vol. 4, p. 181, line 4) Just four months prior to the bobcat incident, in March, 2007, Ms. Carrelli had written the Chief requesting a renewal of her letter permit to rehabilitate whitetail fawns. (See Division Exhibit 7)

31. Ms. Carrelli did not write Chief Graham requesting letter permit authority to rehabilitate the bobcat after accepting the animal to her facility on June 25, 2007. (M. Carrelli, Vol. 4, p. 183, line 3)
32. Chief Graham testified that even if Ms. Carrelli had sent a letter to him requesting letter authority to rehabilitate the bobcat kitten, he would not have granted it because there was, at that time, a sufficient number of endangered species rehabilitators in the state. (Vol. 2, p. 230, line 16)
33. Division employee, Carolyn Caldwell, asked Ms. Carrelli to make arrangements to turn the bobcat over to the Division in a July 1, 2007 phone call. Ms. Carrelli refused to make the requested arrangements. (Caldwell, Vol. 1, p. 43, line 13 – p. 46, line 4) At the end of the July 1, 2007 phone call, Ms. Carrelli stated she would not relinquish the bobcat and hung up the phone. (Caldwell, Vol. 1, p. 124, line 4)
34. Carolyn Caldwell has worked for the Division since 1994 (Vol. 1, p. 11, line 13) and is the Wildlife Biology Program Administrator. (Vol. 1, p. 11, line 22) Since 1996, she has been involved in the Division's wildlife rehabilitation permitting program. (Vol. 1, p. 12, line 8) Ms. Caldwell is authorized to issue Category I and II wildlife rehabilitator permits on the Chief's behalf. (Chief Graham, Vol. 2, p. 211, line 1) She does not have authority to issue letter permits. (Chief Graham, Vol. 2, p. 212, line 11) Ms. Caldwell testified that she has known Mary and Richard Carrelli since 1996. ( Vol. 1, p. 25, line 15)
35. Wildlife Officer Allan Wright is the wildlife officer based in Brown County where the Carrelli's farm is located. Officer Wright testified that he has worked



with Mary and Richard Carrelli in his capacity as wildlife officer since 1993 or 1994. ( Vol. 2, p. 137, line 4 and p. 158, line 18) Officer Wright also testified that a wildlife officer has to “constantly” work with the wildlife rehabilitators in their county (Vol. 2, p. 137, line 8) and that every spring he was at the Carrelli’s farm almost daily. (Vol. 2, p. 159, line 22)

36. Richard Carrelli, in voicemails for Carolyn Caldwell and Officer Wright on July 2, 2007, refused to relinquish the bobcat to the Division. (See Division Exhibit 25 [two (2) voicemails to Officer Wright and one (1) voicemail to Carolyn Caldwell]; see also, Caldwell, Vol. 1, pp. 48-49 and Wright, Vol. 2, pp. 151-156)

37. In the July 2, 2007 voicemail for Officer Wright, Richard Carrelli stated in part, “. . . We received a call (laugh), very auspiciously, from Carolyn Caldwell yesterday afternoon about four o’clock, and it is indicated that she wants to pick up the bobcat, uh, bobcat kitten from over here. Well, our, our answer, of course is no. As long as you are advised as to our position. Have a good day.” (See Division Exhibit 25)

38. In the July 2, 2007 voicemail for Carolyn Caldwell, Richard Carrelli stated in part, “. . . There is no sense spending any time to pick up this bobcat. We are not relinquishing its care. . . .” (Vol. 1, p. 48, lines 19-26 and p. 49, lines 2-6)

39. The Division was forced to obtain and execute a search warrant on July 2, 2007 to recover the bobcat from the Carrelli’s farm. (See Division Exhibit 9) Both Mary and Richard Carrelli were present during the search warrant’s execution. (Tunnell, Vol. 2, pp. 176-181)

40. During the search warrant's execution, Richard Carrelli initially refused to relinquish the bobcat. He demanded a summons from Investigator Randy Tunnell, the team leader for the Division during the search warrant's execution. (Tunnell, Vol. 2, p. 177, line 9-21)
41. As a consequence of his actions during the search warrant's execution on July 2, 2007, Richard Carrelli was cited for deterring a wildlife officer from carrying into effect a law or division rule. (Tunnell, Vol. 2, p. 183, line 21 and Vol. 2, p. 203, line 9; see also Division Exhibit 10) Mr. Carrelli ultimately pled no contest and was found guilty. (Tunnell, Vol. 2, p. 207, line 2)
42. On July 5, 2007, three days after being cited for his actions during the search warrant's execution, Richard Carrelli sent a letter to Chief Graham demanding "a gilded letter of apology for the rogue action of Ms. Caldwell, and which also supports the volunteer work of Second Chance Wildlife," the bobcat's return, the withdrawal of his citation, as well as \$50,000.00. (See Division Exhibit 13)
43. Also, on July 5, 2007, as noted *supra*, Ms. Carrelli relinquished her Category II rehabilitator permit and her letter permit to handle whitetail fawns. (See Division Exhibit 14)
44. Chief Graham testified that following the bobcat incident he would have revoked the rehabilitator permit and letter permits held by Ms. Carrelli had she not voluntarily returned those permits. (Vol. 2, p. 236, line 1)

#### **D. 1996 Coyote Incident**

45. According to Ms. Carrelli's records, in 1996, she held several coyotes for 163 days. (See Division Exhibit 12)
46. During the relevant time in 1996, Chief Graham was the district operations manager in Wildlife District Five in Southwest Ohio which includes Brown County. (Chief Graham, Vol. 2, pp. 212-213) Chief Graham testified, that to his knowledge, Ms. Carrelli did not ask for permission to rehabilitate the coyotes at issue for longer than the 90 days her permit allowed. (Vol. 2, p. 228, line 12) However, Chief Graham later testified that he didn't have the full story about the reasons behind the coyotes being held for 163 days. (Vol. 3, p. 48, line 9) In addition, both Ms. Carrelli and Mr. Carrelli provided unrefuted testimony that Wildlife Officer Alan Wright had given them permission to keep the coyotes for the 163 days. (Vol. 4, pp. 149 and 159) Finally, no charges were ever filed and Chief Graham in regard to this coyote matter. (Vol. 3, pp. 20-21)

#### **E. 1996 Black Bear Incident**

47. In the summer of 1996 the Division delivered a black bear cub, which had been seized as part of a court case in Hamilton County, to Mary and Richard Carrelli to hold temporarily. The black bear cub was to be held by the Carrellis only until the conclusion of the court case. (Chief Graham, Vol. 2, pp. 213-214)
48. After the bear cub was delivered to the Carrelli's, both Mary and Richard Carrelli expressed in phone conversations with Chief Graham, then Wildlife District Five Manager, that they wanted the cub to remain with them. They had

named the bear “Boo.” (Graham, Vol. 2, pp. 215-217; M. Carrelli, Vol. 4, p. 159-160)

49. Chief Graham testified that during these conversations, Mary Carrelli sounded “anywhere from upset, emotional, sometimes crying . . . to pretty adversarial and quite mad at me for not agreeing with her and allowing her to do what she wanted to do.” (Vol. 2, p. 217, line 7)
50. Chief Graham testified that during these conversations, Richard Carrelli’s tone was adversarial, “he’d get quite mad at me and defy [the Division’s] authority, question our authority over the rehab process . . . whether we could tell them what to do and whether we had the authority to remove the bear and threats and the like.” (Vol. 2, p. 217)
51. Chief Graham testified “he [Richard Carrelli] got so mad at me one day that he told me if I came on his property he was going to kill me.” (Vol. 2, p. 218) This allegation was vociferously denied by Mr. Carrelli. ( Vol. 3, pp. 93-94)
52. The bear cub was recovered from the Carrellis in early July, 1996. Officer Wright gave Mary Carrelli 10 to 15 minutes notice that Division employees were coming to collect the cub. (Vol. 2, p. 140, line 19) Richard Carrelli was not at the Carrelli’s farm while Division staff recovered the bear cub. (Vol. 2, p. 141, line 23)
53. Chief Graham testified that he was motivated to give Ms. Carrelli such short notice because “there was a chance that they [the Carrellis] would try to remove the bear if they had too much notice and we [the Division] would have trouble recovering it.” (Vol. 2, p. 222, line 17)

54. A month later, in August 1996, Mary Carrelli told Wildlife Officer Wright, that had the Division given her five more minutes notice she could have had “Boo out of there.” (See Division Exhibit 8)
55. Wildlife Officer Wright testified that he believes had the Division given Ms. Carrelli “a little more notice” that the bear cub would not have been at the Carrelli farm when Division staff came to collect it. He testified, “If I’d have called her [Mary Carrelli] in the morning and said we’d have been there at 5:00 o’clock I don’t think that bear would have been there.” (Vol. 2, p. 145, line 16)

## **CONCLUSIONS OF LAW**

### **A. Statutory and Regulatory Scheme**

#### **1. The Chief “may issue” Category II Rehabilitator Permits.**

1. Pursuant to R.C. § 1531.02, the State has ownership of and holds title to all wild animals in trust for the benefit of the people of Ohio.
2. Coyotes, whitetail fawns, black bears and bobcats are wild animals pursuant to O.A.C. § 1501:31-1-02.
3. Black bears and bobcats are endangered species in Ohio pursuant to O.A.C. § 1501:31-23-01(A)(1).
4. Pursuant to R.C. § 1531.02, individual possession of wild animals may only be obtained and maintained in accordance with the Ohio Revised Code or Division of Wildlife rules.

5. The Chief of the Division of Wildlife has broad authority and powers pursuant to R.C. § 1531.08 which states in part:

In conformity with Section 36 of Article II, Ohio Constitution, providing for the passage of laws for the conservation of the natural resources of the state. . . the chief of the division of wildlife has **authority and control in all matters pertaining to the protection, preservation, propagation, possession, and management of wild animals** and may adopt rules . . . for the management of wild animals.

\* \* \*

The chief may regulate . . . [the] taking and **possessing** [of] wild animals, **at any time and place or in any number, quantity, or length, and in any manner, and with such devices as he prescribes . . .**

R.C. § 1531.08 (emphasis added).

6. Pursuant to R.C. § 1533.08, the Chief has broad powers to issue rehabilitator permits, a type of “wild animal permit.” Section 1533.08 states in pertinent part:

Except as otherwise provided by division rule, any person desiring to collect or possess wild animals . . . for . . . rehabilitation shall make an annual application to the chief of the division of wildlife for a wild animal permit on a form furnished by the chief. . . . **The chief may issue to the applicant a permit to take, possess, and transport at any time and in a manner that is acceptable to the chief specimens of wild animals . . . for rehabilitation . . .** Upon the receipt of a permit, the holder may take, possess, and transport those wild animals **in accordance with the permit.**

R.C. § 1533.08 (emphasis added).

7. The General Assembly’s use of “may” in R.C. § 1533.08 reflects its desire to give the Chief broad discretion in determining whether a rehabilitator permit application should be granted. If the General Assembly had intended to mandate

that a rehabilitator permit be automatically granted upon application to the Division, it would have used the word “shall” as it did elsewhere in R.C. § 1533.08. “Ordinarily, the word, ‘shall,’ is a mandatory one, whereas ‘may’ denotes the granting of discretion.” *Dennison v. Dennison* (1956), 165 Ohio St. 146, 149.

8. Section 1501:31-25-03 of the Ohio Administrative Code specifically governs rehabilitator permits and provides for two types of rehabilitator permits. A Category I rehabilitator permit is appropriate for an entry level rehabilitator and a Category II rehabilitator permit is suitable for a more experienced rehabilitator. (Caldwell, Vol. 1, pp. 15-16)
9. Section 1501:31-25-03 of the Ohio Administrative Code provides the minimum requirements needed in order to seek the issuance of a permit by the Chief pursuant to the authority vested in him under R. C. 1533.08.
10. Section 1501:31-25-03 of the Ohio Administrative Code does not state that the Chief must or will issue a rehabilitator permit if the bare bones requirements set forth in the rule are met. It does not state that the Chief may no longer employ the discretion found in R.C. §§ 1531.02, 1531.08 and 1533.08. Ostensibly, if the Division had intended that the fulfillment of the requirements set forth in O.A.C. § 1501:31-25-03 to result in the automatic or mandatory issuance of a permit it would have so stated.
11. Statutes relating to the same subject matter must be read *in pari materia* in order to “arrive at a reasonable construction giving the proper force and effect, if

possible, to each statute.” *D.A.B.E., Inc. v. Toledo-Lucas Cty. Bd. Of Health* (2002), 96 Ohio St.3d 250, 255.

12. Revised Code sections 1531.02 (“State ownership of wild animals”), 1531.08 (“Powers and authority of Chief of division”), 1533.08 (“Scientific, educational or rehabilitation collection permits”) and O.A.C. § 1501:31-25-03 (“Rehabilitators permit”) must be read together. As trustee of all wild animals in this state, the Chief has been given broad authority by the General Assembly to issue rehabilitator permits when he believes that it is in the public interest to do so.
13. Under this statutory and administrative scheme, when considering whether to grant a permit under R. C. 1533.08, the Chief may consider evidence of an applicant’s failure to comply with Division rules, statutes, and permit conditions in the past. Past violations may be considered relevant to possible future action by the permit applicant. See *St. Augustine Catholic Church v. Attorney General of Ohio, Charitable Foundations Section* (1981), 67 Ohio St. 2d 133, 137.
14. Further, the applicant’s past violations may impact the working relationship between the Division and the rehabilitator and, as such, are properly within the Chief’s discretion to consider when exercising his discretion under R.C. 1533.08.

**2. The Chief may issue letter permits to Category II permit holders.**

15. As noted above, Category II rehabilitator permit holders are not authorized to rehabilitate all species. Ohio Administrative Code section 1501:31-25-03(F) states that deer, coyote, or state or federal endangered species cannot be rehabilitated “unless otherwise approved by the Chief of the division of wildlife.”



16. Approval by the Chief to rehabilitate otherwise prohibited species comes in the form of a “letter permit.” Letter permits are controlled by O.A.C. § 1501:31-25-01 (H) which states that “[the Chief] is . . . authorized to issue free letter permits to qualified persons for the taking, possession or transportation of wild animals, including . . . endangered species.” Persons desiring a letter permit are required to “supply information as required by the Chief.” *Id.* Failure to provide such information will result in denial of the permit application. *Id.*
17. The rehabilitator permit application requires that a letter permit applicant must “submit a letter to the Chief of the Division of Wildlife specifying the species to be cared for, a description of their ability to rehabilitate each species, and a copy of their state and federal permits.” (See Division Exhibit 2, p.2 at para. no. 4; Caldwell, Vol. 1, p. 22-23)
18. The permit application also states that a letter permit applicant must be a Category II permit holder “before requesting permission to rehabilitate state or federal endangered species.” (See Division Exhibit 2, p.2; Caldwell, Vol. 1, p. 22, line 12 – p. 23, line 8)

**B. As permit holder, Mary Carrelli was required to supervise Richard Carrelli and to ensure that he operated under the conditions of her permit and in compliance with wildlife laws.**

19. O.A.C. § 1501:31-25-01(G)(1) states that “[p]ersons who assist a permit holder are authorized to . . . possess wild animals for the permit holder . . . under the conditions of the permit, in compliance with wildlife laws.”

20. “The permit holder is responsible for ensuring that wild animals are . . . possessed by his assistants only in compliance with the permit.” O.A.C. § 1501:31-25-01(G)(2). As stated in the “Minimum Standards for Wildlife Rehabilitation in Ohio”, “[p]ermit holders are responsible for the supervision of their volunteers . . .” (See Division Exhibit 1, p. 17 at para. no. 3)
21. The Division requires that “[a] wildlife rehabilitator who possesses wildlife for a permit holder at a site other than the permit holder’s wildlife rehabilitation facility for over 48 hours, must be named as a sub-permit holder.” (See Division Exhibit 2, p. 11) A volunteer or wildlife rehabilitator who works at the permit holder’s wildlife rehabilitation facility does not need to be listed as a sub-permit holder. (*Id.*; see also, “Minimum Standards for Wildlife Rehabilitation in Ohio,” Division Exhibit 1, p. 17)
22. The Carrelli’s farm in Brown County, Ohio, and having a Fayetteville, Ohio address, is the site of Mary Carrelli’s wildlife rehabilitation facility. (See Division Exhibit 4; M. Carrelli, Vol. 4, p. 189)
23. As stated *supra*, Richard Carrelli was not listed as a sub-permit holder on Ms. Carrelli’s permit, rather he assisted and partnered with his wife in rehabilitating wildlife at their farm. (M. Carrelli, Vol. 4, p. 191)
24. As permit holder, Mary Carrelli was required to supervise Richard Carrelli and ensure that he operated under the conditions of her permit and in compliance with wildlife laws. (See Division Exhibit 1)

**C. The bobcat incident was a violation of Mary Carrelli's permit conditions, statute, and administrative regulations.**

25. There were several available grounds to revoke Ms. Carrelli's permits pursuant to O.A.C. § 1501:31-25-03(I) had she not voluntarily relinquished those permits on July 5, 2007. Section 1501:31-25-03(I) of the Ohio Administrative Code states that "[f]ailure to comply with any provisions or conditions of the rehabilitators permit, this rule, or any other division of wildlife rule shall result in the revocation of the rehabilitators permit."
26. Mary and Richard Carrelli's refusals to relinquish the bobcat to the Division in July, 2007 constituted a violation of the conditions of Ms. Carrelli's permit which stated that she could "rehabilitate all species of wildlife for which [she had] the appropriate facilities *except . . . state/federal endangered species unless* otherwise approved by the Chief of the Division of Wildlife." (See Division Exhibit 3, emphasis added) As previously noted, a bobcat is an endangered species in Ohio and Ms. Carrelli had neither applied for nor received a letter permit from the Chief to rehabilitate the wild bobcat in her possession.
27. Mary and Richard Carrelli's refusals to relinquish the bobcat to the Division in July, 2007 constituted a violation of O.A.C. § 1501:31-23-01(C) which states that "[i]t shall be unlawful for any person to . . . possess any of the native endangered species of wild animals . . . without first obtaining a written permit from the wildlife chief. . ." Again, as previously noted, a bobcat is an endangered species in

this state and Ms. Carrelli had neither applied for nor received a letter permit from the Chief to rehabilitate the wild bobcat in her possession.

28. Mary and Richard Carrelli's refusals to relinquish the bobcat to the Division in July, 2007 constituted a violation of O.A.C. § 1501:31-25-03(F) which states "[a] category II rehabilitators permit will allow the individual permit holder to rehabilitate all species of wild animals *except* . . . state or federal endangered species unless otherwise approved by the chief . . ." (emphasis added). Again, as previously noted, a bobcat is an endangered species in this state and Ms. Carrelli had neither applied for nor received a letter permit from the Chief to rehabilitate the wild bobcat in her possession.

29. Mary and Richard Carrelli's refusals to relinquish the bobcat to the Division in July, 2007 were a violation of R.C. § 1531.02 which sets forth that the state holds title to all wild animals in trust for the benefit of the people of Ohio and that individual possession of wild animals may only be obtained in accordance with the Ohio Revised and Administrative Codes. Ms. Carrelli's possession of the bobcat at issue was not in accordance with Ohio Revised and Administrative Codes as outlined *supra*.

**D. The denial of Ms. Carrelli's 2008 application should be upheld.**

30. Mary Carrelli's 2008 application for a Category II rehabilitator permit met the minimum requirements outlined in O.A.C. § 1501:31-25-03.

31. As outlined *supra*, the Chief has been given broad authority by the General Assembly to issue rehabilitator permits when he believes that it is in the public interest to do so.
32. Chief Graham testified that he made the decision to deny Ms. Carrelli's application for a Category II rehabilitator permit because of her past history with the Division and her failure to follow the rules and regulations that govern her permit. Specifically, Chief Graham testified that the denial was based on the 2007 bobcat incident which raised concerns similar to those raised by the earlier coyote and bear cub incidents stating, "it's the same type of pattern with an increasingly combative situation that concerned me greatly." (Vol. 2, p. 238, lines 16-25) This is a lawful exercise of the Chief's discretion under R.C. 1533.08 (even when discounting the "coyote incident" upon which Chief Graham was under informed).
33. Chief Graham also cited the man hours consumed in dealing with the Carrelli's as well as the "willful defiance of [Division] rules and regulations" as a basis for denying Ms. Carrelli's application. (Vol. 2, p. 238, lines 16-25) This is a lawful exercise of the Chief's discretion under R.C. 1533.08.
34. Chief Graham testified that Ms. Carrelli's application for a letter permit to rehabilitate whitetail fawns, bobcat and black bears was denied because at the time of her application in 2008 she did not hold the required Category II rehabilitator permit. Additionally, Chief Graham testified that Ms. Carrelli's letter permit application was also denied based on the reasons cited for denying

her Category II permit application. (Vol. 2, p. 240, line 14) This is a lawful exercise of the Chief's discretion under R.C. 1533.08.

35. The denial of Ms. Carrelli's application for a new Category II rehabilitator's permit and a new letter permit to rehabilitate whitetail fawns, bobcat and black bears was based upon reliable, probative, and substantial evidence and is in accordance with law.

## **HEARING OFFICER'S ANALYSIS**

### **Introduction**

Pursuant to R.C. 1531.02, the state of Ohio is vested with ownership of and holds title to all wild animals (in the state) in trust for the benefit of the people of Ohio. The General Assembly has established that the Division of Wildlife within the Department of Natural Resources shall have authority and control in all matters pertaining to the protection, preservation, propagation, possession, and management of wild animals and has empowered the Chief of the Division of Wildlife with the authority to adopt rules in this regard. (See R.C. 1531.08) Under this general umbrella of broad statutory authority, the Division of Wildlife has promulgated a limited administrative scheme whereby certain members of the public are allowed to "assist" the Division of Wildlife in caring for and rehabilitating individual wild animals who have been injured or orphaned. This limited ability to "assist" the Division is accomplished on a volunteer basis and pursuant to a permit program

administered under the jurisdiction of and at the discretion of the Chief of the Division of Wildlife. See R.C. §§ 1531.02, 1531.08, 1533.08 and O.A.C. 1501:31-25-03.

Notably, this permit system creates a pool of unpaid volunteers whose mission is to help the Division of Wildlife fulfill its duty to protect, preserve, possess and manage the wild animals which the state owns and holds in trust for the people of Ohio. The rehabilitation permits which the Chief of the Division “may issue” at his discretion under R.C. 1533.08 do not authorize any recipient thereof to practice any trade, business or profession. Such rehabilitation permits merely authorize the recipient to help the Division of Wildlife preserve and manage a few of the many wild animals that the state owns. Therefore, because these rehabilitation permits do not bestow any ownership, economic gain, or business rights upon the recipient of such rehabilitation permit, the Hearing Officer concludes that an applicant for or recipient of such a permit has no constitutionally recognized property interest in receiving or maintaining such a rehabilitation permit. This lack of a constitutionally recognizable property interest will be analyzed more fully, *infra*.

### **Mary Carrelli’s Rehabilitation Qualifications**

At the hearing in this matter, the evidence submitted by Ms. Carrelli clearly demonstrates that she and her husband, Richard Carrelli, own an animal rehabilitation facility that is more than adequate to care for orphaned or injured animals under a Category II permit. The evidence presented also vividly demonstrates that Ms. Carrelli has the necessary training and skills needed to care for and attempt to rehabilitate such animals.

In regard to the letter permit she requested for the purpose of rehabilitating whitetail fawns, bobcat and black bears, it is clear that she has the proper training and facility to handle whitetail fawns and bobcats. However, it is not clear that she has the facility or training required to properly manage black bears other than small cubs for a short period of time. The Hearing Officer concludes that but for the matter of keeping larger black bears, Ms. Carrelli has the proper training and skills and possess the necessary facilities if granted a Category II rehabilitation permit. See Finding of Fact nos. 4, 5, 6, 7, 8, 9, and 10.

Unfortunately, there is also no serious debate in this case that both Mary and Richard Carrelli have had a less than respectful and harmonious relationship with the Division of Wildlife over the years. Specifically, the Hearing Officer finds that the events surrounding the “1996 black bear incident” and most especially the “2007 bobcat incident” support the Chief’s proposition that the Division of Wildlife cannot trust that either Mary or Richard Carrelli will follow the laws and rules pertaining to wildlife rehabilitation permittees if granted the permits which Ms. Carrelli seeks. The Hearing Officer also concludes that it is reasonable for the Chief of the Division of Wildlife to adhere to the position that he believes that neither Mary nor Richard Carrelli will be adequately cooperative with Division employees if Ms. Carrelli is granted the permits which she seeks. See Finding of Fact nos. 33, 36, 37, 38, 39, 41, 42, 50, 54, and 55. The Hearing Officer also finds that the so called “ 1996 coyote incident” is of no consequence or relevance in the Hearing Officer’s overall analysis and conclusions. See Finding of Fact nos. 45 and 46.



Finally, in regard to the issue of Ms. Carrelli's qualifications and relationship with the Division of Wildlife, it is undisputed that the Chief would have taken action to revoke Ms. Carrelli's rehabilitator permit subsequent to the events surrounding the "2007 bobcat incident" had she not voluntarily surrendered her then existing Category II rehabilitator permit along with her letter permit to handle whitetail fawns, both of which were not scheduled to expire until March 15, 2008. The voluntary surrender of these permits took place on July 5, 2007 and was accepted in writing by Chief Graham on July 6, 2007. See Finding of Fact nos. 14, 15, 44.

In the opinion of the Hearing Officer, the relevant and material facts underlying Ms. Carrelli's appeal are **not** in dispute. A review of the transcript reveals that neither party has seriously challenged the other party's factual presentation. Thus, the bottom line issue in this case is whether Ms. Carrelli is entitled to **automatically** receive the wildlife rehabilitation permits she has applied for simply because she meets the minimum requirements set forth in O.A.C. 1501:31-25-03 or whether the issuance of these permits is ultimately left to the best judgment of the Chief of the Division of Wildlife in accordance with the exercise of the discretion apparently placed with him by the legislation when it used the "may issue" language in R.C. 1533.08. Another matter which is very much intertwined with this core issue is the significance of Ms. Carrelli's voluntary relinquishment of her 2007 permits ( immediately following the "bobcat incident") which would have otherwise been the target of a revocation action by the Chief pursuant to the provisions of 1501:31-25-03 (I).

## Appellant Carrelli's Legal Arguments

In the post hearing brief filed by Ms. Carrelli, she sets forth her **First Proposition of Law** as follows:

- I. It was undisputed that Ms. Carrelli meets all of the requirements for a Category II rehabilitators permit, and the Division of Wildlife has no discretion to deny her that permit. The purported exercise of discretion without standards is an unconstitutional permitting scheme. (Carrelli, Post Hearing Brief at p. 1)

In her brief, Ms. Carrelli first argues that she meets or exceeds all of the requirements set forth in O.A.C. 1501:31-25-03 for the issuance of a Category II rehabilitation permit. As stated *supra*, the Hearing Officer agrees with this assertion. Ms. Carrelli, then cites *Lyden v. Tracy* (1996), 76 Ohio St.3d 66, and argues that “administrative agencies are bound by their own rules” and goes on to argue that the relevant administrative rules in this case deny the Chief of the Division of Wildlife any further discretion relative to issuing the permit she seeks. The Hearing Officer accepts that an administrative agency is bound by its rules. However, in this case, the relevant administrative rule neither mandates issuance of a permit simply because the applicant meets the bare bones minimum requirements contained in the rule nor does the rule trump the statute, *i.e.*, R.C. 1533.08, which on its face creates and retains discretion in the Chief of the Division.

Ms. Carrelli next cites *Pennsylvania Co. v. Public Service Commission* (Franklin C.P. 1913), 1913 WL 957, and argues that in the context of statutory law the word “may” has sometimes been construed by a court to actually mean “shall”. She attempts to use this argument to convert the word “may” to “shall” in R.C. 1533.08. However, the Ohio Supreme Court in *Dennison v. Dennison* (1956), 165 Ohio St.146, has opined that:

[a]lthough it is true that in some instances the word ‘may’ must be construed to mean ‘shall’ and ‘shall’ must be construed to mean ‘may’, in such cases the intention that they shall be so construed must clearly appear. Ordinarily, the word ‘shall’ is a mandatory one, whereas ‘may’ denotes the granting of discretion.

*Id.* at 149.

In further support of her “may” means “shall” argument, Ms. Carrelli points to R.C. 4709.07 which relates to the matter of licensing barbers in Ohio. R.C. 4709.07 itself sets forth the various criteria an applicant for a barber’s license must meet in order to obtain a license to work as a barber. R.C. 4709.07 further specifically removes any discretion from the Barber Board in regard to when or whether to issue a barber’s license by stating:

The Board **shall issue** a license to practice barbering to any applicant who, to the satisfaction of the Board, meets the requirements of divisions (A) and (B) of this section, who passes the required examination, and pays the initial licensure fee.

(*Id.*, emphasis added)

This Hearing Officer believes that each of the above arguments are without merit.

Further, a neutral review of *Dennison supra*, *Pennsylvania Co., supra*, and R.C.

4709.07 actually supports the conclusion that use of the words “may issue” in R.C. 1533.08 is intended to vest discretion in the Chief of the Division of Wildlife when considering whether to grant any given application for a wildlife rehabilitation permit. First, the legislature actually used the word “may” in R.C. 1533.08 rather than the mandatory “shall” as it did in R.C. 4709.07. This language distinction clearly illustrates that the legislature intended to vest the Chief with discretion under R.C. 1533.08 while, on the other hand, just as clearly illustrates that it intended that the Barber Board is without discretion under R.C. 4709.07. Second, in the context of exercising his statutory duty to “protect, preserve and manage” Ohio’s wild animals” for the benefit of all the people [in Ohio]”, the Chief most certainly needs wide discretion to fulfill this important obligation. Neither this Hearing Officer nor a court should interfere with the Chief’s exercise of his discretion in this regard in the absence of clear evidence of an abuse of such discretion. See R.C. 1531.02, 1531.08; see also, Conclusion of Law nos. 4, 5, 7, 10, and 12-14. Notably, the Hearing Officer finds no evidence of any abuse of the Chief’s discretion in this case.

Ms. Carrelli next cites *State ex.rel. Selected Properties v. Gottfried* (1955), 163 Ohio St.469 and *State ex. rel. Associated Land and Investment Corp. v. City of Lyndhurst* (1958), 168 Ohio St.289 for the proposition that R.C. 1533.08 and its underlying permit program are unconstitutional because the Chief retains “uncharted discretion” when determining whether to grant a permit pursuant to the authority vested in him under R.C. 1533.08 and O.A.C. 1501:31-25-03. (Carrelli, Post Hearing brief at p. 7) While both *Gottfried* and *City of Lyndhurst, supra*, clarify important legal standards,

the present case differs both factually and legally from these two cases in several important respects. Both *Gottfried* and *City of Lyndhurst* involve the application of municipal zoning ordinances to privately owned real estate, *i.e.*, a situation in which the property owners had a real and constitutionally recognizable “property interest”. The *Gottfried* court referenced the legal significance of such a legally recognized property interest when it stated as follows:

... the courts have often stated that if an ordinance upon its face restricts the right of dominion, which the owner might otherwise exercise without question, not according to any uniform rule, but so as to make the absolute enjoyment of his own property depend upon the arbitrary will of the municipal authorities, it is invalid because it fails to furnish a uniform rule of action and leaves the right of property subject to the will of such authorities, who may exercise it so as to give exclusive profits or privileges to particular persons.

*Id.* at 473, citing 37 American Jurisprudence, 778, Section 160.

As was noted in the introduction to the Hearing officer’s analysis, *supra*, Ms. Carrelli does **not** have any property interest in receiving or maintaining a wildlife rehabilitation permit.

The instant case also differs from *Gottfried* and *City of Lyndhurst* for another critical reason. As stated *supra*, the discretion delegated to the Division, by the legislature, in regard to any matter pertaining to wild animals, is neither absolute nor uncontrolled. Because the state holds title to all wild animals in trust for the benefit of “all the people” pursuant to R.C. § 1531.02, and because the Chief has “authority and control in all matters pertaining to the protection, preservation, possession, and management” of wild animal populations pursuant to R.C. § 1531.08,

a wild animal permitting decision must be in both the public interest and in the interest of protecting, preserving and managing the wildlife in this state.

As a result, it must be concluded that the statutory and regulatory scheme controlling rehabilitator permitting allows the Chief, when evaluating a rehabilitator permit application, to consider evidence of an applicant's past failure to comply with Division rules, statutes and permit conditions. Chief Graham testified that he made the decision to deny Ms. Carrelli's application for a Category II rehabilitator permit because of her past history with the Division. Specifically, Chief Graham testified that the denial had been based, *inter alia*, on the "2007 bobcat incident" which raised concerns similar to those raised by the earlier "bear cub incident". (Chief Graham, Vol. 2, p. 238, lines 16-25) In addition, Chief Graham cited the man hours consumed in dealing with the Carrellis as well as the "willful defiance of [Division] rules and regulations" as a basis for denying Ms. Carrelli's application. (Graham, Vol. 2, p. 239) Such disregard of wildlife laws and the additional time that has to be diverted from other Division programs show clearly that denying Ms. Carrelli a rehabilitator permit was in the public interest and in the interest of protecting, preserving and managing the wildlife in this state. As such, the denial of Ms. Carrelli's application for a new Category II rehabilitator's permit and a new letter permit to rehabilitate whitetail fawns, bobcat and black bear was lawfully based on Ms. Carrelli's past failures to comply with Division rules, statutes and permit conditions and should be upheld.

Ms. Carrelli next argues that certain tenets of First Amendment jurisprudence apply to this case. In support of this argument, she cites *Niemotko v. State of*

*Maryland* (1951), 340 U.S. 268; *Staub v. Baxley* (1958), 355 U.S. 313, and *Dillon v. Municipal Court for the Monterey-Carmel Judicial District* (Sup. Ct. Cal., 1971), 484 P. 2d 945. Each of these cases involve a statute or ordinance which require that permits be obtained from a government official as a prerequisite to the use of certain public places. In *Niemotko*, the U.S. Supreme Court held that such permit requirements must be held invalid in the absence of “narrowly drawn, reasonable and definite standards for the officials to follow”. *Id.*, at 271. However, this Hearing Officer rejects this argument for one simple reason: there is no comparison between the exercise of First Amendment rights and the desire to obtain a wildlife rehabilitation permit. Because courts hold First Amendment rights to be so important, any governmental restriction will be struck down in the absence of a “compelling” state interest. The reverse situation is actually extant in the instant case, *i.e.*, the state has a **compelling interest** in “protecting, preserving and managing” its wild animals. See, *ISKCON v. Evans* (S.D. Ohio, 1977), 440 F. Supp. 414 (Judge Kinneary); see also, *Leyman v. Shaker Heights* (1974), 418 U.S. 298, and *United States v. O'Brien* (1968), 391 U.S. 367.

For all of the foregoing reasons, the Hearing Officer recommends that Ms. Carrelli’s First Proposition of Law be overruled.

In the post hearing brief filed by Ms. Carrelli, she sets forth her **Second Proposition of Law** as follows:

II. Assuming the Chief of the Division has the authority to act on permits with unlimited, unwritten discretion --- the decision in this instance is not

supported by reliable and probative evidence. (Carrelli, Post Hearing Brief at p. 8)

In this second part of her brief, Ms. Carrelli has spent part of her argument chiding the Chief for holding her accountable for some of her past behaviors while serving as a wildlife rehabilitation permittee. (Ms. Carrelli's post hearing brief at p. 8) As stated *supra*, it is the opinion of the Hearing Officer that the relevant and material facts underlying Ms. Carrelli's appeal are not in dispute. Unfortunately for Ms. Carrelli, it was lawful and proper for the Chief to take into consideration her past violations of the law and Division rules when considering whether to grant or deny the rehabilitation permit at issue in this case. See *St. Augustine Catholic Church v. Attorney General*, *supra*, at 137; see also, Finding of Fact nos. 33, 36, 37, 38, 39 and 40. Ms. Carrelli even admits in her brief that she handled the "bobcat incident" poorly. (Carrelli brief at p. 11)

The Hearing Officer also finds it to be relevant and important to recognize that Chief Graham was reviewing the permit application of a person who had managed to avoid a revocation action less than a year earlier by voluntarily relinquishing her then existing wildlife rehabilitation permits. See Finding of Fact nos. 14, 15, and 44. The fact that the voluntary relinquishment of her prior permits on July 7, 2007 was inextricably intertwined in the various statutory and regulatory violations she committed in conjunction with the so-called "bobcat incident", which took place between June 25 and July 2, 2007, simply cannot be ignored or considered irrelevant. Nor can Ms. Carrelli avoid responsibility for Richard Carrelli's misdeeds in this case.



Mr. Carrelli is Mrs. Carrelli's husband and partner in their Second Chance Wildlife Operation (Finding of Fact no. 25) As a matter of law, she as the permit holder, was responsible for ensuring that he operated under the conditions of her permit(s) and in compliance with all wildlife laws. ( See Division Exhibit 1)

In her brief, Ms. Carrelli also attempts to minimize the fact that wildlife permit holders are "representatives" of the Division of Wildlife. Chief Graham addressed this matter of Division representation twice in his testimony. First, on direct examination, he was asked why he felt Ms. Carrelli wasn't a "good candidate" for a rehabilitation permit "based on her history with the Division". Chief Graham replied as follows:

I think a couple --more than a couple of reasons and I think you have to first look at the 80 to 85 rehabilitators that we have out there in any given year over the history of this program and the Ohio Wildlife Rehabilitators Association. We've had a great working relationship with that group. They have represented themselves well as a whole, individually as well as their representing the OWRA and have represented the Division of Wildlife well and we've had virtually no problems with any rehabilitators in this long history timeframe with the exception of a couple, with the Carrellis being one of them. **So while they are volunteers they are a representative of the Division of Wildlife** as well as a representative of the Ohio Wildlife Rehabilitators Association and we have countless man hours of time consumed in dealing with these individual problems with the Carrellis. We have willful defiance of our rules and regulations.  
(Vol. 2, p. 239, lines 4-21, emphasis added)

\* \* \* \*

So they are causing problems with the credibility of the Division of Wildlife and the Rehabilitators Association and rehabilitation in general when they put forward this defiance and don't follow the rules and break the rules whenever they don't want to follow them. And we don't tolerate that in permanent employees, that type of behavior, **and we can't tolerate that in any of our volunteers that represent the Division of Wildlife and defy the public trust.**

(Vol. 2, p. 240, lines 1-10, emphasis added)

Later in his testimony, on cross examination, Chief Graham reiterated the importance of a wildlife rehabilitation permittee's representative role on behalf of the Division of Wildlife:

Q: So that takes care of need. What other considerations would be made by you in granting or denying a permit other than what is written here?

A: Problems with individuals in terms of how they follow the rules, how they obey the statutes, how they represent themselves in terms of the fact that they are, as I stated yesterday, a representative of their organization and a representative of this agency, and how that fits in with meeting requirements that are important to this agency and to the people of Ohio in terms of public trust and beyond that trust between the agency and the individual rehabilitator to do that. That is very important.

(Vol.3, p. 40, lines 7-20)

The Hearing Officer agrees that wildlife rehabilitation permit holders are indeed "representatives" of the Division of Wildlife -- perhaps in a less than formal manner, but representatives nonetheless. (See Finding of Fact no. 12) As such, a permittee's attitude toward the Division, lack of cooperation with lawful requests from Division employees, and open defiance of laws and administrative regulations are most certainly appropriate matters for the Chief to take into consideration when exercising his legislatively expressed discretion under R.C. 1533.08.

Ms. Carrelli concludes her argument with a discussion of her extensive experience and many good deeds in the field of wildlife rehabilitation. After receiving her testimony and the testimony of her husband, it was obvious to the Hearing Officer that wildlife rehabilitation is Ms. Carrelli's "passion" as her husband so eloquently

articulated. (R. Carrelli, Vol. 3, p. 119, line 17). However, and unfortunately, there is also extensive and undisputed evidence in the record demonstrating willful and open violation of various laws and administrative regulations by both Mary and Richard Carrelli within the parameters of their Second Chance Wildlife operation on their Brown County farm. (See Finding of Fact nos. 36, 37, 38, 39, and 40; see also, Conclusions of Law nos. 19, 20, 26, 27, 28, 29, 32 and 33.

For all of the foregoing reasons the Hearing Officer recommends that Ms. Carrelli's Second Proposition of Law be overruled.

### **RECOMMENDATION**

For all of the foregoing reasons, the Hearing Officer finds that the Order of the Chief of the Division of Wildlife denying Mary Carrelli's June 9, 2008 application for a Category II rehabilitators permit and for an additional letter permit to rehabilitate whitetail fawns, bobcat and black bears is supported by reliable, probative and substantial evidence and is a lawful Order. It is therefor recommended that the Chief's June 16, 2008 Order denying Ms. Carrelli's permit application be sustained.

Respectfully submitted,

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Gary E. Brown  
Attorney at Law  
Hearing Officer



