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**TESTIMONY ON MEDICAL FACILITIES AND PRACTICES  
WITHIN THE DEPARTMENT OF CORRECTIONS  
PRESENTED BY THE AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA  
BEFORE THE PENNSYLVANIA HOUSE JUDICIARY COMMITTEE'S  
SUBCOMMITTEE ON CRIMES AND CORRECTIONS  
ON FEBRUARY 22, 1999**

Good afternoon. My name is Larry Frankel and I am the Executive Director of the American Civil Liberties Union of Pennsylvania. I would like to thank Chairman Birmelin and the other members of the Subcommittee on Crimes and Corrections for providing us with this opportunity to discuss the subject of medical services in our prisons.

The ACLU believes that all persons confined in prisons are entitled to safe, sanitary and humane conditions of confinement. This includes adequate living space, food, recreation, medical and mental health care, and protection from physical mistreatment .

Medical mistreatment or non-treatment may rise to the level of cruel and unusual punishment. The United States Supreme Court established, in *Estelle v. Gamble*, 429 U.S. 97 (1976), that a deliberate indifference to the serious medical needs of prisoners constituted a constitutional violation. John W. Palmer, in his treatise, *Constitutional Rights of Prisoners*, states that this deliberate indifference standard contains:

both an objective and subjective prong. First, the alleged deprivation must be, in objective terms, 'sufficiently serious.' Second, the charged official must act with a sufficiently culpable state of mind. Deliberate

indifference requires more than negligence, but less than conduct undertaken for the very purpose of causing harm. More specifically, a prison official does not act in a deliberately indifferent manner unless that official knows of and disregards an excessive risk to inmate health or safety; the official must be aware of the facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.

Palmer, *Constitutional Rights of Prisoners*, 186 (1997) (footnotes omitted).

Just last year, the United States Supreme Court held that prisoners are protected under the American with Disabilities Act. *Pennsylvania Department of Correction v. Yeskey* (1998). That decision upheld the right of disabled prisoners to toilets, showers and other essential facilities and services, including medical clinics, within prison.

The ACLU thinks that providing quality medical care to persons confined in our prisons is not only humane and constitutionally required but also sound public health policy. Let me demonstrate this point by referring to a matter we litigated several years ago. In the summer of 1992, ACLU lawyers noted an alarming increase in the number of active tuberculosis cases in state prisons. We sought a preliminary injunction against the Department of Corrections that would have forced the Department to develop a plan to actively contain and combat this contagious disease. Ultimately, Judge DuBois, a federal judge in the Eastern District of Pennsylvania, ordered the Department of Corrections to implement a new policy. There was a good likelihood that a tuberculosis epidemic would have spread well beyond the prison walls had the court not required the Department to take strong actions.

The ACLU also believes that prisoners, just like every other American, have a constitutional right to refuse unwanted medical treatment. We think that right includes freedom from being used as human guinea pigs in medical experiments. And we hope that most

Americans would agree with that position.

Today you are hearing from a number of witnesses who are describing medical experiments that were conducted on prisoners at Holmesburg prison in Philadelphia. We would submit that these prisoners were subjected to a shocking deprivation of their constitutional rights, violations so severe that they should be deemed in violation of the Nuremberg Code.

Although these experiments ended in 1974 after Congressional hearings put an end to most human experimentation involving prisoners and mental patients, the individuals whose lives were profoundly altered by these experiments continue to be uncompensated victims of social injustice. It is our hope that this hearing today will spark an interest in trying to formulate a remedy for these constitutional violations.

Thank you again for providing me with this opportunity to testify. I will be happy to try to answer any questions you may have.