SETTLEMENT AGREEMENT AND RELEASE

WHEREAS, Vermont Protection and Advocacy ("VP&A") has brought an action pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 1983 to redress alleged deprivations of the rights of its constituents, captioned *Vermont Protection & Advocacy v. Robert Hofmann, in his official capacity, and Vermont Department of Corrections*, Civil Action No. 2:04-CV-245 (the "lawsuit" or the "litigation"); and

WHEREAS, defendants (collectively "DOC") dispute the standing of plaintiff to bring this action, deny the allegation that DOC has violated plaintiff's constituents' rights, and have asserted various defenses to the plaintiff's claims; and

WHEREAS, nothing in this Agreement is intended to, nor shall be construed as, an admission of liability; and

WHEREAS, plaintiff and defendant are involved in the discovery phase of the litigation as of the date of this Agreement; and

WHEREAS, it is mutually advantageous for both parties to settle this dispute without further discovery or a trial;

NOW THEREFORE, in consideration for the payment described below, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

I. DEFINITIONS

A. "Parties" shall mean plaintiff Vermont Protection & Advocacy and defendants Robert Hofmann and the State of Vermont Department of Corrections.

B. "Consultant" shall mean the expert or experts chosen by the Parties who have expertise in the treatment of people who self-harm and correctional experience and whose function shall be to review incidents of self-harm to assure compliance with DOC directives, as set forth in greater detail in Section V of this Agreement.

C. "Qualified Mental Health Professional" shall mean a psychiatrist, psychologist, psychiatric social worker, psychiatric nurse, and others, who by virtue of their education, credentials and experience are permitted by law to evaluate and care for mental health needs of patients.

D. "Qualified Health Care Professional" shall mean a physician, physician assistant, nurse practitioner, nurses, dentists, mental health professionals, and others, who by virtue of their education, credentials and experience are permitted by law within the scope of their professional practice to evaluate and care for patients.

II. PROCEDURE

A. Execution of Release: Simultaneous with the execution of the Settlement Agreement, VP&A shall execute a Release in favor of the State of Vermont Department of Corrections and Robert Hofmann in the form attached as Exhibit A to this Agreement.

B. Dismissal of Action with Prejudice: In accordance with Federal Rule of Civil Procedure 41(a), upon the execution of this Agreement and Release, the Parties shall execute a Stipulation of Dismissal of the litigation with prejudice and without costs, in the form attached as Exhibit B, which defendant will file with the Court within three (3) days of its execution.

C. Effective Date of the Agreement: This Agreement shall become effective upon the final execution of this Agreement and Release and the filing and entry of the Stipulation of Dismissal of the litigation by the Court, in accordance with Federal Rule of Civil Procedure 41(a).

III. DIRECTIVE ON RESPONSES TO SELF-HARMING INMATES

A. Comprehensive Final Directive: DOC will draft a comprehensive directive addressing responses to self-harming inmates that will discuss administrative segregation, disciplinary segregation, use of restraints, use of force and training and quality assurance. The final Directive addressing responses to self-harming inmates will be reviewed by the Executive Management Team on or before May 15, 2006 and posted for public comment so as to permit implementation of a Final Directive on or before July 1, 2006.

B. Interim Directive: DOC will draft an interim directive addressing responses to self-harming inmates that will discuss administrative segregation, disciplinary segregation, use of restraints and training and quality assurance. The interim directive will be issued on or before June 1, 2006.

C. Contents of the Interim Directive and Final Directive: The Interim and Final Directives issued by DOC will contain the following language:

1. "Individuals who engage in self-harming behaviors may experience an exacerbation of their condition when placed in segregation."

2. "DOC does not punish inmates for engaging in self-harming behaviors. DOC strives to ensure that inmates understand that confinement and uses of force are not punishment but applied to protect an inmate or other from injury."

3. "An inmate who self harms who is placed on administrative segregation status solely for observation and self-protection will be removed from administrative segregation status as soon as a qualified mental health professional determines the

inmate no longer poses a risk of harm to him or herself because he or she is able, without continued placement in segregation, to satisfy his or her need for self-protection and safety. At that point, the qualified mental health professional shall recommend transfer of the inmate to a mental health housing unit in the facility or the return of the inmate to his or her former housing status. The goal is to place the inmate in the least restrictive environment that security, safety, health and resources will allow."

4. "Before an inmate who self-harms is placed in administrative or disciplinary segregation, a qualified mental health professional must be consulted to determine whether contraindications to that placement exist."

5. "Qualified mental health professionals shall conduct weekly rounds on inmates who self-harm who are placed on administrative or disciplinary segregation status."

6. "Inmates who self-harm who are in segregation shall receive daily visits from a qualified mental health professional or qualified health professional to assess their status and initiate referrals to a qualified mental health professional if indicated by a standard brief mental health status examination."

7. "Under no circumstances may an inmate be placed in disciplinary segregation based upon self-harming behavior."

8. "Efforts to de-escalate a self-harming inmate are preferred, and restraints should be used only as a last resort when an inmate's behavior presents a risk of harm to him or herself or others."

9. "Any inmate remaining in restraints beyond an initial emergency must have an immediate, face to face assessment by a qualified mental health professional if one is available or a qualified health care professional if a qualified mental health professional is not available."

10. "A qualified mental health professional must begin to consider other interventions, including a request for admission to a psychiatric hospital, if restraint has failed to stabilize the inmate within eight (8) hours."

11. "An inmate in administrative segregation for self-harming behaviors shall be entitled to the same property and privileges of all other inmates in administrative segregation unless DOC can demonstrate the need to remove an item or curtail a privilege, consistent with the input of a qualified mental health professional."

D. Documentation To Be Required by the Interim and Final Directives: The Interim and Final Directives issued by DOC will require documentation as follows:

1. Form Regarding Use of Restraint/Use of Force: On or before July 1, 2006, DOC will create a form that must be filled out by correctional staff when force or restraints are used on inmates who self harm that: (a) describes the inmate's behavior prior to the use of force or restraint; (b) states whether a qualified mental health professional or qualified health professional was consulted prior to the use of restraints or use of force; (c) if there was no consultation, states why consultation did not occur; and (d) describes all other available techniques of de-escalation attempted prior to the use of force or restraint.

2. Contraindications to Segregation: When a qualified mental health professional conducts an assessment prior to the placement of a self-harming inmate on disciplinary or administrative segregation status, the qualified mental health professional must document whether contraindications to segregation exist.

3. Rounds in Segregation: Qualified mental health professionals must document their assessment of each self-harming inmate's level of risk of self-harm and the plan and actions taken by the qualified mental health care professional to reduce the risk and transition the inmate out of segregation status.

4. Daily Visit Documentation: After conducting the brief mental health status examination, the qualified mental health professional or qualified health professional must document whether: (1) the inmate is alert and oriented; (2) any signs exist of increased depression; (3) the inmate has exhibited any signs of suicidal ideation; (4) the inmate has exhibited any signs of self-harming ideation; (5) the inmate has exhibited any symptoms of psychosis; and (6) the inmate is making progress on his or her risk reduction plan to transition out of segregation.

5. Alternate Interventions After Eight Hours of Restraint: If restraint has failed to stabilize an inmate after eight (8) hours, a qualified mental health professional must document all other interventions considered to stabilize the inmate, and where that includes a request for admission to a psychiatric hospital, the qualified mental health professional must document all facilities contacted and the nature of the discussion with those facilities.

IV. TRAINING ON RESPONSES TO SELF-HARMING INMATES

A. Retention of Lindsay Hayes: DOC will retain Mr. Lindsay Hayes to conduct a video taped training on responses to inmates who self harm, which will occur within 60 days of the issuance of the Final Directive on Responses to Self-Harming Inmates.

B. Meeting with VP&A Prior to Training: Mr. Hayes will meet with representatives of VP&A prior to conducting the training to discuss his anticipated remarks and review materials Mr. Hayes intends to use during the training.

C. Payment of Hayes: DOC represents that it will pay all costs associated with Mr. Hayes' preparation for and participation in the videotape training.

D. Use of Video: The video of Mr. Hayes' training will be used during basic academy training and all other DOC correctional officers and health care contractors will view the videotape within one year of its production. DOC will also conduct follow up training with the video of all academy graduates within one year of the officer's completion of initial probation.

V. ASSESSMENTS BY A CONSULTANT

A. Retention of Consultant: DOC will retain one or two Consultants who have expertise in treating individuals who self-harm and correctional experience to review incidents of self-harming behavior. The term of the retention will last for two years. Both parties must agree to any individual chosen as a Consultant. In the event the Parties cannot agree to a Consultant within 30 days of the execution of the Agreement, Lindsay Hayes will identify three possible Consultants, and each Party can exercise one veto to eliminate one of the Consultants.

B. Payment of Consultant: DOC represents that it will set aside all necessary funds to pay the Consultant for the full two year period.

C. Review of Incidents by Consultant: The Consultant will review three incidents of self-harming behavior every two months for a period of 24 months. The Consultant will decide how to pick the incidents to be reviewed, after consultation with the Parties, so the Parties have input into the final system that the Consultant will adopt.

D. Issuance of Reports: The Consultant will issue a report every two months for the 24 months of the review that assesses the compliance of DOC personnel and contractors with DOC policies and directives implicated by each incident of self-harm, including, where appropriate, compliance with DOC's directive on obtaining prior medical records. These reports will not identify the inmates or correctional officers involved in the incident by name or initials.

E. Bi-Annual Meeting of Parties to Discuss the Reports: The Parties will meet bi-annually to discuss the implications of the reports, although either Party will have the right to suspend any meeting.

F. Use of Reports: VP&A agrees that: (1) the reports issued by the Consultant shall be deemed confidential, peer-review and self-critical evaluation; (2) VP&A may not publish or disseminate the reports; (3) in the absence of a waiver of a privilege or a determination by a court that the reports are not privileged, the Consultant may not testify at deposition or trial about their analyses, the reports or the information they contain; (4) VP&A will not use the reports issued by the Consultant in any litigation in which it is a party or in which it represents a party; (5) VP&A will not discuss the reports with inmates who are

the subjects of the reports or with any third parties; (6) VP&A will not work with any third party to further public release of the reports or publish or disseminate the reports in any other way. Notwithstanding the foregoing, if concerns that are raised by the reports are not resolved as a result of the bi-annual meeting of the parties, VP&A may testify before the legislature regarding the existence of the reports and the trends they illustrate, assuming VP&A does not refer to specific inmates or correctional officers by name or initials.

VI. PAYMENT OF COSTS

Without any admission, implication or suggestion by DOC that plaintiff is a prevailing party, within five (5) days of the effective date of this Agreement, DOC will pay VP&A the sum of $[illegible],000 to reimburse it for costs incurred in this litigation. This payment will be by check made payable to Vermont Protection & Advocacy.

VII. REMEDIES AND EXPIRATION OF AGREEMENT

Either party may commence an action to enforce the terms of this agreement, provided however:

A. The party has made good faith efforts to resolve the dispute without litigation;

B. Any action for breach of this agreement shall be filed in Washington Superior Court in the State of Vermont; and

C. The remedy available in any such action shall be specific performance. In addition, an award of attorneys' fees and costs associated with such an action may be awarded to the prevailing party if the court finds that the party against whom judgment is entered acted frivolously or in bad faith.

VIII. MISCELLANEOUS

A. Negotiation and Drafting of Document: This Agreement is a document which both Parties have negotiated and drafted; therefore, the general rule of construction interpreting a document against the drafter shall not be applied in any future interpretation of this Agreement.

B. Entire Agreement: This Agreement represents the entire and only Agreement between the parties. All prior agreements, representations, statements, negotiations and understandings shall have no effect.

C. Amendments: No changes, modifications or amendments to the terms and conditions of this Agreement shall be effective unless reduced to a writing signed by both Parties.

D. Governing Law: The law of the State of Vermont shall govern any dispute regarding this Agreement.

IX. AUTHORITY

The undersigned representatives of the Parties certify that each is fully authorized by the Party he or she represents to enter into the terms and conditions of this Settlement Agreement and to execute and bind that Party to it.

By the signatures below, and for the consideration contained herein, the Parties agree to be bound by the terms and conditions of this Agreement.

VERMONT PROTECTION & ADVOCACY
141 Main Street
Suite 7
Montpelier, Vermont 05602

By: Edward Paquin
Edward Paquin
For the Plaintiff

STATE OF VERMONT
SS
COUNTY OF Washington

At Montpelier, in said county, this 15TH day of May, 2006, personally appeared Edward Paquin on behalf of Vermont Protection & Advocacy and acknowledged that the foregoing instrument has been subscribed by him for Vermont Protection & Advocacy as his free act and deed and in accordance with authority granted to him by Vermont Protection & Advocacy.

Before me, Linda Carver
Notary Public

My commission expires: 2/07

STATE OF VERMONT
DEPARTMENT OF CORRECTIONS
103 South Main Street
Waterbury, Vermont 05671

By: _____
Robert Hofmann, Commissioner
For the Defendants

STATE OF VERMONT
COUNTY OF Washington SS

At Waterbury, in said county, this 18th day of May, 2006, personally appeared Robert Hofmann on behalf of the Vermont Department of Corrections and acknowledged that the foregoing instrument has been subscribed by him for the Vermont Department of Corrections as his free act and deed and in accordance with authority granted to him by Vermont Department of Corrections.

Before me, Rose Jackman
Notary Public

My commission expires: 2/10/07.