

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

RICHARD HOLLIHAN,

Plaintiff,

vs.

PENNSYLVANIA DEPARTMENT OF
CORRECTIONS, et al.

Defendants.

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Civil No. 3:15-CV-00005-CCC

Hon. Christopher C. Conner

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This SETTLEMENT AGREEMENT AND GENERAL RELEASE (“Settlement Agreement” or “Agreement”) fully sets forth the terms of the settlement by and between Plaintiff Richard Hollihan (“Plaintiff”) and Defendants Pennsylvania Department of Corrections, John E. Wetzel, and Brian Hyde (collectively, the “DOC”), collectively referred to as the “Parties.”

INTRODUCTION

WHEREAS, on January 2, 2015, Plaintiff filed this lawsuit, on behalf of himself and inmates who are in the custody of the DOC, alleging, *inter alia*, that the DOC, under its Cataract Policy, denies necessary surgical treatment to inmates with a severe eye disease in one eye, but with another eye that provides some level of vision that DOC claims to be adequate, in violation of the Eighth Amendment of the United States Constitution and the Americans with Disabilities Act.

WHEREAS, Plaintiff and the DOC, without conceding any infirmity in their claims or defenses, and prior to conducting formal discovery, have engaged in extensive settlement negotiations to resolve the claims raised in this litigation and recognize that it is in their mutual best interest to fully resolve and finally settle any and all past, existing, and/or

potential claims between the Plaintiff and the DOC relating to the Cataract Policy.

WHEREAS, the DOC is entering into this Settlement Agreement for the purpose of settlement and nothing contained herein may be taken as or construed to be an admission or concession of any violation of law or regulation, or of any other matter of fact or law, or of any liability or wrongdoing (including allegations of the Complaint), all of which the DOC expressly denies. The DOC does not admit to any violation of law, and does not admit to any wrongdoing that was or could have been alleged by the Plaintiff before the Effective Date of this Agreement. No part of this Agreement, including its statements and commitments, shall constitute evidence of any liability, fault, or wrongdoing by the DOC.

WHEREAS, this Agreement is not nor is it to be construed to be a Consent Decree and does not operate as an adjudication on the merits of the litigation. Actions taken or to be taken by the DOC hereunder are not admissions of liability on the part of the DOC, but are undertaken in the spirit of compromise.

WHEREAS, this Agreement is made without trial or adjudication of any issue of fact or law or finding of wrongdoing or liability of any kind – it is the intent of the Parties that this Agreement shall not be binding or admissible in any other matter.

WHEREAS, it is also the intent of the Parties that no part of this Agreement shall create a private cause of action or confer any right to any third party for violation of any federal or state statute.

NOW, THEREFORE, IT IS HEREBY AGREED by and between the Parties, as follows:

DEFINITIONS

1. As used in this Agreement, the following terms have the following meanings:
 - a. The “Cataract Policy” refers to the policy referenced in the Complaint as the “One Good Eye” policy and which is presently titled as “Section 16 – Quality Improvement Plan – Chapter 4” in Appendix 16-B to 13.2.1, Access to Health Care Procedures Manual.
 - b. The “New Cataract Policy” will replace the “Cataract Policy” pursuant to the terms of this Settlement Agreement and is attached hereto as Exhibit 1.
 - c. The “Effective Date” means February 8, 2017.
 - d. The “Affected Inmates” are inmates who are in the custody of the Pennsylvania Department of Corrections and are diagnosed with a cataract in one or both eyes.
 - e. The “Identified Affected Inmates” are Affected Inmates who were identified by DOC during discovery as having been denied surgery under the Cataract Policy. The inmate numbers of the Identified Affected Inmates are reflected on Exhibit 2 (under seal).
 - f. An “Announcement” of the New Cataract Policy shall state: “Attention inmates with cataracts (a clouding of the normally clear lens of the eye). DOC’s cataract surgery policy has changed. Under the new policy, inmates may be eligible for cataract surgery whether or not they have good eyesight. Copies of the new cataract policy are available in medical facilities and in the library. For more information, please consult medical staff.”

AGREEMENT

In consideration of the mutual terms, covenants, conditions and releases of this Settlement Agreement, the Parties agree as follows:

1. Replacement of the Cataract Policy.

No later than thirty (30) days after the Effective Date, the DOC shall replace the Cataract Policy with the New Cataract Policy. Inmates are eligible for cataract surgery even if an individual has one eye that does not meet the indications in the New Cataract Policy.

The DOC shall be responsible for informing its staff, correctional health care provider, and outside medical providers of the New Cataract Policy.

2. Surgical Evaluation for Identified Affected Inmates.

Pursuant to the New Cataract Policy, DOC shall provide each Identified Affected Inmate with a surgical evaluation by an ophthalmologist on a rolling basis and within 120 days of the Effective Date and shall arrange treatment by an ophthalmologist for each Identified Affected Inmate (including cataract surgery) in accordance with the ophthalmologist's recommendation and the New Cataract Policy.

3. Notice to Inmates.

The DOC shall provide notice to all inmates of the New Cataract Policy by:

- Making an Announcement of the New Cataract Policy on one occasion at each DOC facility equipped with a prison-wide intercom within thirty (30) days after the Effective Date;
- Making regular audio and video Announcements of the New Cataract Policy at each DOC facility equipped with a CCTV system for a fourteen (14) day period beginning thirty (30) days after the Effective Date;
- If a DOC facility has neither a prison-wide intercom nor a CCTV system, DOC shall provide each inmate with an Announcement of the New Cataract Policy by mail;
- Posting a copy of the New Cataract Policy in each medical facility accessible to inmates for a period of at least three (3) years; and

- Posting a copy of the New Cataract Policy in each library accessible to inmates for a period of at least three (3) years.

In addition, the DOC shall instruct medical staff to inform potential Affected Inmates of the New Cataract Policy.

4. Surgical Evaluation for Affected Inmates.

DOC medical staff shall evaluate whether each Affected Inmate has one or more indications for cataract surgery and, where appropriate under the New Cataract Policy, provide Affected Inmates with a timely surgical evaluation by an ophthalmologist and arrange for treatment for Affected Inmates (including cataract surgery).

5. Post-Operative Treatment.

DOC must provide post-operative treatment for each inmate undergoing cataract surgery in accordance with the outside ophthalmologist's recommendation, including follow-up examinations, refraction for new glasses, and laser and surgical procedures to address any post-operative complications.

6. Monitoring Period.

For a period of three (3) years after the Effective Date of this Agreement, the DOC shall provide Plaintiff's counsel with quarterly reports (for the first year) and bi-annual reports (years two and three). These reports shall include, at minimum: the names and inmate numbers of Affected Inmates; the date first diagnosed with one or more indications for cataract surgery; with the date seen by an optometrist or ophthalmologist; the name of the optometrist or ophthalmologist; whether the Affected Inmate was approved or denied for surgery; and the date of surgery.

For any Affected Inmate denied surgery DOC shall, if requested, provide Plaintiff's counsel the inmate's medical records in accordance with the terms of the Protective

Order in this action within sixty (60) days of the request.

7. Notice and Comment to Future Changes to Cataract Policy.

For a period of three (3) years after the Effective Date of this Agreement, the DOC shall provide Plaintiff's counsel with a copy of any proposed revisions or changes to the New Cataract Policy. Such proposed revisions or changes to the New Cataract Policy shall not be placed into effect without Plaintiff's counsel being given an opportunity to provide comments on the changes and, if invoked, until the conclusion of the Dispute Resolution procedure identified below.

8. Dispute Resolution.

The Parties agree that Plaintiff's counsel has standing to raise disputes related to the DOC's compliance with the terms of the Settlement Agreement and the New Cataract Policy under the procedures identified herein.

In the event that Plaintiff's counsel believes that the DOC has improperly denied an Affected Inmate medically necessary cataract surgery, failed to comply with the terms of this Settlement Agreement or the New Cataract Policy, or proposed revisions or changes to the New Cataract Policy which are inconsistent with the Settlement Agreement or the New Cataract Policy, Plaintiff's counsel will provide the DOC with a notice of potential non-compliance. This notice will identify, with particularity, the basis of the claim that the DOC is not in compliance and the specific material provision of the Settlement Agreement or New Cataract Policy that is implicated.

Within thirty (30) days of receipt of the notification, the DOC will provide a good-faith written response to the Plaintiff's notification with a full factual explanation as to why the DOC believes it is in compliance with the specified material provisions, or an explanation of

the DOC's plans to achieve full compliance with the specified material provisions.

If the Parties are unable to resolve the dispute within thirty (30) days of DOC's response, Plaintiff's counsel may seek intervention from the Court by filing a motion for specific performance of the material provision identified through the aforementioned dispute resolution procedure. The Court may order specific performance of the material provision only upon a showing that the DOC is in substantial non-compliance with the material provision specified in the notice. The Court may not entertain a motion for contempt, and the Court may not grant any remedial relief in the nature of a contempt of court finding against the DOC, unless the DOC fails to comply with an order of specific performance issued by the Court.

9. Dismissal.

The Parties understand and agree that the Court will maintain jurisdiction of this civil action throughout the duration of the Agreement to enforce the provisions of the Agreement and that the Plaintiff may seek to enforce the Agreement, pursuant to Paragraph 8 above. The Parties also agree that upon termination of the Agreement they will sign and submit a joint stipulation of dismissal with prejudice pursuant to Fed. R. Civ. P. 41(a), thereby ending the Court's jurisdiction over this case.

10. No Admission of Liability.

Neither this Settlement Agreement nor anything in this Settlement Agreement shall be deemed an admission or concession of liability or evidence respecting any liability on the part of Defendants Pennsylvania Department of Corrections, John E. Wetzel, and Brian Hyde, or an admission that any of Plaintiff's claims lack merit.

Neither this Agreement nor any policies or procedures referenced herein, shall define any state or federal constitutional rights.

11. Notices.

All notices required under the Agreement will be sent overnight mail or overnight courier to the following people:

a. **If to Plaintiff:**

Thomas B. Schmidt, III
PEPPER HAMILTON LLP
100 Market Street, Suite 200
P.O. Box 1181
Harrisburg, PA 17108-1181

and

Angus Love
PENNSYLVANIA INSTITUTIONAL LAW PROJECT
The Cast Iron Building
718 Arch Street, Suite 501 South
Philadelphia, PA 19106

b. **If to Defendants:**

Department of Corrections
Office of Chief Counsel
1920 Technology Parkway
Mechanicsburg, PA 17050

Either party may substitute the individual designated to receive notice by advising the other side in a writing sent by overnight mail or overnight courier.

12. Payment to Plaintiff Richard Hollihan.

The DOC will pay the sum of Sixteen Thousand Five-Hundred Dollars (\$16,500), in full and complete satisfaction of any and all Plaintiff's claims, except for attorneys' fees and litigation expenses. The payment shall be made by check within eight weeks of the full execution of this agreement and delivered to Thomas B. Schmidt, III, PEPPER HAMILTON LLP, 100 Market Street, Suite 200, P.O. Box 1181, Harrisburg, PA 17108-1181. Plaintiff's counsel will be responsible for remitting this sum to Plaintiff.

13. Release.

In consideration of the terms and conditions called for herein, the Plaintiff releases and completely and forever discharges the DOC their agents, attorneys, servants, representatives, and employees, past and present, and their past, present and future agents, attorneys, servants, representatives, and employees and all other persons with whom any of the former have been, are now or may hereinafter be affiliated, of and from any and all past or present claims, demands, obligations, actions, causes of action, rights, damages, costs, expenses, and any claims for relief or punitive or other damages of any type which have accrued as of the Effective Date of this Agreement, and which relates to the subject matter of this civil action; provided, however, that this release does not affect Plaintiff's right to seek and recover attorneys' fees and reasonable expenses associated with the prosecution of this civil action. Notwithstanding the foregoing, nothing in this Settlement Agreement may be construed as a release of Plaintiff's claims against Wexford Health Sources ("Wexford"), Dr. Rashida Mahmud, Dr. John Robinson, Dr. Donald Kern, or any other past or present agent, attorney, servant, representative, or employee of Wexford.

Plaintiff hereby acknowledges and agrees that this Release set forth above is a general release, and Plaintiff expressly waives any and all claims as set forth above, except for attorneys' fees and expenses, or except of which the Plaintiff does not know or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise, and which, if known, would materially affect the Plaintiff's decision to execute this Agreement.

14. Payment of Attorneys' Fees and Costs.

Plaintiff's counsel will file a petition for attorneys' fees and expenses. In the event of an award, the payment shall be made by check within eight weeks of the award and

delivered to Thomas B. Schmidt, III, PEPPER HAMILTON LLP, 100 Market Street, Suite 200, P.O. Box 1181, Harrisburg, PA 17108-1181. Plaintiff's counsel shall be responsible for making an appropriate division of these fees amongst themselves.

Nothing in this Settlement Agreement precludes Plaintiff's counsel from seeking attorneys' fees and costs for enforcement of the provisions of this Agreement.

15. Non-Wavier of Claims and Defenses as to Non-Parties.

The Parties agree that by entering into this Settlement Agreement, Plaintiff does not waive his rights to continue to pursue claims against any non-party to this Settlement Agreement. Furthermore, this Settlement Agreement does not waive any rights of other inmates in the custody of the DOC, including the Affected Inmates.

16. Integration Clause.

The terms of this Settlement Agreement and its exhibits as written are the entire agreement and there are no other terms relied upon by the Parties, verbal or otherwise.

17. Counterparts.

This Settlement Agreement may be signed in multiple counterparts by fax or email and interchangeably executed. Such execution shall be valid and binding upon the Parties and all counterparts when so executed and shall together be deemed one final original instrument. The Parties may rely on fax or email copies as if they were originals and such copies shall be equally admissible in evidence.

18. Captions.

The captions and headings used throughout this Settlement Agreement are for convenience only and shall not be deemed to modify the meaning of any provisions of this Settlement Agreement.

19. Written Modification.

As permitted by law, this Settlement Agreement may be modified only by a written instrument signed by both the Parties.

20. Severability.

If for any reason any provision of this Settlement Agreement is determined to be invalid or unenforceable, the remaining provisions of this Settlement Agreement shall be construed, performed or enforced as if the invalidated or unenforceable provision had not been included in the text of the Agreement.

21. Governing Laws.

This Settlement Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

22. Binding Effect.

Except as provided elsewhere herein, this Settlement Agreement is binding upon the Parties and their respective agents, officers, directors, employees, executors, administrators, heirs, assigns and successors-in-interest, regarding this action, Civil No. 3:15-CV-00005-CCC.

23. Advice of Counsel.

The Parties acknowledge that each has carefully read the entire Settlement Agreement, has been given the opportunity to consult with and be advised by their attorney, and knows and understands the contents of this Settlement Agreement.

24. Ambiguities.

This Settlement Agreement has been reviewed by the Parties and their respective attorneys, and the Parties have had a full opportunity to negotiate the contents of this Settlement Agreement. The Parties waive any common law or statutory rule of construction that

ambiguities should be construed against the drafter of this Settlement Agreement, and agree that the language in all parts of this Settlement Agreement shall be in all cases construed as a whole, according to its fair and reasonable meaning.

25. Jurisdiction: Dispute Resolution.

The Parties hereby consent to personal jurisdiction and venue in the United States District Court for the Middle District of Pennsylvania, to resolve any dispute relating to the terms of the Settlement Agreement or the obligations of the Parties under this Settlement Agreement. The Court shall retain jurisdiction of this matter for the purposes of the enforcement of this Settlement Agreement.

Dated: March 21ST, 2017

IT IS SO AGREED:

For Plaintiff:


Richard Hollihan

As to Form:


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**PENNSYLVANIA INSTITUTIONAL LAW
PROJECT**

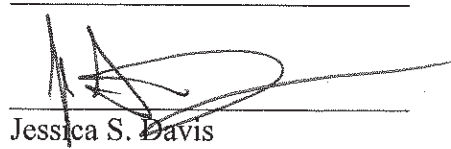
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Attorneys for Plaintiff Richard Hollihan

For the Pennsylvania Department of Corrections:

As to Form:



Jessica S. Davis

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Counsel for Defendants Pennsylvania Department of Corrections, John Wetzel, and Bryan Hyde.

EXHIBIT 1
New Cataract Policy

**13.2.1, Access to Health Care Procedures Manual
Section 16 – Quality Improvement Plan – Chapter 4**

Appendix 16-B

Chapter 4 – Cataract Surgery

Cataract surgery will be considered on an individual basis in accordance with this policy.

Indications:

The patient must have one or more of the following indications for cataract surgery:

- Snellen visual acuity testing of 20/50 (or worse) despite corrective device(s) in either eye; or
- Potential for undetected retinal disease, which cannot be visualized due to the presence of cataract; or
- Hypermature cataract

Under this policy, inmates who have one of these three indications are eligible for cataract surgery. Inmates are eligible for cataract surgery even if an individual has one eye that does not meet the above indications.

Relative Contraindications:

An ophthalmologist will decide whether surgery is contraindicated, including whether:

- The patient is unable to undergo surgery because of coexisting medical or ocular conditions.
- The patient does not desire surgery.
- Surgery will not improve visual function.

Evaluation for Surgery

- For any patient diagnosed with a cataract, the patient will undergo a timely surgical evaluation by an outside ophthalmologist. (For purposes of this policy, "outside" includes ophthalmologists contracted through the DOC's medical provider to provide medical services to inmates incarcerated by the DOC.)
- If an outside ophthalmologist recommends that the patient undergo cataract surgery, and no aforementioned relative contraindications exist, DOC will arrange for the patient's cataract surgery in a timely fashion.
- Absent extraordinary circumstances or necessary restrictions on patient travel, a surgical evaluation by an outside ophthalmologist shall be provided within ninety (90) days of the diagnosis of a cataract, and cataract surgery shall be provided within ninety (90) days of an outside ophthalmologist's recommendation.

Bilateral Extractions

To minimize the risk of bilateral vision loss cataract surgery will not be performed on both eyes on the same day.

13.2.1, Access to Health Care Procedures Manual
Section 16 – Quality Improvement Plan – Chapter 4

Appendix 16-B

Patients and clinicians will require sufficient time to assess the results of the first eye surgery to determine the potential need and appropriate timing for surgery in the second eye.

EXHIBIT 2 (UNDER SEAL)

List of Identified Affected Inmates

Exhibit B

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Attorney Fees

Explanatory Notice to the Public

CLS never charges attorney's fees to its clients, although in some cases clients are asked to pay for court filing fees or other out of pocket expenses.

The attached chart lists the fee schedule used by CLS only in cases in which the law allows for the award of attorney's fees from opposing parties in order to compensate CLS for the legal services provided to its clients.

RANGE OF HOURLY RATES*, Effective February 15, 2017

Attorneys post-law school experience under 2 years	\$180-200
Attorneys 2-5 year's experience	\$220-255
Attorneys 6-10 year's experience	\$270-340
Attorneys 11-15 year's experience	\$360-440
Attorneys 16-20 year's experience	\$450-510
Attorneys 21-25 year's experience	\$520-570
Attorneys more than 25 year's experience	\$620-650
Law Students	\$90-145
Paralegal I and II	\$115-140
Senior and Supervisory Paralegal	\$140-165

*These rates do not reflect any adjustment for contingency, and are based on Philadelphia law firm market survey data and increases in the Consumer Price Index.

THESE FEES ARE NOT CHARGED TO CLS CLIENTS. SEE NOTICE ABOVE.