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COUNTY OF LOS ANGELES
DEPARTMENT OF HEALTH SERVICES
313 N. Figueroa, Los Angeles, CA 90012
(213) 240-8101

July 27, 2004

TO: Each Supervisor

FROM: Thomas L. Garthwaite, M.D.
Director and Chief Medical Officer

SUBJECT: **ADULT FILM INDUSTRY HEALTH AND SAFETY UPDATE**

On April 20, 2004, the Board instructed the Department of Health Services (DHS) to report back on actions which can be taken by California Occupational Safety and Health Administration (Cal/OSHA) or the local health officer to assure safety in the adult film industry. This memorandum is an update to my May 18, 2004 report.

The following recent activities have being undertaken by DHS, or other agencies working in collaboration with DHS, to address the recent outbreak of four connected HIV cases in the adult film industry, and to develop long-term policy solutions to safeguard the health of adult film workers.

1) DHS Investigation. DHS staff interviewed and provided medical referrals for the index case and two other individuals identified as HIV-positive during the recent outbreak. DHS has subsequently interviewed another individual identified with HIV in the adult film industry who is not evidently connected to any of the other recent cases. DHS staff is currently seeking to interview and obtain information for the third HIV-positive partner to the index case in the recent outbreak.

2) Cal/OSHA Accident Investigation. Cal/OSHA's investigation into the recent outbreak, initiated on June 4, 2004, is open and continuing.

3) Adult Film Industry Worker Health and Safety Work Group. The STD Program and Cal/OSHA have continued collaboration on a draft Exposure Control Plan for the adult film industry, adapted from the Bloodborne Pathogens standard, which will subsequently be reviewed by other agencies participating in the Work Group.

4) Worker and Employer Education. STD Program staff met on May 24, 2004 with staff of the state Labor and Workforce Development Agency and of the state DHS to develop educational outreach plans and materials for both producers and performers. This effort is ongoing. Tentative plans include the development of a website and hardcopy materials for both employees and employers.

5) NIOSH Technical Assistance. On April 29, 2004, the DHS Health Officer requested technical assistance from the National Institute of Occupational Safety and Health (NIOSH), to investigate workplace hazards in this industry and issue recommendations. On May 18 and 19, Dr. Bruce Bernard and Mr. Chip Lehman of NIOSH, accompanied by Dr. John T. Brooks of the National Center for HIV/STD and TB Prevention, met with staff of DHS and AIM, and with various members of the industry. A draft report based on this visit was provided to DHS (Attachment I). On June 18, 2004, NIOSH received a request from one adult film producer for a Health Hazard Evaluation (HHE). NIOSH informed the producer that it will be issuing comments and recommendations from a public health perspective on health and safety issues in the adult film industry to the County of Los Angeles (based on work already performed), and that it would transmit a copy of these comments and recommendations to the producer, which would then be public documents.

6) Ongoing Dialogue with Industry Members. DHS staff has continued to engage in ongoing dialogue with industry producers and performers, including a meeting with a performer/producer on July 11, 2004, as well as an appearance by Jonathan E. Fielding, M.D., Director of Public Health and Health Officer, at a public meeting of the HIV Commission and Prevention Planning Committee Joint Policy Committee, covering adult film industry health and safety issues.

7) Public Hearing, California Assembly Committee on Labor and Employment, Chaired by Assemblyman Paul Koretz. A hearing on worker health and safety in the adult film industry was held on June 4, 2004 (Attachment II). Dr. Jonathan E. Fielding presented a review of DHS activities and key DHS recommendations.

Next steps:

In addition to the ongoing investigations noted above, the next steps will include completion of a draft exposure control plan, and circulation of this draft for comments. DHS will also continue to work with the state Labor and Workforce Development Agency and state DHS on education materials, including web-based information, for adult film industry employers and workers.

I will continue to advise the Board of developments in this area periodically. If you have any questions or need additional information, please let me know.

TLG:pk
404:014

Attachments

c: Chief Administrative Officer
County Counsel
Executive Officer, Board of Supervisors

DEPARTMENT OF HEALTH & HUMAN SERVICES
Public Health Service

Centers for Disease Control and Prevention (CDC)

John T. Brooks, M.D.
Clinical Epidemiology Section, Division of HIV/AIDS Prevention

Memorandum

Date: May 20, 2004

John T. Brooks, M.D.

File

Subject: Trip Report – Technical Assistance to Los Angeles County STD Program, Worker Safety in the Adult Film Industry, May 18-19, 2004

Persons Met:

Bruce Bernard, M.D., M.P.H. (NIOSH, Cincinnati)
Chip Lehman (NIOSH, Cincinnati)
Peter Kerndt, M.D. (LA County DHS, STD Program)
Harlen Rotblatt, Ph.D. (LA County DHS, STD Program)
Jorge Montoya, Ph.D. (LA County DHS, STD Program)
Sarah Guerry, M.D. (LA County DHS, STD Program)
Douglas Frye, M.D. (LA County DHS, HIV Surveillance)
Eugene Murphy, C.N. (California OSHA)
Stephen Simon, J.D. (LA City AIDS Coordinator)
Lori Laubacher (CDC, LA County)
Tameeka Johnson (CDC, LA County)
Sharon Mitchell, Ph.D. (Adult Industry Medical "AIM" Health Care Foundation)
Colin Hamblin, M.D. (Adult Industry Medical "AIM" Health Care Foundation)
Dave Pounder (Adult Film Industry performer and producer)
Jeanine Martin (Adult Film Industry performer and producer)
Adam Glasser (Adult Film Industry performer and producer)
Ron Spallone (Adult Film Industry producer)
Jack Lawerence (Adult Film Industry performer)
Tabatha Yang (Adult Film Industry performer manager and "HEARD" co-developer)
Ron Berry ("HEARD" co-developer)
Caitlin Liu (Los Angeles Times newspaper reporter)
Approximately 20 anonymous Adult Film Industry performers, producers, and managers

Background:

In response to a series of HIV infections among performers in the heterosexual adult film industry that appear to have been occupationally acquired, Dr. Peter Kerndt of the Los Angeles County (LA County) Department of Health Services' Sexually Transmitted Disease (STD) Program requested technical assistance from CDC/NIOSH to evaluate means of improving worker safety. CDC/NIOSH requested CDC/NCHSTP accompany their staff on a one-day site visit to provide expertise in HIV and STD transmission, diagnosis, and prevention. On May 18, 2004 Dr. Bruce Bernard and Mr. Chip Lehman of NIOSH joined Dr. John T. Brooks of NCHSTP in Los Angeles.

This report will only briefly describe the background for the technical assistance provided. Two appendices accompanying this trip report that provide a more complete review of the context in which these HIV infections occurred. Appendix 1 is a memorandum dated February 27, 2003 from Thomas L. Garthwaite (County Director and Chief Medical Officer) responding to a county Board of Supervisors request for information on ways to prevent HIV/AIDS and other STDs in the adult film industry, and possible regulatory action that could be taken to ensure protection of workers. Appendix 2 is the minutes of an August 7, 2003 meeting held by the LA County STD Program regarding worker safety and health in the adult film industry.

In brief, LA County DHS STD Program has been formally engaged in identifying ways to improve workplace safety for performers in the adult film industry for at least a year, although since at least 1998, when the last reported workplace-related HIV infection occurred, the health department has interacted from time-to-time with the industry on specific issues (e.g., STD guidelines). As a result of the recent cluster of workplace-related HIV infections, the health department requested assistance from California OSHA (Cal/OSHA) to draft an Injury and Illness Prevention Program (IIPP) and any other guidelines deemed appropriate to comprehensively protect workers in the adult film industry from exposure to HIV and STDs.

Adult film production is a legally sanctioned business enterprise in the state of California. The industry produces approximately 4,000-11,000 films and an estimated $9-13 billion gross revenues annually[1]. Persons within the industry estimate that >200 production companies employ 1,200-1,500 performers (performers are referred to as "talent" in the industry), of whom perhaps 25% are male. These performers are managed by 10-20 agents; free-agent performers are rare. The industry is divided between "straight" adult films produced for heterosexual audiences and "gay" adult films produced for homosexual audiences. In general, there is very little interaction between these two segments of the industry.

Reefer Madness, E. Schlosser, Houghton Mifflin Co., New York NY, 2003, pp 113-4.

Since 1998, performers in straight adult films have voluntarily participated in a program of monthly HIV, gonorrhea, and chlamydia testing run by the Adult Industry Medical AIM Health Care Foundation (AIM)[2]. Funded by donations and with technical assistance from by the LA DHS STD Program, this testing program was developed to reduce transmission of infections through early diagnosis, treatment, and quarantine. Individual monthly test results are provided to performers on paper forms with embossed, irreproducible seals. Performers sign consent forms (Appendix 3) that permit disclosure of their test results to adult film managers and producers in order to protect the performers' safety. These data are published as they become available through an internet-based system called "Labdat" (www.labdat.com). Presently, Labdat contains each performer's true name.

In response to the recognized need for detailed exposure data to identify at-risk individuals who need to be contacted, tested, and quarantined in the event of positive test results, AIM has very recently (less than a week ago) developed a parallel internet-based system called "Adultdat" (www.adultdat.com). As films are made, producers voluntarily enter data for each performer describing exposures (i.e. sexual interactions) and the persons involved, by date. A similar system has also been proposed by a group unaffiliated with AIM called the Health Entertainment Adult Records Database ("HEARD"). The HEARD system would create financial incentives for producers to participate and to adopt the cost all testing, which is currently borne by the performers. Data would be stored using unique identifiers and/or stage names without any personally identifying information.

Currently, AIM uses Healthcare Clinical Laboratories, Inc. to test venous blood samples for HIV by RT-PCR with the Roche Amplicor system (i.e. viral load)[3] and urine for chlamydia and gonorrhea by ligase chain reaction. Oropharyngeal and rectal specimens are not tested. AIM provides testing and treatment services for other STDs (e.g., syphilis, trichomoniasis, HSV, genital warts), vaccination against hepatitis A and B, and gynecological care for women including Pap smears. AIM also counsels performers on risk reduction, early symptoms of STD infection, and provides an instructional video titled "Porn 101" that addresses aspects of STD and HIV transmission unique to the adult film industry.

AIM has not developed a clientele among performers performing in gay adult films. Performers in gay adult films rely on regular condom use, although there is a segment of the industry where condoms are specifically not employed, termed "bareback" films. In light of sensitivities regarding disclosure of HIV status among gay male performers, this more "universal precautions"-like strategy has been adopted in place of a system of scheduled quasi-public testing.

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2 AIM may have only been testing for gonorrhea and chlamydia since sometime after 1998

3 Viral load testing is not a currently FDA-approved method for diagnosis of HIV infection. AIM uses RT-PCR because it can detect virus before seroconversion, thus reducing the "window period" between infection and diagnosis. RT-PCR is prone to false-positives. Depending on the test method used, RT-PCR may not detect equally all subtypes of HIV-1 (see discussion under "Recent HIV Infections in the Industry").

Film Making:

Shoots usually take place at private homes or in film studios. Los Angeles County requires that a permit be issued for any filming activity, but permits are rarely obtained for adult film shoots. Producers planning a film contact managers to identify and recruit performers. Performers may also be hired directly by producers. Managers negotiate the terms of employment before performers go to a shoot: the specific work (i.e. sexual interactions), the role and expectations for each performer, and the payment. At the shoot, it is routine for performers to share their STD and HIV test results among one another. Producers often but inconsistently check performers' test results prior to the shoot. By federal law (18 USC 2257), all performers must produce evidence that they are at least age 18 years. Producers create a separate set of records documenting each performer's age for each shoot.

Performers may decline to perform at their own discretion based on their level of comfort with other performers' test results (e.g., tests are greater than one month old). They may also decline to perform if the work proposed at the shoot is not as previously arranged with their manager (for instance, a producer requests an anal scene in place of a vaginal scene). Performers are typically paid $400-1000 per shoot. The marginal living circumstances of many actors in adult films may pressure them to take risks they may otherwise have not taken. A small number of actors are salaried employees working exclusively for a particular producer, but most actors work on a job-to-job basis, analogous to stunt performers in more mainstream film production.

It generally takes 1-2 months from conception to retail distribution to complete a film. Fixed start-up costs (e.g., camera and lighting purchase) are in the range of $10,000-15,000. Production costs (e.g., equipment rental, performers wages, reproduction) range $3,000-5000. A sale of 1,500 units for a film is the standard considered necessary to recoup production costs with acceptable profit.

Recent HIV Infections in the Industry:

On April 12, 2004 a male performer for straight adult films was confirmed HIV-infected. Interviews by AIM staff with the index case suggest that this man was infected while working in film shoots in Brazil during March 2004. This man's last negative HIV test (HIV viral load) had been on April 9, 2004. In between his return from Brazil and April 12, 2004, he was hired for a number of shoots and had multiple sexual contacts. Following identification of this man's infection, AIM issued a quarantine notice, advising all adult film production be halted for 60 days until the at-risk primary and subsequent contacts of this man could be identified and HIV tested. At least three additional incident HIV infections have been identified among 14 women (21% attack rate) who were determined HIV negative 30 days or less prior to sexual contact with this man. Appendix 4 is a network diagram constructed by LA County DHS STD Program illustrating these relationships and test results as of May 17, 2004.

Anecdotally, it has been reported that one and possibly all three cases involved women who had performed unprotected anal sex with the index case. Multiple producers and performers stated that in last 12 months there has been a notable rise in requests to make films involving insertive sex with internal ejaculation, both anal and vaginal. As well there has been an increase in the number of films made involving double penetration (two penises in a woman's anus or simultaneous penetration of both the vagina and anus), also with internal ejaculation. Condoms are generally not used. This trend contrasts sharply with the traditional adult film practice of the past 10-15 years of filming the ejaculation outside the woman's body. Shoots ending with ejaculation into a woman's face remain routine and may also be occurring more often; facial ejaculation could lead to mucous membrane exposures in the mouth and eyes.

Drs. Mitchell and Hamblin of AIM stated that despite the frequent number of risky exposures experienced by performer in the course of their work, they have received "less than a handful" of requests for either pre- or post-exposure prophylaxis (PrEP and PEP, respectively) against HIV infection. Questioning performers, managers, and producers indicated there is little PEP use among straight adult film performers, either by prescription or obtained "on the street". Only "one or two" of the persons exposed potentially to HIV during the current episode have requested post-exposure prophylaxis; they were referred to Dr. Eric Daar (UCLA), an expert in primary HIV infection.

In collaboration with Roche Diagnostics, AIM is investigating whether the strains of HIV isolated from the four HIV-infected performers thus far identified are related genetically. The source patient in Brazil may have been located and will be asked to provide blood samples for viral testing as well. There is some concern that the HIV-1 strain may be a non-B subtype. CDC Division of AIDS, STD and TB Laboratory Research has also offered to determine the HIV-1 subtype of virus isolated from these persons, and any others identified as the investigation continues, and to assess genetic relatedness. In contrast to ELISA-based antibody detection systems, PCR-based technologies have not been as optimized for detection of non-B subtypes, HIV-2, or Group O HIV-1. Using an RT-PCR[4] not optimized to react with non-B HIV-1 subtypes could lengthen the window period between infection and diagnosis.

During the 60-day filming moratorium, a fifth performer (transgender) without apparent relationship to the other four performers also tested HIV positive by RT-PCR approximately 30 days after a negative test. Concern has thus been raised that two separate occupational HIV infections may have occurred. Further investigation of this case and the other cluster of four infections is on-going.

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4 Newer versions of the Roche Amplicor RT-PCR test use primers targeting a highly conserved region of the HIV-1 genome and therefore can measure more accurately viral loads resulting from infection with non-B HIV-1 subtypes.

Condom Use:

Condom use is reportedly low in straight adult films. Anecdotally less than 20% of penile-anal and penile-vaginal penetrations are performed with condoms. Condoms or other barriers (e.g., dental dams) are used very rarely, if ever, during episodes oral-genital contact. Use of latex gloves for digital-anal and digital-vaginal interaction is limited mostly to a tiny fraction of "fetish" adult films. A small number of studios (estimated 2-5) require the use of condoms for all penile-anal and penile-vaginal sexual interaction. For the remainder, condom use for filming any sexual interaction is theoretically left to the full and unbiased discretion of the performers involved.

Multiple sources reported that virtually all female performers and most male performers would prefer using condoms, at a minimum for all penile-anal and penile-vaginal interactions. Reluctance to condom use among male performers is related mostly to technical issues (e.g., difficulty placing a condom on penis during complex shoots, loss of erection while placing a condom on penis) and not concerns about physical appearance or a performer's ability to carry out the requested work.

Producers, other than those who mandate condom use, hesitate to employ condoms in shoots, even though many reported a desire to make condoms part of their company's standard operating films that include condoms. The few producers who mandate condom use are large companies procedure. The reasons offered are predominately economic: condom-free films sell better than with extensive, well-established distribution and retail networks; these companies can weather losses related to filing "condom only". However, moderate- and smaller-sized producers that want to introduce condoms cannot risk loss of market share in this highly competitive, commodity-driven business. Efforts to form a trade association that could set industry-wide standards for adult film production, such as the routine use of condoms, have not been successful. In light of the large number of producers competing in a tight marketplace it seems unlikely that 100% of producers would participate. There would always be existing or new companies, which could produce condom-free adult films.

Thus, pressures exist for performers to work without devices that could offer substantial personal protection against STDs and HIV infection. For performers who will work only with condoms, there is a large pool of other performers willing to accept the increased risk of working condomless. Of particular concern, those work activities that pose the greatest risk of HIV and STD transmission (e.g., penile-anal sexual interaction) are also the activities for which the greatest wages are offered. One producer reported that for riskier acts it was not uncommon to use coercion, a type of "bait-and-switch" ploy, at the end of the month. For example, a producer, knowing that a performer's rent payment is upcoming, arranges with that performer to work in a scene involving vaginal intercourse. However, once the performer is on-site at the shoot, the producer changes it to a scene involving anal intercourse, knowing the performer is unlikely to turn down this riskier job in light of his or her financial need.

Performers and some producers have therefore advocated for local or federal government intervention to mandate condom use during shoots, specifically use of condoms for penile-vaginal and penile-anal contact. The only existing workplace regulation that could be used for this purpose is OSHA's Bloodborne Pathogens Standard (29 CFR 1910.1030). When applied in other industries (e.g., healthcare, clinical laboratories) this regulation has been interpreted with a "zero tolerance" perspective. In the adult film industry "zero tolerance" would necessitate requiring use of latex or equivalent barriers for all sexual interaction that pose a risk of HIV and STD transmission, including oral-genital, oral-anal, digital-anal, and digital-vaginal contact.

Producers state that "zero tolerance" would generate adult film product unacceptable to the public and lead to tremendous loss of sales, driving the adult film industry out of the state of California ("regulatory flight"). Outside the state, adult film performers would face the same workplace health risks but in jurisdictions where adult film production is not legal and where there may well be less concern or awareness among public health and worker safety authorities about the workplace safety risks faced by adult film performers. Regulatory flight would also lead to a sizable loss of revenue for the region.

Local public health representatives cited these concerns as justification for some kind of federal involvement from NIOSH; recommendations resulting from a NIOSH review of Cal/OSHA's IIPP could provide other state occupational safety agencies with a citable reference. From the public health perspective "zero tolerance" is the only acceptable recommendation; neither LA County DHS nor CDC (NIOSH and NCHSTP) would state that sexual interactions associated with a lower risk of STD and HIV transmission are an appropriate substitute for higher risk sexual interactions, when protection against infection in both circumstances is available. According to the persons with whom we spoke, a more limited action requiring condom use only during penile-vaginal and penile-anal contact (and optional use in other work situations) would be considered more acceptable. Cal/OSHA, as the regulatory agency, has the authority to negotiate standards that take into account the interests of all stakeholders (e.g., workers, industry, value of the industry to the public), even though LA County DHS and CDC are unlikely to compromise.

Those producers who advocated condom use most strongly believed a federal-wide requirement similar in scope to 18 USC 2257 was necessary to protect both the physical health of performers and provide a "level playing field" to protect the fiscal health of producers. "2257" is the law that requires producers, distributors, and retailers verify that the age of all persons appearing in visual materials depicting sexual conduct be 18 years or older. Because this law applies to not only producers, but also the distributors and retailers of such product, it discourages production of explicit visual materials with underage persons off-shore or underground that could then be sold without penalty; the burden of compliance is comprehensive.

Alternatives to Strict Condom Requirements:

Some producers have proposed creating film content where condoms cannot be seen, giving the illusion that no condom was used. Special effects techniques are available that can digitally remove condoms during post-production. Although presently cost prohibitive, this option might become more affordable if used widely. Test materials produced for LA County DHS STD Program by a special effects company were considered very acceptable. Producers also reported that there are condoms available, which are hardly visible when filmed.

Concerns were raised however by some public health representatives, performers, and producers that "hiding" condom use may leave room for production of condom-free content, for which distribution and retailing could not be controlled. To discourage this practice, there was discussion that perhaps a "condom seal of approval" system for adult films could be generated by the industry. For example, a statement at the start of each film, similar to the FBI warning, could state that "condoms were used consistently to protect workers when they were engaged in depiction of high risk sexual interactions during production of this film." This system would require buy-in from consumers, most likely large consumer groups, such as hotel chains or cable television. Buy-in could be generated through goodwill or end-user pressures (e.g., boycotts, letter-writing campaigns).

Citing the profound influence of the film industry on the behavior of the American public, these same public health and industry representatives questioned whether there was an obligation to show consistent condom use to encourage the same practice among viewers. No data were known to exist to support the hypothesis that depicting condom use encourages the practice. It was suggested that data might obtained by assessing the impact of condom depiction in gay adult films on behavior within this genre's viewership.

Other HIV and STD Concerns:

Performers may be exposed to HIV and STDs outside the workplace. Performers often have personal relationships that include sexual activity with persons outside of work (e.g., spouses). As illustrated by the current series of infections, performers work frequently on productions where a routine HIV and STD testing program, such as the system provided by AIM, is not in place. Some performers (estimated at 15% by one source) undertake commercial sex work (e.g., escort services) to supplement their income. Another small group of actors actively use intravenous drugs. Finally, some male performers inject androgenic steroids and may share needles. Performers and producers recognized that condoms could prevent performers who had acquired HIV and STDs outside the workplace from transmitting to other performers during shoots.

Activities Undertaken to Protect Adult Film Workers:

In 2003, LA County DHS formed a working group too examine issues of worker safety in the adult film industry. LA County DHS STD Program and Cal/OSHA have prepared a draft IIPP. The draft IIPP is a comprehensive workplace program that addresses important elements required by Cal/OSHA related specifically to worker health hazards. Among the recommendations in the IIPP are testing for HIV and curable STDs using approved protocols, Hepatitis B and C testing, and Hepatitis A and B vaccination, disclosure of HIV/STD status among performers, universal requirement for condom use, documentation and record-keeping, and surveillance and monitoring compliance. LA County DHC STD Program has asked CDC/NIOSH with input from CDC/NCHSTP to review this IIPP and to make additional recommendations deemed appropriate to the health and safety of adult entertainment workers.

A bill has been introduced in the LA County Assembly (Bill No. 2798) that if passed in its current form would require biweekly screening of all adults film actors for HIV and STD (modeled after the AIM program). The bill does not address condom use. A public hearing regarding this bill is scheduled for June 4, 2004. Of note, this bill would apply equally to straight and gay adult filmmaking. It is anticipated that there may be reluctance on the part of the gay adult film industry to adopt an HIV and STD screening program unless there were some additional layer of confidentiality in place to prevent performers from learning the test results of other performers.

An area not addressed by this bill or the IIPP is whether persons with HIV infection may be permitted to work. This concern is perhaps most relevant to the gay adult film industry, where a sizable proportion performers (anecdotal estimates have ranged from 15-80%) are HIV-infected. Under the Americans with Disabilities Act (ADA), HIV infection is a disability and HIV-infected persons must be accommodated in the workplace. Specifically, the ADA prohibits discrimination in employment against qualified individuals by all private employers with 15 or more employees (http://www.omhrc.gov/omh/aids/faq_ada_hiv_01.htm). A "qualified individual with a disability" is a person who meets legitimate skill, experience, education, or other requirements of an employment position he or she holds or seeks, and who can perform the "essential functions" of the position with or without reasonable accommodation. "Essential functions of the position" are those core duties that are the reason the job position exists, which in the case of adult film workers is the ability to perform particular sexual interactions. A "reasonable accommodation" is any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to perform the essential functions of the job or enjoy the benefits and privileges of employment. Reasonable accommodation is usually interpreted as something to help the disabled persons, such as provision of a ramp for a wheelchair-bound worker, or time off to visit a healthcare provider. One interpretation of "reasonable accommodation" might include provision of personal protective devices (e.g., condoms) during work that involves intimate sexual interaction capable of transmitting the virus to protect HIV-uninfected workers from acquiring the infection from HIV-infected colleagues.

Summary and Plan:

Performers working in the adult film industry face substantial, avoidable risk of HIV and STD infection. The current program of monthly screening identifies persons after infections occur, permitting treatment and quarantine, as needed. It is an important component of protecting workers' health in the adult film industry but is an imperfect solution, as evidenced by the recent series of HIV infections. Though STDs are frequently curable, repeated infections can increase risk of certain cancers and infertility. Further, STDs are costly to treat (in some cases requiring surgery), expose performers to side effects of medication, and increase pressure favoring antimicrobial resistance. Regular use of personal protective equipment, such as condoms, could considerably reduce the risks of acquiring HIV and STD infections. In the heterosexual adult film industry, a complex set of forces has prevented universal adoption of routine condom use for the riskiest work practices (penile-vaginal and penile-anal penetration); opportunities for exploitation of workers exist. There has been a notable recent increase in certain high-risk practices, specifically, traumatic anal intercourse with internal ejaculation, which may have contributed to the recent set of HIV infections. These practices also have increased the likelihood that a similar outbreak of HIV infections may occur again, despite a program of routine screening.

LA County DHS STD Program and Cal/OSHA have prepared an IIPP that proposes means of preventing exposure of adult film workers to HIV, STDs, and other important infections (e.g., viral hepatitides) in the workplace.

CDC/NIOSH and CDC/NCHSTP have been asked to provide technical assistance, specifically, to review and comment on this IIPP and to make additional recommendations as needed. CDC/NIOSH and CDC/NCHSTP have agreed to prepare a coordinated written response to LA County DHS and Cal/OSHA within 14-30 days after May 20, 2004. This response, which will likely be in the form of a letter, will require clearance through both centers and potentially the CDC's Office of the Director.

ATTACHMENT II

STATE CAPITOL
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SACRAMENTO, CA 94249-0110
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Assembly
California Legislature

ASSEMBLY COMMITTEE
ON LABOR AND EMPLOYMENT
PAUL KORETZ, CHAIR
ASSEMBLYMEMBER, FORTY-SECOND DISTRICT

BEN EBBINK
PRINCIPAL CONSULTANT

NICK LOUIZOS
ASSOCIATE CONSULTANT

LORIE ERICKSON
COMMITTEE SECRETARY

Worker Health and Safety in the Adult Film Industry

Friday, June 4, 2004
10:00 a.m. to 1:00 p.m.
Van Nuys State Office Building

Introductory Remarks

- *Assemblymember Paul Koretz, Chair*
- *Committee members*

Panel One: State and Local Government Role in Protecting Workers Health and Safety in the Adult Film Industry

- *Vicky Heza, Deputy Chief for Enforcement, California Division of Occupational Safety and Health*
- *Jonathan Fielding, M.D., Director of Public Health, Los Angeles County Department of Health Services*
- *Gail Bolan, M.D., Chief STD Control Branch, Prevention Services, California Department of Health Services*

Panel Two: Industry Perspective and Response

- *Kat Sunlove, Executive Director, Free Speech Coalition*
- *Jeffery J. Douglas, Esq., Board Chair, Free Speech Coalition*
- *Sharon Mitchell, Administrator, AIM Health Care Foundation*
- *Gill Sperlein, General Counsel, Titan Media*
- *Nina Hartley, R.N., Performer*

Panel Three: Health Perspective: Transmission Risk Assessment and Solutions

- *Robert Bolan, M.D., Medical Director, L.A. Gay & Lesbian Center*
- *Thomas J. Coates, Ph.D., Professor, Department of Medicine, Division of Infectious Diseases, David Geffen School of Medicine, University of California, Los Angeles*

Panel Four: Additional Policy and Constitutional Concerns

- *Martha Matthews, Attorney, ACLU*
- *Michael Weinstein, President, AIDS Healthcare Foundation*

Public Comment

Testimony of Dr. Jonathan E. Fielding, MD, MPH
Before the Committee on Labor and Employment of the California Assembly
June 4, 2004

Good morning, I am Dr. Jonathan Fielding, Director of Public Health, and Health Officer, for Los Angeles County. I thank you for this opportunity to address you on the public health concerns we have for the adult film industry, and, most importantly, some of the interventions we suggest to protect the health of those who work in the industry and the public in Los Angeles County.

The public health basis for my testimony before you today is simple and clear. Workers in this industry are subject, solely by conditions of their employment, to numerous communicable disease hazards. Some of these hazards are curable diseases, which usually cause only temporary discomfort, although can cause serious and long-term health problems if not recognized and treated promptly. However, other diseases transmitted by unprotected sex, particularly HIV, are incurable and life threatening. I would also point out that an individual with Hepatitis C, and a carrier for Hepatitis B, could also transmit these serious chronic diseases through sexual contact.

Just as we would not allow a construction worker to be on a work site without a hard hat, we should not allow an adult film industry worker to have a high risk sexual encounter as part of their work without a condom. We therefore endorse legislation for the adult film industry that would: (1) require condom use for all high risk sexual encounters; (2) have screening requirements for sexually transmitted diseases set by the state, with screening costs paid by the industry, and offer vaccinations for appropriate preventable conditions; (3) mandate education and training of all adult film industry performers; and (4) assure monitoring to ensure compliance by state and local health departments paid for by the industry. These measures would not only provide for reasonable worker protection, but would send an unmistakable visual message to the many millions viewing this material that sex between non-monogamous partners should always be safe sex.

Normal working conditions in the adult film industry currently involve a worker having prolonged and repeated sexual intercourse with multiple sexual partners over short periods of time. Those circumstances create ideal conditions for effective transmission and acquistion of HIV and other STDs. Indeed, episodes of HIV transmission such as we have just experienced have occurred before. In 1998, a single male performer is thought to have infected at least three female performers. Additional reports of HIV detection in the industry occurred in 1999, 1997, and 1995. We also understand that Adult Industry Medical Healthcare Foundation (AIM), the primary provider of HIV/STD screening for industry performers, has identified several other individuals with HIV before they exposed other workers in the industry, but what is not known is where they may have acquired HIV.

It is critical to highlight the inadequacy of screening alone to prevent HIV and other STD transmission. A performer who was infected with HIV a week ago can test negative today and transmit HIV to a sexual partner tomorrow. For HIV, the period immediately after infection, before the body's immune response has been fully mobilized and obviously before any treatment has been applied, is the time when an individual can be highly infectious.

STD screening of performers by AIM has found a monthly incidence of approximately 2% for chlamydia and gonorrhea. Assuming between 700 and 1,200 performers screened, these rates translate roughly into 14 to 24 performers with active chlamydia infection, and the same number with active gonorrhea infection, per month.

In addition to the infection risks borne by the workers of this industry, there are potentially other risks to the community as well. Infected workers can, in turn, transmit disease to personal sex partners in the general community. This additional possibility only adds to the rationale for public health interest, and intervention, in this industry.

We have worked with AIM since 1999 to better define the STD risk to workers in this industry and to promote voluntary adoption of measures that would reduce risk to workers in the industry. More recently we have worked with producers and performers to develop measures the industry can implement to diagnose, refer for treatment and prevent HIV and other STDs. This experience has reinforced our view that, as a legal industry in this state, the adult film industry should have the same fundamental obligation to worker health and work place safety as any other industry.

Our Board of Supervisors, on January 14, 2003, and April 20, 2004, approved motions directing us to address health and safety issues in this industry. In response to recent events, we have already taken several actions to address public health issues in this industry, as follows:

1) We initiated dialogue with Cal/OSHA on existing standards, in Title 8, California Code of Regulations, specifically including the Injury and Illness Prevention Program standard (Section 3203), and the Bloodborne Pathogens standard (Section 5193). Based on these standards, we are currently working with Cal/OSHA to develop a model Exposure Control Plan. We also initiated discussion with the state Labor and Workforce Development Agency to develop educational outreach plans and materials for both producers and performers.

2) On April 20, 2004, we requested that Cal/OSHA conduct an accident investigation of the recent incidents of presumed workplace infection with HIV. This investigation is now open and ongoing.

3) We initiated our own investigation into the recent outbreak, in which we have sought to determine the extent of potential exposure and actual disease transmission. We also offered additional HIV and STD testing services to performers, provided counseling and medical referrals for those performers who

were infected with HIV, and offered partner contact and referral services to their private sex partners. These efforts are continuing.

4) We sought technical assistance from the National Institute of Occupational Safety and Health (NIOSH), to investigate workplace hazards in this industry, and issue recommendations. On May 18 and 19, representatives of NIOSH and of the National Center for HIV/STD and TB Prevention met with our staff, with AIM, and with various members of the industry. This consultation is continuing.

5) We, as noted, initiated dialogue with producers and performers in both straight and gay male parts of the industry, as well as with other relevant agencies, including the California Department of Health Services, STD Control Program and the State Office of AIDS to better understand health and safety issues in this industry, and develop appropriate screening recommendations and interventions.

As already noted, we have collaborated with AIM, the main agency that provides STD/HIV screening for the industry, to expand services that include screening for syphilis, chlamydia and gonorrhea, and to establish baseline STD infection prevalence in the industry and to promote worker personal protective measures like the use of condoms. Screening for HIV and other STDs is helpful, but the inadequacy of using screening alone for worker protection in the industry was exemplified by the recent HIV outbreak.

Based on our consultation with other agencies, with producers and performers in the industry, and with AIM, we see four key areas where action is needed:

1. **Changes in work conditions and practices.**
Condoms will significantly reduce exposure risk for HIV and most other STDs. It is very likely that condom use would have prevented all of the three known female HIV infections in the recent outbreak. Condom use should be mandated by the state and not left to voluntary compliance by producers. The most difficult question is whether to require condom use for oral sex, which carries a much lower, but still real, risk for HIV transmission than vaginal or anal intercourse. Oral sex also carries a risk for other STDs, although again the risk is generally lower than other types of penetrating sexual encounters. Our position is that in an occupational context, oral sex should be protected sex, because infection from this sexual act is a preventable risk of the work.

2. Education and training.
Our conversations with adult film industry reporters found persistent misconceptions about, and desire for, more information on HIV and STD risks and complications, prevention, and testing. We have already begun to work with the state Labor and Workforce Development Agency to develop an educational outreach program for the industry. AIM has also recently expanded its own ongoing educational efforts. However, there is no set training requirement in this industry, as there is by law for every other industry with known workplace hazards, or a mechanism to track whether workers have

received training. Workers need to know their rights under state health and safety law and regulations.

It appears that many worksites in this industry do not display basic notices that all employers are required to post, involving worker health and safety contacts and rights, though other industries with temporary worksites, such as construction or the general film industry, routinely provide such notices. A comprehensive education and training program must be created for workers to know their prerogatives, and producer/employers to know their obligations.

3.Vaccination.
Currently, hepatitis B is the only STD that can be prevented through vaccination. However, vaccines may become available in the future for HSV-2 (herpes) and human papillomavirus (HPV). Hepatitis B vaccine, demonstrated to be both safe and effective, is currently offered by AIM to non-immune individuals but its significant cost is usually the responsibility of the performer. Hepatitis B is an important, and now completely preventable, STD. It is transmitted similarly to HIV, but is 1,000 times more infectious. About 1% of those acutely infected will develop fulminate disease and will die while another 5-10% of those who become infected will develop chronic infection, making them permanently infectious to others, and placing them at high risk of developing chronic active liver disease and liver cancer. All workers potentially exposed to this virus through work, should receive hepatitis B evaluation and vaccination as needed, at employer expense. When other STD vaccines become available, these should be offered as well.

4. Testing and Treatment.
While regular screening for HIV and other STDs is not sufficient as the sole method of worker protection for this industry, it sill constitutes a necessary part of a worker health and safety system for this industry. Testing in this industry serves a traditional occupational health purpose of medical monitoring. It can identify the medical needs of individual workers, and monitor the impact of prevention efforts. When a problem is found, medical monitoring for communicable diseases enables prompt treatment of affected workers, and rapid containment of further transmission. This is the precise value of the routine screening by AIM during the recent outbreak, in which exposed individuals stopped working temporarily, so that further transmission did not occur, and infected individuals could be referred for care. For an STD like chlamydia or gonorrhea, testing enables appropriate treatment, which, in turn, prevents additional worker exposures from the infected individual. Producers should carry the financial responsibility for testing and related monitoring and treatment, as appropriate.

We recommend that the state have the responsibility for defining testing requirements, with refinements as disease trends and the advances in science dictate. The program must address the types of tests to be used for each disease, their frequency, related health education and informed consent, the extent and manner in which results are communicated to workers and employers, the ways in which worker privacy and dignity

are to be protected, and most importantly, the purposes for which test results are to be used.

The Los Angeles County DHS is available for further consultation on this important matter, and is willing to assist the legislature to achieve the goal I believe we, and indeed members of the industry, all share—the elevation of worker health in this industry to the same level of employer consideration, the same public oversight, and the same serious attention, enjoyed by all other workers.

Thank you again for your time and consideration.

TESTIMONY

ASSEMBLYMEMBER PAUL KORETZ HEARING

HAZARDS IN THE ADULT FILM INDUSTRY

By

Vicky Heza, Deputy Chief of Enforcement

Division of Occupational Safety and Health

June 4, 2004

Assemblymember Koretz, other members of the Legislature, and attendees of this hearing, I am Vicky Heza, Deputy Chief of Enforcement for the Division of Occupational Health (Cal/OSHA) in the California Department of Industrial Relations. am here today to provide you with Cal/OSHA's perspective on the issue of protecting workers from health hazards associated with employment in the adult film industry.

would like to begin by talking a little about the jurisdiction of Cal/OSHA. As the name of our agency indicates, our jurisdiction for the purposes of this discussion is limited to events that take place in the context of an employer-employee relationship. Where there is an employer-employee relationship, and in the context of that relationship employees are exposed to a hazard, Cal/OSHA has the authority and the obligation to take reasonable measures to enforce those protective measures mandated by law to remove the hazard or otherwise protect employees from it. mention this jurisdictional

issue because I wish to make it clear that Cal/OSHA's involvement will ultimately be guided and restricted by our mandated focus on the employer-employee relationship.

Because of this focus, there may be some inherent limitations on how fully Cal/OSHA may be able to address the core issue presented by the practices of the adult film industry that are the subject of this hearing. will return to this point after discussing the manner in which we can address those situations over which we have jurisdiction

To provide a little historical background, would like to mention that last year at about this time Cal/OSHA was officially asked by Yvonne Brathwaite Burke, Chair of the Board of Supervisors of the County of Los Angeles, to answer two basic questions regarding Cal/OSHA's jurisdiction to address health hazards to which adult film industry actors may be exposed. The first question was whether existing occupational safety and health standards apply to the activities of adult film actors, and the second was whether there is a need for a special standard to be adopted to address this issue. In a letter dated June 6, 2003, Len Welsh, Acting Chief of Cal/OSHA replied by identifying two standards that do apply, the Injury and Illness Program standard and the bloodborne pathogens standard. Both of these standards are found in Title 8 of the California Code of Regulations at sections 3203 and 5193 respectively. Mr. Welsh's letter described in general terms the requirements of these standards and where more information could be obtained, and concluded with his opinion that the existence of these two standards made it unnecessary to engage in rulemaking to adopt a specific standard to address the adult film industry. After that letter was sent, Cal/OSHA made

contact with the Los Angeles County Department of Health Services to inform them about the exchange of letters and to make sure they were aware of Cal/OSHA's complaint and inspection process so that they could provide that information to any employees who wished to make a complaint.

Mr. Welsh received a second letter in regard to this issue on April 20th of this year, this time from Jonathan E. Fielding, M.D., M.P.H., Director of Public Health and Health Officer for the Los Angeles County Department of Health Services. In this letter, Dr. Fielding formally requested that Cal/OSHA investigate recent reports of HIV transmission in the Adult Film Industry. Since receiving that letter, Cal/OSHA has attempted to coordinate its investigative efforts with those of the staff of the Los Angeles County Department of Health Services.

At the core of this controversy is the allegation, which appears not to be disputed, that in at least some cases actors involved in making adult movies in Los Angeles County are not using, and indeed are being forbidden from using, barrier protection to prevent contact with body fluids while engaging in the sexual activities that are the subject of these movies. As I have already mentioned, there are existing occupational safety and health requirements that apply to this situation. The most important requirement is based on a medical, public health, and workplace health principle that is brought into question by the practices taking place in this industry. That requirement is to observe what are termed "universal precautions" in all cases where there is potential for contact

with blood or potentially infectious body fluids. Universal precautions are defined in the bloodborne pathogens standard as follows:

> Universal Precautions are an approach to infection control. According to the concept of Universal Precautions, all human blood and certain human body fluids are treated as if known to be infectious for HIV, HBV, HCV, and other bloodborne pathogens.

While I am sure that the medical experts here today can provide a much more thorough explanation of the need for this requirement, can tell you in very plain terms that it has existed since the bloodborne pathogens standard was first adopted because it is difficult if not impossible to confirm that any individual, whether apparently healthy or not, is completely free of diseases that can be transmitted by exposure to blood and other disease-carrying body fluids. In light of that simple truth, the most effective approach to preventing the transmission of diseases carried by blood and other body fluids is to minimize contact with them. It is for this reason that the utilization of screening methods like periodic blood testing for HIV infection may help to reduce disease transmission, but is not permitted by the bloodborne pathogens standard as a substitute for observing universal precautions.

The bloodborne pathogens standard is written with universal precautions as its centerpiece, and if you read through the standard you will find that it is written broadly to apply to any workplace where exposure of skin, eyes, or mucous membranes to blood or other potentially infectious body fluids is "reasonably anticipated." In all of these workplaces, this kind of exposure must be prevented where possible. This means that personal protective equipment, which means barrier protection in some form or other,

must be used to prevent exposure and is to be considered acceptable only if it does not permit blood other disease-carrying body fluids to contact skin, eyes, mouth, or other mucous membranes "under normal conditions of use and for the duration of time which the protective equipment will be used." Incidentally, there is a federal counterpart to the California bloodborne pathogens standard that applies nationwide as enforced by federal OSHA, and in this respect the applicable language is essentially identical.

Stated simply, what this language means for our purposes, is that if employees engage in work practices that result in the contact of their skin, eyes, or mucous membranes with blood or other body fluids known to transmit bloodborne disease, they are required to be provided with barrier protection to prevent such contact. As stated in the bloodborne pathogens standard, these diseases include but are not limited to the human immunodeficiency virus, HIV, hepatitis B virus, and hepatitis C virus.

will now turn briefly to the status of our enforcement of the bloodborne pathogens standard in the adult film industry. Cal/OSHA is attempting to investigate by working with Los Angeles County Department of Health Services to identify employees willing to come forward with information on the practices they have been a part of in the adult film industry. To be successful, our investigation will need some of these employees to come forward. We are required by law not to reveal the name of the complainant, and we generally do not discuss the details of an investigation once it has been opened. In general terms, however, can tell you that issues to be investigated include (1) what practices on the part of actors have been required or allowed, (2) what is the status of

the actors engaging in those practices, i.e., are they employees or are they independent contractors, and (3) how do those practices comply or not comply with the requirements of the bloodborne pathogens standard. If violations are found, citations will be issued The mandates under which we operate require Cal/OSHA to issue a citation if the investigation determines that one or more employees have been exposed to a violative condition.

will now return to what I am calling the core issue that is the subject of this hearing. As have already mentioned, Cal/OSHA does not have jurisdiction to address practices that occur outside of the employer-employee relationship. One way this could present a problem is if it is determined that the actors who are exposed to practices otherwise prohibited by the bloodborne pathogens standard have the status of independent contractors rather than employees. After discussing this issue with attorneys at our sister agency, the Division of Labor Standards Enforcement, or DLSE, it is apparent that the existence of an employee-employer relationship or an independent contractor status will have to be determined on a case-by-case basis. The Labor Code presumes an employee-employer relationship and Cal/OSHA will operate on that assumption unless we encounter information that indicates otherwise during the investigative process.

Another relevant consideration that is beyond the jurisdiction of Cal/OSHA but likely to be of concern to public health officials is the behavior of actors off the job.

Finally, and perhaps most importantly, Cal/OSHA cannot be the ultimate authority to weigh in on the wisdom or advisability of changing the law to allow protective measures other than those prescribed by applicable occupational safety and health standards. have heard it suggested, for example, that some sexual practices involve less risk of disease transmission than others, and therefore they might be considered safe enough to be allowed to occur without barrier protection. However, the bloodborne pathogens standard flatly prohibits any skin, eye, or mucous membrane contact with blood or other potentially infectious body fluids, and that is the rule that governs Cal/OSHA's enforcement jurisdiction If there is to be a debate about the wisdom of altering the workplace requirement to observe universal precautions in this setting, it should be conducted by medical authorities who specialize in the transmission of bloodborne diseases and have a thorough understanding of all the potential consequences of making any change.

In closing, would like to mention that the Division is in the process of developing an outreach and training program that will mirror the relevant requirements of the Exposure Control Plan as stated in the bloodborne pathogens standard. We have discussed partnering with both the County of Los Angeles Department of Health Services and the State of California Department of Health Services to ensure that the outreach and training program is available via the various web sites.

This concludes my presentation. would be happy to respond to any questions you may have.