

**Vermont Occupational Safety and Health Administration  
Inspection Number 1103423**

**PRE-CITATION SETTLEMENT AGREEMENT**

The Vermont Commissioner of Labor and the Vermont Commissioner of Public Safety (collectively “the parties”) hereby stipulate and agree to the following:

1. On September 17, 2015, the Vermont State Police, a division of the Department of Public Safety (DPS), was conducting tryouts for its Tactical Services Unit (TSU) at the Ethan Allen Firing Range in Jericho, Vermont. One of the applicants was Kyle D. Young, an active-duty State Trooper with the Vermont State Police. Trooper Young was a 28 year old male in excellent physical health. He had been pursuing a rigorous, self-directed training regimen of strength and cardiovascular training in preparation for the TSU tryouts.
2. Trooper Young reported to the training site between 12:30 p.m. and 1:00 p.m. on September 17, 2015, along with two other applicants. Three additional applicants had completed the tryout earlier in the day without incident. The tryout consisted of an oral interview, a physical fitness test, and a firearms test. Trooper Young completed the oral interview without incident.
3. Prior to the physical fitness portion of the test, all three applicants were informed by the test’s coordinator Trooper Matthew Johnson that the test was strenuous and very difficult. They were asked if they had any medical issues and how their “hearts” were. All applicants indicated they were able to take the test. All applicants had been advised to be properly hydrated in advance of the test. The TSU members overseeing the try outs were first aid

trained and certified. The Department had water at the training site. Trooper Young was observed drinking out of a large water bottle prior to the start of the test.

4. The physical fitness test consisted of the following components: 10 burpees (a combination squat/pushup), 50 pushups, a one-mile run, lunges with a battering ram while wearing a gas mask, drop ram/remove gas mask/ low crawl for 30 feet, maneuvering around cones with a shield, running with the shield for 100 yards, flipping a tractor tire, dragging the tire, running and laying prone between staggered cones, dragging a fallen Trooper 30 feet, climbing and descending a 30-foot sand hill, and finally disassembling and reassembling a handgun while once again wearing a gas mask. Body armor is worn for the duration of the test.
5. Prior to Trooper Young, three applicants completed the physical portion of the try out without experiencing problems. Trooper Young began the physical fitness test at 1:24 p.m. The air temperature at the time was estimated at approximately 82 degrees. Trooper Young completed all but the last two components of the test without apparent difficulty, and was on pace to complete the entire test approximately 10 minutes faster than the four applicants who had already taken the test that day.
6. As Trooper Young neared the top of the sand hill climb on all fours, he was observed by Trooper Johnson to have stopped moving forward, even though his arms continued to move through the sand. Trooper Johnson climbed the hill and asked Trooper Young if he was okay. Trooper Young responded "I'm fine, I'm good" and that he was not going to quit. Trooper Johnson asked Trooper Young if he was experiencing any medical issues and Trooper Young responded "No, I'm tired."

7. Trooper Johnson observed Trooper Young's eyes to be "droopy." He then asked Trooper Young to provide his name, date of birth, and had him count backwards from 10, all of which Trooper Young did while remaining alert. Trooper Johnson asked a similar, second series of questions, during which Trooper Young became unresponsive.
8. Trooper Johnson told Trooper Young to stop trying to move. Trooper Johnson asked two other VSP officers on site, Trooper Matthew Cannon and Sergeant David White, to retrieve water or power aid. Trooper Cannon retrieved an electrolyte gel pack from his cruiser, which Trooper Johnson attempted to squirt into Trooper Young's mouth. However, the gel came right back out of Trooper Young's mouth. Trooper Johnson and Sergeant White then removed Trooper Young's tactical vest and rolled him onto his back.
9. Sergeant White remained with Trooper Young while Trooper Johnson descended the hill and contacted 911 at 1:48 p.m. Sergeant White described Trooper Young as alert at this time. Trooper Johnson retrieved an automated external defibrillator (AED) from his cruiser and applied it to Trooper Young. During this time, Trooper Cannon left the hill to notify Lt. Michael Manley and the rest of the TSU who were on-site of the situation.
10. Trooper Johnson administered the AED, but noted that it did not detect a heartbeat. He and Sergeant White also administered CPR till they were joined by other members of the TSU, who assisted with CPR as well. Trooper Young's clothing was partially removed in an effort to cool him. All troopers present were trained and certified to provide first aid. Two game wardens also assisted with CPR till two first responders arrived and continued administering CPR until an ambulance arrived. The Essex Rescue ambulance did not arrive until approximately 55 minutes after Trooper Johnson's 911 call.

11. Trooper Young was transported to the emergency room at the UVM Medical Center in Burlington. The Essex Rescue EMTs who transported him were not able to detect a pulse. Trooper Young was declared deceased by emergency room doctor Mariah McNamara at 3:10 p.m.
12. An autopsy was performed on September 18, 2015, by Dr. Stephen Shapiro. He concluded that Trooper Young's death was due to exertional heat stroke, and that the manner of death was accidental.
13. The Vermont Occupational Safety and Health Administration (VOSHA), a division of the Vermont Department of Labor (VDOL), learned of Trooper Young's death sometime on September 21, 2015. A fatality report was created on September 22, 2015, and assigned to VOSHA Compliance Officer Karl Hayden. An investigation was opened on September 24, 2015.
14. The Vermont Department of Public Safety is an employer subject to VOSHA's jurisdiction. *See* 21 V.S.A. §203(7) and §203(8). VOSHA's jurisdiction includes determining whether an employer's place of employment is in compliance with the VOSHA Code (21 V.S.A. §206), and enforcing occupational safety and health standards within the state in cooperation with federal OSHA (21 V.S.A. §221). Section 18(c)(6) of the Federal OSHA Act (29 USC §667(c)(6)) requires a state plan state to establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions. VOSHA is responsible for investigating workplace fatalities pursuant to the approved Vermont State Plan and the federal OSHA Field Operations Manual Chapter 11, Section II(C), as adopted and followed by VOSHA.

15. Mr. Hayden spoke with senior VSP officials, interviewed numerous witnesses, and reviewed documentation associated with the incident and with the TSU tryout process in general. He also visited the Ethan Allen Firing Range and the site of the tryouts and of Trooper Young's collapse.

16. The scope of Mr. Hayden's investigation was broad. He attempted to identify any and all general industry safety and health standard violations associated with the TSU tryout process, whether or not they may have actually contributed to Trooper Young's death.

17. At the close of his investigation, Mr. Hayden identified two potential violations of VOSHA general industry safety standards, but he did not attribute Trooper Young's death to either of these violations

18. Mr. Hayden identified 29 CFR 1910.151(b), which reads in full:

In the absence of an infirmary, clinic or hospital in near proximity to the workplace which is used for the treatment of all injured employees, a person or persons shall be adequately trained to render first aid. Adequate first aid supplies shall be readily available.

Mr. Hayden concluded that even though trained first aid responders were on site, given the nature of the physical activity, the industry standard requires that ice packs or other cooling devices be available.

19. Mr. Hayden also identified 29 CFR 1910.134(c)(1), which reads in full:

In any workplace where respirators are necessary to protect the health of the employee or whenever respirators are required by the employer, the employer shall establish and implement a written respiratory protection program with worksite-specific procedures. The program shall be updated as necessary to reflect those changes in workplace conditions that affect respirator use.

Mr. Hayden concluded that because the use of respirators by applicants during TSU tryouts was a mandatory component of the physical fitness test, the VOSHA standard required TSU to have a written respiratory protection program in place. Mr. Hayden's finding of a lack of a written respiratory program was an ancillary finding and not associated directly with the investigation into Kyle Young's death. The masks were not used in a manner that contributed to Kyle Young's death and the lack of a written respiratory protection program did not contribute to Kyle Young's death.

20. The parties met on January 25, 2016 to discuss Mr. Hayden's preliminary findings. At that time, DPS volunteered to provide additional documentation to VDOL as evidence of their good-faith efforts to address issues raised by Trooper Young's death. The parties met again on February 18, 2016, and agreed to resolve this matter as follows.
21. DPS recognises the need to ensure the safety of its members during routine physical training exercises and special units tryouts. DPS is committed to reviewing and improving its training and physical testing protocols to ensure that they not only comply with all applicable occupational safety and health standards, but protect DPS's members to the greatest extent possible. The Department of Public Safety is reviewing the practices and procedures for all DPS Special Teams. As part of the review, DPS consulted with two highly regarded independent experts, Dr. Suzanne Elliott and Denise Alosa, both long time medical team directors for the Vermont City Marathon. As a result of the on-going review, the Vermont State Police will implement additional safeguards during all physical testing procedures.
22. VDOL recognises DPS's good faith commitment to improving its training and physical testing protocols to better protect its members. In particular, VDOL recognises the grief and

sorrow felt by DPS at the loss of one of its members, and DPS's sincere desire to prevent such tragic events in the future.

23. As evidence of such good faith commitment, VDOL recognises the fact that DPS immediately initiated a comprehensive review of its TSU policy, and that DPS is continuing work on the implementation of additional safeguards during physical testing that will address the issues raised by VOSHA's investigation.
24. DPS agrees to provide VDOL with a draft comprehensive safety plan for use during physical testing no later than July 1, 2016. VDOL will review such plan and promptly notify DPS of any concerns or suggestions it might have. Upon completion of such plan, DPS agrees to provide VDOL with evidence of the plan's implementation and the manner in which the plan will be communicated to its members.
25. VDOL agrees that upon review and approval of the plan and its implementation as described above, this matter will be considered closed without the issuance of a citation or citations.
26. By entering into this agreement, no party makes any admission concerning the strength or weakness of any findings or claims.

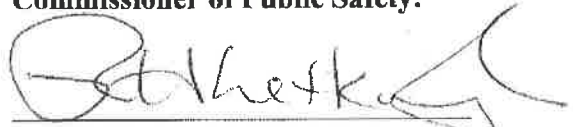
**For Complainant  
Commissioner of Labor:**



DIRK ANDERSON  
GENERAL COUNSEL

Dated: March 24, 2016

**For Respondent  
Commissioner of Public Safety:**



ROSEMARY GRETKOWSKI  
GENERAL COUNSEL

Dated: March 24, 2016