

**Bloodborne Pathogens in the Adult Film Industry
Cal/OSHA Advisory Meeting
June 29, 2010**

Chairs: Deborah Gold, Peter Riley

Participants

Anya Agopian	USC
Howard Aaron Aranow	LAC-USC Med
Kerry A. Baker	USC
Kevin D. Bland	attorney
Denise Bleak	APIC -- Greater LA Chapter and Beyond AIDS
Anthony Boiand	DLSE
Traci Bryant	sex worker
Joanne Cachapero	FSC
Chris Caine	
Brian Chase	AIDS Healthcare Foundation
Vicki Chase	Erotique Entertainment
Corinne D. Clark	Point Loma Law
Whitney Clearwater	USC
J. Covarrubias	DLSE
Dave Cummings	
Debbie de Sagun	USC Public Health
Maxine Doogan	ESPU
Jeffrey J. Douglas	FSC
Diane Duke	FSC
Whitney Engeran	Public Health Aids Health Care
Michael Fattorosi	
Annie Fehrenbacher	UCLA Reproductive Health Interest Group
Jeremy Feit	
Tess Fish	student
Diana Grandmason	
Marcy Greer	
Nina Hartley	
Brooke Haven	
Derek Hay	Direct Models
Ivy Hng	USC
Regina Hollins	DOSH
Tod Hunter	tod-hunter.net
Miki Jackson	AHF
Eric John	Erotique Entertainment
Suzie Karimi	USC
Lyla Kate	Xbiz
Ged Kenslea	AHF
Peter Kerndt	LAC Dept of Public Health
Mark Kernes	AVN
Robert Kim-Farley, MD	LA county dept of public health

Joy King	Wicked Pictures
Alec Knight	
Evan Krueger	USC
Jennifer Larsen	LFP, Inc.
Dan Leal	Immoral Productions
Ron Lin	LA Times
Shelley Lubben	Pink Cross
Garrett Lubben	PCF
William Margold	
Mark Roy McGrath	UCLA School of Public Health
Matt Mason	Treasure Island Media
Eugene McMenamin	AALRR
Jan Meza Mennitt	
Tom Mitchell	Occupational Safety and Health Standards Board
Gene Murphy	DOSH
Jessica Neely	performer
Steve Nelson	Adult Industry News
Eve Ostrowska	USC
Maria Rangel	UCLA
Heidi Ritacts	
Christina Rodriguez-Hart	UCLA chair AFI subcommittee
Donald Rubiano	student
Sarah Skalku	FSC
Steve Smith	DOSH
Mark Spiegler	Spieglergirls
Jeremy Steele	
Jane Steinberg	LACDPH
Paula Tavrow	UCLA School of Public Health
Kevin Thompson	COX
Chauntelle Tibbals	scholar
Tuyet-Van Tran	DOSH
Tim Tritch	
Karen Tynan	
Michael Weinstein	AIDS Healthcare Foundation
Kathryn Woods	Cal/OSHA
Bethy Woubeshet	USC Public Health
Jolene Yoneoka	LACDPH -- STD Program
Eunice	
Christian	performer

Summary of Key Points

1. The Los Angeles County Department of Public Health presented statistics and recommendations regarding sexually transmitted diseases in performers in the adult film industry.

2. There was extensive discussion regarding current practices in the industry and appropriate control measures.
3. Participants agreed that there should be subcommittees created to allow for more in-depth discussion of certain issues.

Detailed Minutes

The start of the meeting was delayed by a building fire drill. Deborah Gold opened the meeting, thanked people for coming, and introduced the Cal/OSHA work group for this project. She explained the history and structure of the federal Occupational Safety and Health Administration and Cal/OSHA, which operates a “state plan.” She said that Cal/OSHA’s rules are required to be as effective as federal OSHA rules. In the early 1990’s federal OSHA adopted a bloodborne pathogens (BBP) regulation and Cal/OSHA adopted a similar [regulation](#) soon after. D. Gold said that this standard requires employers to take measures to prevent contact of the employees’ eyes, skin and mucous membranes with blood and “other potentially infectious materials,” which include semen and vaginal secretions. D. Gold explained the process for rulemaking under California’s Administrative Procedures Act, and the role of advisory meetings. She explained that if a proposal is developed out of this advisory process, there would be a formal rulemaking process leading to a vote of the Occupational Safety and Health Standards Board, and review by the Office of Administrative Law. The issue of federal equivalence is key to this process.

D. Gold then reviewed the agenda and explained the structure of the meeting. She said that because under California law, the local health department has an important and mandated role in controlling communicable diseases, the Los Angeles County Department of Public Health (LACDPH) was asked to make an opening presentation at this meeting.

Presentation by Los Angeles County Department of Public Health

Dr. Robert Kim-Farley, Director of Communicable Disease Control and Prevention at LACDPH gave a PowerPoint presentation on STD/HIV in the Adult Film Industry (AFI). The presentation [available at:

<http://www.dir.ca.gov/dosh/DoshReg/comments/STD%20and%20HIV%20Disease%20and%20Health%20Risks%20Los%20Angeles%20County%20DPH.pdf>] included statistics regarding STD risks in the AFI and the means of controlling risks.

R. Kim-Farley stated that sexually transmitted diseases (STDs) are common among adult film industry (AFI) performers, and often are “silent” and go undiagnosed. Most are preventable by condom use. Some diseases have serious and significant consequences, and STDs also increase the risk of HIV transmission. Performers are not isolated and have sexual partners outside of work. The STD risks are increased by high-risk sexual practices on film sets including multiple partners over short time periods, ejaculation into the face, mucous membranes and mouth or eyes, internal vaginal and/or anal ejaculation, unprotected anal sex, double vaginal and double anal penetration, the sharing of sex toys, oral-anal contact, and oral sex after anal. STD risks are also increased by prolonged intercourse coupled with anogenital trauma, with bleeding and with menstruation and exposure to blood, semen, seminal and vaginal/cervical fluids. This risk is increased by the lack of protective equipment such as the limited use of condoms.

R. Kim-Farley explained that the serious health consequences include HIV which causes AIDS, and is often fatal. Chlamydia, gonorrhea, Trichomoniasis, and bacterial vaginosis may increase the risk of HIV transmission, may cause pelvic inflammatory disease (PID) which can result in infertility, may complicate pregnancy, and may also cause neonatal infection. Other STD risks include Syphilis and herpes simplex virus (HSV). Hepatitis B and C may cause liver disease, liver cancer and neonatal infection. Human papillomavirus (HPV) can cause cervical, penile, anal, and oral pharyngeal cancer, and neonatal infection. He described the routes of transmission for different diseases, and said that the estimated risk of infection from one vaginal sex act with an infected partner are as follows:

Gonorrhea: 20-90%
 Chlamydia: 45%
 HPV 40%
 HSV 0.05-0.2%
 HIV: 0.05% - 20%

R. Kim-Farley provided the following table of HIV/STD Health Risks:

Review of Major AFI HIV/STD Health Risks

<u>Unprotected Exposure</u>	<u>HIV Risk</u>	<u>STD* Risk</u>
Anal sex	Very high	Very high
Vaginal sex	Very high	Very high
Ejaculate in vagina, anus	Very high	Very high
Ejaculate in eye	Very high	High
Oral-genital	Low**	High
Oral-anal	Low**	Moderate
Ejaculate in mouth	Low**	Moderate
Sharing toys, fingers	Low**	Moderate
Skin to skin contact	Very low	Moderate

* Also includes HBV, HCV, fecal-oral infections

** Low in general practice; occupational risk not clear, may be higher if lesions in mouth more prevalent, etc.



R. Kim-Farley said that screening does not prevent infection. It does, however, allow prompt identification and treatment of infected people and can therefore prevent adverse consequences of infection and prevent further spread to sexual partners. He described the 2004 HIV outbreak in which four AFI cases were identified. The LACDPH investigation documented workplace transmission of HIV.

R. Kim-Farley reviewed statistics regarding STD cases reported to LACDPH from 2004 to 2008. There were over 3200 Chlamydia and gonorrhea cases reported among performers in this industry, of which 75 percent were in female performers. He said that 25 percent of all female

performers were reinfected within one year, and that women were 35 percent more likely to have a repeat infection within one year than were men. Up to one-fourth of all performers are diagnosed with at least one infection of Chlamydia and/or gonorrhea each year. He said that between 2004 and 2008, 8 HIV cases were reported to LACDPH in people who were employed in the AFI at the time of their HIV diagnosis. He stated that this is a minimum estimate because reporting of occupation is not required (except for health care workers) on the HIV report form.

R. Kim-Farley then addressed what he called “myths” regarding the AFI. He said that testing does not ensure that adult film performers are free of HIV/STDs and “safer” than someone in the general population. AFI testing only includes HIV, gonorrhea, Chlamydia and syphilis. Industry testing does not include HPV, herpes, hepatitis A, B, and C, Giardia, and other diseases. There is no STD/HIV testing in the “gay porn” industry, medical monitoring in the “straight porn” industry is unregulated, and compliance cannot be verified. Further, the screening protocols are not consistent with the incubation periods for the disease, and screening is not consistent with exposures by anatomic site (i.e. oral, rectal, urethral, cervical, and vaginal sites are often not tested). The screening tests have inherent limitations based on sensitivity, specificity and biological media. Performers are required to pay for tests and vaccinations, which, he said, is not consistent with Cal/OSHA standards.

He also said that it is not true that rates of STDs in the AFI are lower than the general population. He said that STD rates in the AFI are high and undercounted, and contribute to spread in the general community. He said that the annual STD prevalence rate of Chlamydia and gonorrhea in the AFI is between 15 and 25 percent, and said that this rate is 8.5 times the rate of Chlamydia and 18 times the rate of gonorrhea found in LA County residents aged 18 to 29 years. It is 34 times the rate of Chlamydia and 60 times the rate of gonorrhea in all LA County residents. He said that the true STD prevalence rate in the industry is unknown due to undercounting, lack of comprehensive screening, and the common practice of self-treatment. He said that performers in the AFI are considered to be “core transmitters” because of the high STD rates and multiple concurrent partnerships.

He also addressed the statement that sharing of performers’ STD/HIV test results ensures a “clean bill of health.” He said that the current practice in the “straight” part of the industry that requires AFI performers to agree to release confidential health information to the employer may violate the worker’s right to medical confidentiality and is inconsistent with Cal/OSHA’s bloodborne pathogens standard that requires employers to maintain a confidential medical record for each employee. He said the practice may also violate HIPAA confidentiality laws. The industry also requires workers to waive any production company liability without providing adequate protection.

R. Kim-Farley explained that the California Health and Safety Code requires the local health department to investigate conditions affecting prevention and control of venereal diseases, to ascertain the existence of cases within their jurisdiction, and to take all measures reasonably necessary to prevent the transmission of infection. The Health and Safety Code also requires the health department to take measures to control reportable diseases within their jurisdiction, including the investigation of the sources of morbidity and mortality and the effects of localities, **employments**, and other circumstances. He said that when the Department receives an STD or

HIV case report a disease investigator attempts to contact the patient and initiates a field visit. During that visit, the investigator tries to elicit the contacts (partners) of the infected person, and refer the contacts for testing and treatment. He said that partner management in the AFI is particularly important because workers are considered “core transmitters” due to extensive sexual networks with multiple and concurrent sexual partners. He said that there are many barriers to AFI disease investigations, including the transient nature of the workforce, a lack of cooperation with investigations by test sites, talent agencies and production companies, and a reluctance of performers to cooperate with public health investigations for fear of future hiring difficulties. It is often difficult to identify the source of potential disease outbreaks and mount a rapid public health response when an outbreak occurs in the AFI.

R. Kim-Farley concluded with the LACDPH recommendations to reduce the risk of occupationally acquired HIV and other STDs in the AFI, and to stop transmission into the community. These recommendations are:

1. Require performers to use condoms.
2. Require screening for STDs consistent with incubation periods, anatomic site, and performance characteristic of the diagnostic test.
3. Require medical monitoring of workers consistent with the BBP and CalOSHA standards, with screening costs paid by the industry.
4. Maintain confidentiality of worker testing and other medical records out of view of the employer.
5. Require full cooperation of test sites, production companies and talent agencies during any investigation of possible workplace exposures.
6. Require ongoing monitoring to ensure compliance with reporting, Cal/OSHA workplace requirements and cooperation with investigation by state and local health departments.

Dr. Kim-Farley then took questions and comments regarding this presentation.

Questions and Comments:

Michael Weinstein, President of the AIDS Healthcare Foundation (AHF), asked about the status of the 22 cases about which LA County had previously stated that there was insufficient information received to determine whether the cases had occurred within the industry. M. Weinstein also asked about the level of cooperation between LACDPH and AIM (Adult Industry Medical Healthcare Foundation) which he stated had more a less of a monopoly on testing of performers, and what could be done legislatively to improve this cooperation. R. Kim-Farley responded that eight of the cases from the group had come from the industry, and all have been contacted by LACDPH. With regard to AIM and other testing sites they hope to continue to try to work with them and to continue to receive STD reports. HIV reports are required to be sent to the HIV Epidemiology program. There is still some difficulty in getting information from production companies.

David Cummings¹, performer, asked how many of the 22 cases had occurred in people who tried to get into the AFI but were tested HIV positive, so they never worked, but were counted as AFI? R. Kim-Farley responded that of the eight cases he mentioned from 2004 onward, 4 were active

¹ David Cummings initially identified himself as David Charles

in the industry and in fact 3 were infected from the one individual. The other four listed their occupation as AFI. D. Cummings asked if they knew whether any of these individuals had ever performed. Peter Kerndt, LACDPH STD Program Director, responded that in California HIV did not become reportable until April 2006 so the investigations to determine whether the individuals were exposed at work were not done. Since 2004, 8 individuals we know with certainty were employed in the industry, 4 were actually were employed in the industry and acquired their infection on a shoot. That is well documented. Several of the others were tested at AIM but they do not know where the infection was acquired. D. Cummings stated that it was important to this process that we know the true figure for people definitely infected while performing or in the industry. R. Kim-Farley responded that the uncertainty is one reason why we need regulations that will allow us to get information about infections and employment and do a thorough investigation.

Tim Tritch, a former AIM laboratory representative and a paid consultant in the industry, asked about keeping medical records of performers and pre-employment screening. There's a common saying that it's illegal to require an HIV test as a condition of employment. So how can the county suggest mandating that companies keep medical records of their performers if they can't legally mandate the tests in the first place? R. Kim-Farley responded that the County is trying to emphasize the importance of using condoms. In much of the gay industry the assumption is that infection is present, so in that part of the industry people use condoms all the time.

Dr. Aaron Aronow, HIV expert, LAC/USC Medical Center and consultant for AIM, said that the County does know that there have been no cases of transmission within the industry. There have been cases detected in prospective performers and performers who have not been allowed to perform after detection. Since those sentinel cases in 2004 there have been changes in the testing methods to detect all sub-types. In regards to bloodborne pathogens, it is prudent to have repetitive testing and identification in this population regardless of condom use. R. Kim-Farley said that they support the idea of medical monitoring in this industry, but we should not rely exclusively on it. He said that HIV is the tip of the iceberg, and that there's a tremendous amount of other sexually transmitted diseases, including gonorrhea.

Traci Bryant asked whether the STD testing at the Free Clinic, which includes swabs of the mouth, anus and vagina are better than the AIM STD tests. P. Kerndt responded that the Nucleic Acid Amplification Tests (NAAT) are better for Chlamydia, and for gonorrhea the culture is equivalent. NAAT tests have been validated in the LACDPH labs, but not at all labs, for oral and rectal screening. The test characteristics as well as the screening in the anatomical sites are important. Tests are not perfect. They all have limitations in terms of their sensitivity and specificity. Their positive predictive value is based on the prevalence of disease. He said that LACDPH wanted to dispel the myth that through testing, you are protected.

Eric John said that the statistics presented regarding community infection rates compared to the people in the industry may be misleading. They are comparing a small population with regular testing to a large population tested irregularly. Also, a lot of the diseases are asymptomatic. R. Kim-Farley responded that they had compared the data to Los Angeles County as a whole, as well as to the specific age group 18-29, and have also compared the data to other high prevalence groups, such as incarcerated people. If there were good and adequate medical monitoring of this

population, they could make better comparisons. E. John said that it is scientifically inaccurate to compare these groups. P. Kerndt responded that they would expect a lower rate in a repeatedly tested small group, because they are repeatedly screened and treated and the disease is removed from the population. This population is defined as core transmitters because they are infected and then repeatedly re-infected. The reason is continual exposures which often occur from sites, such as rectal and oral sites, that are often asymptomatic. They are trying to dispel the myth that because of the repeated testing, this group is safer. But the fact is that this is a small number with very high rates of infection that are repeatedly re-infected. The way to address the difference in population size is to adjust for it. The rates are calculated per 100,000 people. The AFI rates (calculated per 100,000) are in the thousands compared to the general population.

Whitney Engeron, AHF, asked two questions: 1. If a performer can be tested on June 1, for example, and take those test results and shoots four scenes over the next few weeks, and then goes in on June 29 with that same verification, is that valid? 2. Are there any other worker groups, such as restaurant workers, that have this level of sexually transmitted diseases? If not, doesn't that make these rates of infection significant? R. Kim-Farley replied that the very next day after a negative test, the person can be positive, and that's essentially what happened in 2004. The test came back negative the worker performed in the industry, and then by the time of his next test about a month later, he had become positive. The infection had become detectable. There's no guarantee with any test. That's why they feel strongly that this industry should use condoms at all times, because testing can not ensure that people will not be infected. He and P. Kerndt stated that they were not aware of any other occupational group with this rate of infection with STDs.

A. Aronow said that the statistics on Chlamydia and gonorrhea from the AIM population are inflated for two reasons. First, a lot of performers test prior to a shoot during the treatment period which is a minimum of six days for antibiotic therapy to work. Second, the population includes not only AFI performers, but other sex workers with other people with high risk sexual behavior. You need to look at comparable types of sexual behaviors and acts to get true comparable groups. You can't get around frequent testing and treatment. R. Kim-Farley said that there needs to be a medical monitoring component for the AFI in the BBP standard. The infection rate is probably higher than the numbers show because people take antibiotics prophylactically before coming for testing. He and P. Kerndt said that the reports of disease included as AFI are about individuals who list their occupation as adult film industry. P. Kerndt said they review the reports from AIM and other testing sites, and one reporting element is occupational. They do everything they can to sort it out, either through reviewing records, when offering referral to treatment, or when asking about partners who should be offered treatment.

Maxine Duggan, Erotic Service Providers Union, asked R. Kim-Farley if he had said that there is a high transient population among AFI workers and that they were reluctant to get tested because of fear of not being able to get work? R. Kim-Farley explained that he had said that some AFI workers were reluctant to cooperate with the health department due to fears that it would interfere with their access to work. M. Duggan asked what the documentation was for that, and R. Kim-Farley said that there were a lot of situations where people who worked in that industry were reluctant to talk with the health department. M. Duggan asked if it was their intention to ban people who tested positive from working. R. Kim-Farley said that was not their intention.

M. Weinstein asked two questions: 1. how much asymptomatic gonorrhea is present in the gay male population, and 2. if someone was tested and performed and then three days later developed symptoms and went to their own doctor or a county clinic for treatment, would that person be reflected in these statistics? Isn't it possible that these statistics are actually underestimates due to people being treated elsewhere? R. Kim-Farley agreed that it is possible that these statistics are underestimates. P. Kerndt said that he does not have a number for asymptomatic infections, but it is very significant. Some time ago LACDPH recommended to all medical providers that deal with the industry that they screen all anatomic sites including the rectum and oral cavity. M. Weinstein said that gonorrhea in the penis generally caused discharge, but what about asymptomatic infections. P. Kerndt replied that 70 percent of the time gonorrhea is asymptomatic in the oral cavity, which is not to say that 70 percent of MSM (men who have sex with men) or engage in oral sex are infected. M. Weinstein asked about heterosexuals. P. Kerndt responded that people who are engaging in such activity in a population that is highly infected are at increased risk. Four to seven days after you have been exposed you are infectious to other people.

Jan Mesa said she is a former porn actress who worked in the industry from 2006-2007. She stated that she contracted herpes and Chlamydia from her time in the industry. She said that AIM gives you a false sense of security by only testing for HIV, Chlamydia and gonorrhea, and only making it mandatory to test every 30 days. Shelley Lubben said that the Pink Cross Foundation assists people who are currently in the industry and also those who want to get out of the industry. They have assisted hundreds of people over the years. In addition to the fact that AIM only tests for HIV, Chlamydia and gonorrhea, their own doctor has admitted how high their rates are. Sharon Mitchell has joked that she is up to her ass in Chlamydia. S. Lubben said she has hundreds of quotes that these diseases are documented and rampant.

Denise Bleak from Beyond AIDS and APIC [Association of Professionals in Infection Control and Epidemiology] – Greater Los Angeles, asked whether it is true that people can have concomitant gonorrhea, Chlamydia and herpes at any given time and you can't really tell, and whether it is also true that these infections are frequently asymptomatic. R. Kim-Farley said that when a clinic tests for more than one agent they can find both agents, and that is what is done at County clinics and at STD clinics. Peter Kerndt said that the information would only be knowable if every person were screened at every anatomic site for every agent. This kind of testing is cost-prohibitive, especially in this industry where testing costs are borne by the performer. So it is correct that there is a false sense of security because of the very limited unverified screening that goes on. Often these infections are asymptomatic, and some of these infections, like herpes, are chronic, lifelong, recurrent, and episodic and are most likely to be highly infectious during a recurrent episode.

Kevin Bland representing the Free Speech Coalition (FSC) stated that there is a difference of opinion on the meaning of the statistics. The FSC is here to come up with a rulemaking proposal that will create options that will work for the AFI, for the performers, and everyone who is directly affected. As with construction or agriculture, there are specific conditions that may not apply in the mainstream industry or any other sector. R. Kim-Farley agreed that it is important to find common ground to protect the workers in this industry. Ultimately, the decision will not

be made by the public health department, but by Cal/OSHA because this is a workplace setting. The decision has to be made about what risks need to be more tightly controlled in this industry. For example, some companies may choose to require condoms and digitally remove them in post-production. From a public health point of view, they'd like to see the condoms, but from a free speech point of view, they just want the workers to be safe.

D. Gold asked if there was anyone else who wanted to speak on this topic. Nina Hartley said that she is a 26 year veteran of adult film. She said she is against mandatory condoms. She still works in front of the camera, and condoms don't seem safer. They are abrasive. People in this industry have sex for 30-60 minutes at a time. There have been 8 cases of HIV since 2004 in this industry, and three were very high risk activities. How many cases per year of HIV are there in LA County? P. Kerndt said there are approximately 100-125 new case reports of HIV per month. What makes this different is that it is a legal industry in our state. A fairer comparison would be how many nurses or other occupational groups in a legal industry got HIV in the course of employment, and that number is zero. This industry has been plagued with this problem – what led to the formation of AIM was an outbreak of 5 cases in 1998 documented in public records. There were a number of other reports in the 1990's of other performers that were infected. The history of HIV infection and sexually transmitted diseases in this group is enormous. R. Kim-Farley said that it's important to remember we're talking about other STDs as well as HIV. These STDs are serious diseases that can affect a person's life including fertility and other outcomes.

T. Tritch said that in regards to re-testing and re-infection the test for Chlamydia and gonorrhea result says on it that this test is not intended for post-treatment evaluation. You can test positive with the urine test for up to four months after being treated. So you can get a false positive. Civilians who test at AIM have a higher percentage of positive tests than performers because they come in to test because they are very concerned after they have had a high risk exposure in their private life. A lot of the civilians test at AIM because they know about the clinic serving the adult industry. He also asked whether OSHA has the right to mandate pre-employment screening in any field.

P. Kerndt said that the lab test remains positive after treatment because it is sensitive enough to detect genetic material from dead organisms. The test will remain positive for Chlamydia for 30 days after treatment, and gonorrhea will remain positive for seven days after treatment. A positive test that falls within those intervals for those two diseases is not considered a new infection. T. Tritch asked if some of the thousands of reported positive tests were re-tests within that interval, and P. Kerndt responded no, that those retests had been excluded from analysis. D. Gold said that medical screening would be discussed later in the meeting. Diane Duke, FSC, asked if we could get copies of R. Kim-Farley's presentation, and he agreed to provide it. D. Gold said that rather than e-mail out large files, Cal/OSHA will e-mail out links to presentations and other resources, and encouraged people to provide an e-mail address. Paula Tavrow from the UCLA School of Public Health said that in regards to the use of condoms, and N. Hartley's comment that they caused abrasions or small tears, she is not aware of any studies or other evidence supporting this. P. Kerndt said he was not aware of any such studies. D. Gold said there would be further discussion of condoms later in the meeting.

Current health and safety measures in the adult film industry

Peter Riley opened this discussion, and asked K. Bland if he would like to address current control measures in this industry. K. Bland asked A. Aronow to speak about the current medical testing protocols. A. Aronow said that they test for HIV and all STDs including Chlamydia, gonorrhea, HPV, etc. They do it to the best of their abilities on a frequent basis for adult film industry performers. They hope this process will come up with a consensus on a current set of testing protocols that is most useful, efficient and cost effective, and to meet often enough that those protocols can be reviewed and revised. These protocols should address both in terms of the type of test and frequency, not only performers in the adult film industry, but other people who meet similar criteria, such as the number of sexual encounters and risk behaviors.

Marcy Greer said that she is a former porn actress who worked in the industry from 1999 through 2009. During that time she contracted Chlamydia, gonorrhea and vaginitis. No company paid for her medical. She recently went to an emergency room for treatment of vaginitis that she had contracted over the summer in her last video, because she had no idea what was wrong with her. She said that although there was supposed to be condom-only periods in the industry, such as in July 2009 when there were AIDS and STDs, she worked without condoms during that time. She said that she had been raped on a set by an actor/director who forcibly penetrated her mouth and throat. She said she contracted Chlamydia and gonorrhea in the throat, which she said is a site AIM does not test. She stated that that AIM did not take appropriate action. M. Greer asked about using dental dams for lesbian films, and about protection against Giardia, which is a parasite that can be contracted through rimming. She said that it is also important to protect against HPV, which can appear as a mole or a wart on the genital area and can be spread through rubbing. Mark Kernes asked M. Greer to identify the person in the industry she called a rapist. P. Riley said that the purpose of this section of the meeting was to discuss control measures in the adult film industry. D. Gold added that this is a Cal/OSHA rulemaking process, people have a right to say what they want to say, but we need to avoid personal attacks or attacks on groups or organizations.

K. Bland said that this isn't his first Cal/OSHA rulemaking. In every industry, there is a fringe of people who won't comply with regulations. In this process it would be good to come to some points of clarity, and focus on what will work for the general consensus of industry and the stakeholders. He asked producers in the room to talk about their safety measures.

David (Charles) Cummings said that he is a performer and a past producer. He said he would like to know how many of the people in this room have been on a porn set. In order to get a 12-20 minute sex scene, performers spend an hour or an hour and ten minutes of actually having sex. His sets, like many others in the industry are very pro-woman. The women decide who they'll have sex with, and determine whether condoms are used and he will not try to change their mind. The woman inputs what positions they do or do not want to do. The industry provides dedicated restrooms with the woman's name on the door and they are ultra-clean restrooms for the female performer only. He provides new sex toys. The woman can bring her own toys, but he pushes the woman to make sure they are clean. To prevent irritation to the woman in a condom scene he frequently asks the woman if she wants more lube. It takes more time to get footage in a condom scene. He's 70 years old and it's not easy some times to be "up" for the scene, but he does. He

hasn't filmed in three years. If condoms are mandatory, he would retire because of their effect on sales. As a performer, he's comfortable with AIM's testing and believes it's more than equivalent to the use of condoms. He performs for many other companies and he is not a contract performer. He spends 60-90 minutes per scene, and use of condoms is a challenge for guys, even with viagra. Most performers are not employees, only the "contract girls" have an employer. Performers go on a different set with different performers each time. There are lots of other risky behaviors in the swinging life-style and bars, social gathering, and he feels most relaxed in the porn industry with AIM testing.

Mark McGrath from the Reproductive Health Interest Group asked what percentage of the total adult film industry in California, including gay and straight, use AIM's services. Dr. Chauntelle Tibbals from Southwestern University in Texas stated that there is a 98 percent compliance rate among 208 companies in southern California. M. McGrath asked about San Francisco, San Diego and Palm Springs. He said he had been in the San Francisco studios and they don't use AIM. C. Tibbals said a study of AIM's services had been published in the Lancet and in response to a request from D. Gold said she would provide a copy of the article. S. Lubben said that the majority of the adult industry uses AIM, because according to the FSC 80 percent of the world's adult content is made in Chatsworth CA. T. Tritch said that the majority of the gay industry doesn't do any testing, which is why there is no information about STD infection rates in that industry. Only anecdotal information is available. One of the main contentions when AIM was first formed was that eventually it would be used against the industry, and that's what's happening here.

P. Riley asked if there is anyone from the adult industry that is condom only. Joy King said that Wicked is the only studio that is all condom, and they also do testing. She doesn't necessarily support making condoms mandatory. D. Gold said that the standard currently mandates the use of condoms and other protection. The current status quo is that employers must prevent contact of the employee's skin, eyes and mucous membranes with blood and other potentially infectious materials. At this meeting we are trying to figure out if there is something new that can be worked out for this industry that will protect employees as well as the currently required measures.

Brian Chase, AHF, said that in regards to D. Cummings' statement regarding that people working in this industry are not employees, there are two standard tests for whether someone is an employee. He provided an article from the USC Law Review that looked at whether performers working in the AFI are employees. The author concluded that performers are employees. The Circuit Court of Appeals, in the Deupree Decision two years ago held that for workers compensation purposes, the performers are employees.

K. Bland said that the FSC is not participating in this process from the point of view that the people in this industry are not employees. They believe that there are employees in this industry that need to be protected and we are trying to figure out how to do that. The determination of an employer/employee relationship doesn't have to be dealt with during this process it will be dealt with during a Cal/OSHA investigation. D. Cummings said that most of the performers work for various producers, and can't point to one specific employer.

Dan Leal said that he is an adult film producer and shoots about 60 live shows a quarter, and uses between 80 and 150 performers per quarter. He also performs in about 20-50 scenes per quarter. He suggested that we form a subcommittee that meets regularly to work out a compromise for the adult industry that includes testing and optional condom use, or maybe a study. There are too many people here to accomplish much. D. Gold responded that at the moment, Cal/OSHA had committed to two general meetings, but it might be possible to create one or more subcommittees. All meetings need to be open to the public. D. Leal said that he thought we could all agree that there needs to be a compromise worked out in this industry.

P. Riley asked if there was any performer here who works condom only. Traci Bryant said that she is a sex worker and uses condoms. D. Gold asked if she was currently able to work in the adult industry. T. Bryant responded that if she pushed it, she could probably get a lot more work, but she doesn't push it. A lot of people don't like her too much because she's condom only. The last production she did was earlier this year and was out of the state. She's been pushed to work under another name, or without condoms, or with condoms on low-budget productions only. She said she'd like to see this law include all sex workers, not just porn stars and B-movie actors. Prostitution is coming in this state. Sex as a legal consideration in front of a camera is not much different than without a camera. All sex workers should be protected – latex on every penis.

Nina Hartley said that there's no way that anything can be made risk free. She knows when she makes a film that she is at some risk. It is possible to do things to manage risk. It is not possible to make the risk zero, but she is an adult, and it's a choice that she is making. Condoms don't necessarily make it safer and may tear the skin. Jan Mesa said that D. Charles [Cummings] must be the rarest type of producer, because she was never offered a choice on a set to use a condom. She was told that if she brought up the subject again, she would never work again in the industry.

D. Gold said that it appears from the previous discussion that control measures have included a system of testing, and there are questions about the effectiveness of that testing. There is some use of condoms, and she asked if there are other types of controls currently being used in this industry. She asked producers what types of controls, such as training, they are currently using.

K. Bland said that the FSC members have a BBP program, a safety program, and on-line training. Similar to other industries they address different classes of employees such as stage and set workers, who you can protect differently than performers. This is similar to construction for example there are different controls for iron workers at different heights. It isn't unprecedented to protect different workers at different levels. He said he recognizes the issue that we have to overcome in regards to "at least as effective as" to federal OSHA, but at least as effective as doesn't mean the same. We can come up with methods that will address protection and be at least as effective as the federal standard.

P. Kerndt asked how many production companies have exposure control plans, and what are the elements? K. Bland said that they have an 8-12 page model program that addresses the elements of the standard. S. Lubben asked if he could provide a copy, and address some of the basic elements. K. Bland said that D. Cummings had basically addressed the testing and other control measures already. J. King said that Wicked has a safety plan in place, and people sign that they have received a copy. It addresses bloodborne pathogens and other hazards such as electrical and

health benefits. They care about their employees. Amy Martin asked if the plan says that they use condoms and other barrier protections, and J. King responded that it does. K. Bland said that he needed to confirm with Diane [Diane Duke, FSC] that they can provide a copy of the model program, since it is a benefit of membership in the Coalition.

T. Tritch said that there enough people in this room from this industry including producers, performers and members of AIM. The AIM system doesn't need any approval to change its system. In 2003 they started testing for gonorrhea and Chlamydia on a monthly basis. No one had to approve it. They could increase testing right now, but finding someone to pay for it, is another issue. They could go to two or three week testing right now, and implement it tomorrow. That would show industry's willingness to come to a reasonable compromise, although there is still the issue of who will pay for it. Testing has proven effective. When they first started testing for gonorrhea and Chlamydia the positive rate was thirteen to fourteen percent in the first month. After one or two months of repeated testing it was down to three percent. After one to two months of two-week testing, AIM would be able to show a decreased rate.

A. Martin said that there is a current state of the law that applies to this industry, just as it applies to every other industry in the state that exposes employees to bloodborne pathogens. We have that law. You can do whatever you want in terms of increasing testing, and we are not against voluntary efforts. But the law is the law, and Cal/OSHA has to enforce the law in a way that is equivalent to federal law. So at the end of this we will not simply agree that a form of testing is as effective as barrier protection, unless there is convincing medical evidence that it is equivalent. She said that she hopes that we will hone in on what we can do in a regulation that will meet the requirements of federal equivalency and protect employees. K. Bland said that the FSC would provide the model BBP plan and A. Martin thanked him for that.

There was a lunch break from 12:20 to 1:20 p.m.

Condoms, Barriers and Other Engineering Controls

D. Gold introduced the discussion of condoms, barrier protection and other engineering controls. She quoted from the existing law, Section 5193 saying that engineering and work practice controls shall be used to eliminate or minimize employee exposure. She said the AHF petition recommended being more specific about what we mean by engineering and work practice controls in this industry. She said it includes condoms, and simulation. She said she knows some people are here to make statements about condom use, and some have done so already. What people may not understand about Cal/OSHA is that in 1970 Congress made a finding that occupational exposures must be controlled in more specific way than other public health issues. Additional protections are needed because employees don't have the ability to work things out they way they do in personal relationships. This applies not only to bloodborne pathogens, but to the risk or off a building or to guarding your saw.

Jeremy Steele, a performer who has been working in this industry since 1996, said he agreed with N. Hartley that there is no way to make this industry risk free. You can't guarantee protection, and if you're worried about the risks, you shouldn't be in the industry. Eighty percent of the general population has oral herpes, so should you prohibit kissing? You should strengthen your natural immune system – don't be a drug addict, eat healthy. He doesn't agree that there is

an epidemic. The closest thing the industry has had to an epidemic is in 2005, when there was an outbreak of staph infections, but condoms would have been worthless to protect them. He said that HIV is microscopic and the condom does not protect against it because the pore size is much larger than the virus. It's like trying to stop a golf ball with a hula hoop. Transmission of HIV from an HIV positive person is unlikely, with or without condoms. There is no guarantee of safety. He is against condom use being mandatory. P. Kerndt said that the CDC has found that when used consistently and correctly condoms are highly effective in preventing transmission of HIV and other sexually transmitted diseases over those areas that it covers. The CDC statement is available on their website. [<http://www.cdc.gov/condomeffectiveness/latex.htm>]

D. Cummings said that he has heard that condoms break one to four percent of the time. He asked if that is correct. P. Kerndt replied that condoms do break, but he doesn't know the percentage of the time. When they break, it's an exposure incident and would require that the person be provided with follow-up. T. Bryant said that she has been working in the brothels in Nevada for four years on and off. The woman who owns the Mustang Ranch worked at the Bunny ranch for many years, and over the course of those years she has had only six condoms break, out of thousands of uses. T. Tritch said that the studies on condom use and breakage are about condom use in every day life. The sex that takes place on a porn set is very different. There is a greater risk of condom failure because of the stresses created by the different sex acts. There is a much greater risk of condom breakage and condom failure in the porn industry.

A. Martin said that her understanding, based on reviewing of raw footage gathered during Cal/OSHA investigations, is that there is a lot of starting and stopping in making these productions. She said she understood that condoms will lose strength over time. She asked whether condoms couldn't be changed when the action stopped. D. Cummings said that on the Wicked sets, when they used condoms, if the action stopped for any reason, such as a plane flying over, and the performer came out of the vaginal area, they changed condoms. That's the only right, moral or ethical thing to do. J. King agreed, and said that they use 10 to 30 condoms per scene. Every time the action stops, the condom is changed. D. Bleak said that in surgery, during procedures on patients involving blood and the body is open, when a glove breaks or is stuck by a needle, the glove is changed and the surgery is momentarily stopped. The person who exposes that patient is tested, and sometimes prophylaxis is given to the patient. The surgery is stopped momentarily to change the protective gear, and that is appropriate.

Christina Rodriguez Hart from the Reproductive Health Interest Group said that there are studies on condom breakage and efficacy in brothel workers. There was a prospective study and found there was an almost zero rate of breakage. They found that the sex workers using condoms consistently became better than other populations at using condoms. She said she would provide a copy of the study, done by Albert et al. C. Tibbals said that this study was secondary to another study published in 1999 as "Brothel." Alexa Albert had lived in the brothel, and she did find almost zero percent breakage, but she was looking at workers who used condoms regularly and changed condoms often because that was their job and they were professionals. She said that the populations weren't exactly the same. D. Gold asked if she was saying that the workers in the AFI are not professionals. C. Tibbals replied that she was not saying they weren't professionals, but that in order to use the condom effectively and have no breakage you need to have someone who is trained and experienced. In order to get no breakage, the population that is working with

them also has to be experienced. The population in the brothels is different than the population working in adult films. D. Duke said that it is important to stay focused on the adult film industry, which is different than the brothels. The circumstances in a brothel are different than the circumstances on a set such as lighting. It's different working on a set with the same people, as compared to a brothel with different people. D. Gold asked what training was provided to brothel workers as compared to people working in adult film. D. Duke said that according to what Albert wrote the training in the brothels is on-the-job, and experience. They don't receive any specific training. Some of the women have been working in the brothels for decades. Maxine Duggan said she has been working as a prostitute for 22 years, and although she has never performed in adult film, their organization has members who perform in adult film. There is a big difference between sex in the AFI and prostitution. Her clients are typically done in 5-7 minutes. Porn people do different kinds of sex in different ways and for much longer periods of time. She has 100 percent condom use and has had maybe two condoms break. Her organization looks to Australia and New Zealand where prostitution is decriminalized they have protocols for what to do if there are breakages on the job. Laws do apply to prostitutes as well, and all kinds of erotic labor, even though these rules we're discussing today are aimed at producers of porn.

Jane Steinberg said that the LACDPH health education program they provide training to all kinds of populations – high risk and low risk – but the training on how to use a condom is all the same. The issue of frequency of use may come up. But on a set, if there's downtime there's time to change a condom, and there's also time for health education. Low and high risk populations are trained and can use condoms just fine.

Paula Tavrow said that she could provide a study about condom breakage that found three main categories of reasons for condom breakage. The first is using an ill-fitting condom. Obviously a male performer using condoms would know which condoms were appropriate for him. Another reason is not leaving enough space at the tip, and again, a male performer who used condoms frequently would become proficient in their use. The third reason is using an expired condom or a condom that has been exposed to the elements. All those reasons could be easily dealt with in this industry. If you think about, it the male professional actors would become extremely proficient, more so than the brothel customers. There should be virtually no breakage.

K. Bland said that training is important and should be on the agenda. We should talk about specific training for this industry. He is not arguing that a condom is not a viable option. He would like us to discuss whether there is another viable option that can be used within this industry if either the performer or the producer doesn't choose to use a condom. There are many ways to reduce risks, in the workplace. It's good to be able to explore the options. The biggest hurdle is the "at least as effective as" issue. The condom isn't foolproof, there are arguments to be made that it's 90 percent or 99.9 percent effect. Can we look at other methods that provide a similar reduction in risk?

A. Aronow said that we may need to increase the frequency of testing in terms of making the risk as minimal as possible. That's something that we can work on in committees later. We need to do our homework and be sure that we have researched every possible study of analogous situations. We need to pilot what we do.

Bill Margold, from Protecting Adult Welfare, read his statement [available at: <http://www.dir.ca.gov/dosh/DoshReg/comments/Bill%20Margold%20Comment.htm>]. He said that 25 years ago he testified in front of the Meese Commission saying welcome to Salem by the Pacific. Today he will open by saying “force is a very unhealthy practice.” He said that the implementation of mandatory condom use will force the California’s industry to find unhealthy ways to circumnavigate the process. He said he would prefer that Cal/OSHA work with the adult industry to create a policy of sane sexual practices, rather than trying to control a legal creative medium. Increasing performer testing to twice a month and testing for not only STDs but also for drugs that debilitate the immune system would be a start. Confidentiality should not be an issue, because people who enter the industry should understand that "when their privates become public viewing material, they should fully expect to lose their privacy."

P. Tavrow said that she was concerned about the discussion of options. A nurse, dentist, or doctor shouldn’t have the option not to use a glove just because they don’t like the way they feel. We should have agreement in this room that using condoms is much, much safer for the performers than not using condoms. The issue then becomes that the industry thinks it can not market its product if condoms are visible. Then the issue becomes are there ways to make the condom much less visible by removing them digitally in post production, or ways of filming, use of transparent condoms and other techniques. Whether you’re a public health professional or not, we all know that using condoms during any sexual act is much safer than not using them.

T. Bryant said that she thinks that condoms should be used on every penis for vaginal or anal sex, but it is not easy or economical or necessary to use them for blowjobs. Vaginal and anal sex are higher risk. Oral is less risky, although there is the risk of throat cancer. It’s easier to film and to do a blow job without a condom, and that’s a risk she would take. She wouldn’t take the same risk with below the waist parts.

Joy King said that removing condoms in post production is cost-prohibitive and unrealistic. D. Gold asked her what the cost was. J. King said that they hadn’t done it for condoms, but they had done it to remove logos in the past for trademark reasons, and a movie that might take 4 weeks normally took 12-15 weeks for the process, and the cost was increased by about four times.

M. Greer said she had Chlamydia and gonorrhea of the throat which is not tested for. She could pass it on by going down on a girl or a guy. The only company that sells small condoms is condomania.com. A lot of guys use too large a condom.

K. Bland said that he doesn’t think there is consensus in this room that condoms are the only means to protect employees. Part of the problem is that a change may drive up the cost or change the way the product is produced. In construction there are different classifications of employees in terms of their job duties and their training. In regards to fall protection, Section 1710 permits iron worker connectors to go to 30 feet without use of personal fall protection, which includes a greater risk of injury if they fall, while the rest of the workforce, with some exceptions, must be protected at 7.5 feet. In this context we are trying to look at options to protect a class of performers in a way that will allow the industry to produce the product. Condoms are one option, but what are other options that will reduce the risk although perhaps not to the same level?

Gene McMenamin, an occupational safety and health lawyer, said that it almost seems like we're having an academic discussion about an industry that's about to kick off, and how it should be regulated, rather than discussing a multi-billion dollar industry that keeps the San Fernando Valley afloat. We're shadow boxing with the industry and their organizations. Every employer is required to have an Injury and Illness Prevention Program (IIPP). One person in the back of the room talked about a training program. Cal/OSHA has an obligation to have the industry show their IIPP so that we can get to the reality of what they are doing on their sets and what their program is.

A. Martin said that K. Bland should also show us the science to support alternative means of protection. Tell us how you will get equivalent safety. She said that we need to see the programs, the IIPP, and the training. We need specifics, not generalities. K. Bland said that there are studies that people have mentioned, including conflicting studies. This is common in rulemaking. He said the industry had some valid points. A. Aronow said that at this point they are looking at the data very carefully. He's not taking a side of condoms vs. non-condoms. He's looking at good public health policy to see if there are alternatives that will approach risk in terms of testing. He said he didn't know the answer. In regards to HIV, they are doing a good job within the adult film industry in preventing transmission on the set. There have been no documented transmissions on the set since 2004, out of thousands of tests. In terms of Chlamydia and gonorrhea, the tests could be better. There is clearly a problem because there is no gay or straight company that uses condoms for oral sex, and there are multiple STDs that can be transmitted by oral sex. We could pilot a program looking at data for testing every two weeks and see how we do, for people willing to sign consent. D. Gold said that we would be talking about medical monitoring later in the agenda.

Whitney Engeron, AHF, said that he agreed with K. Bland that we need to look at the respective risks of different acts. Change is difficult. He said that when the smoking ban in bars was first proposed, there were concerns that the industry would leave. But in fact, people are still eating and drinking beer. There are creative marketing ways and other ways this can be done that will be palatable to the industry. People working in this industry need to be protected, and condoms are the way to protect them. He said he is not aware of another alternative product that will provide that protection. Barrier protection is the standard.

D. Duke said that she has a copy in her hand of the health and safety manual for the adult film industry. They want to comply with Cal/OSHA regulations, but the regulations don't work in this industry. She said that D. Gold has agreed with that at the Standards Board meeting. In her experience at Planned Parenthood, if you don't have a system that works or people don't buy into a system, you don't have a system. She was impressed when she started working in this industry at its self-regulation and system of best practices. She said they want to work with folks, and need a plan in place that works for performers and is viable for the industry. She said they are not anti-condom. D. Gold responded that D. Duke's representation of her statement at the Standards Board meeting did not accurately reflect D. Gold's statement or the position of Cal/OSHA. She said that we should try to craft something specific to this industry that might work better. She further stated that she and other people here have issued citations to employers in this industry for failure to comply with regulations. We are applying these standards, and we

are not saying that these standards don't work in this industry. We do say let's try to sit down with the industry and everyone else, and try to come up with a better system.

J. Steele said that that there are 46,000 highway deaths each year. You could be hypothetically safer if you made cars out of steel, but we have to take into account what works, and whether that would be too costly. Condoms don't guarantee protection. Most recently, there was a problem with staph infections and condoms don't protect from that. We fool ourselves in relying on condoms for protection.

D. Gold asked if there was anyone here who use simulation in filming adult videos. J. King said she is with Wicked Pictures and on the Board of the FSC. She said that when they shoot a movie, they do use condoms. They also use simulated sex for the cable versions, and most other companies do also. She asked why simulation was on the agenda. D. Gold responded that to the extent that a specific thing that you want to depict can be simulated, for example, if you want to depict ejaculate coming out of a woman's body, to the extent that what you want to depict can be simulated without exposure to bodily fluids, that would be considered to be an engineering control under BBP. One approach to making a movie, or an Opera, is to say, we want to make this scene, these are the hazards and here's how we are going to control these hazards. So in producing a film, you could say that in this scene we want to depict a certain act, and we'll use condoms for that, and in another scene, where you want to depict someone ejaculating on a woman's face, for example, the performer doesn't actually ejaculate on her face, you use an editing technique to depict that. The concept is to plan out the scene and reducing the risk of what you want to depict, and then using things like condoms to control what risk remains. She asked if anyone in the industry is currently taking that approach.

J. King said that they will film XXX, XX, and X versions of each movie for different markets. She shoots the hardcore first, and goes through all the positions then she shoots the soft core. So it's not as easy as what D. Gold had described. As she uses the term "simulation" it means you don't actually see physical intercourse. D. Leal asked what the current policy is regards to semen on the body. D. Gold said that there is a requirement to prevent contact of the employee's skin, eyes or mucous membranes with OPIM which includes semen and vaginal secretions, as well as blood. However an exposure incident is only non-intact skin. So there's some room in regards to intact skin. There is no room in regards to the vagina, anus, mouth or eyes, for which contact has to be prevented. You never really know if skin is intact. You're supposed to prevent contact with intact skin, but it's only an exposure incident if the contact is with non-intact skin. In a medical situation you wear gloves to protect your hand, if the glove had blood on it and got torn, and the skin underneath was broken, you would need to be sent for a post-exposure evaluation.

D. Bleak explained what an exposure incident is, and how they respond to one in a medical setting. When blood or body fluids are on skin (whether intact or not), eyes, mucous membranes, or vagina, you evaluate the source case as well as the exposed case. You need to do a full evaluation of the incident and do a full blood and body fluid workup. This needs to be done in a timely manner, to figure out what can be done to prevent infection, and also what medications or other treatments may need to be done to allay symptoms if the person is diagnosed later with HIV or other illnesses. There is no blueprint other than following the occupational law. If you have no law or policy for exposure, and no plan, you have to depend on the medical professional

to whom you refer the employee to know what they're doing, and they may not know. It has to be worksite based, because only the employer knows what happened.

D. Leal said that in the adult industry, they simulate fluids. He has an internal "cream pie" series (ejaculation inside a woman's vagina). They fake those scenes because from the camera viewpoint it shows up better. He said that a lot of companies fake "cum shots," and several participants agreed. If there is going to be an agreement in this industry we need to be clear about all of this. D. Gold asked if they simulate anything else, and D. Leal said that cum shots are the main things they simulate.

T. Tritch said that semen in the eyes mouth and vagina is clearly more dangerous than semen that touches intact skin. He asked whether keeping a Log 300 for exposures in a workplace, what type of OPIM contact would be mandated to be reported to OSHA, as compared to just recorded. D. Gold said that should be separately because it was not on topic.

M. Kernes said he had asked a person who is involved in producing adult films about the costs of digitally removing condoms from sex scenes. He said that it would cost about \$12,000 per minute to remove the condom and replace it with something that looks like a penis. Most adult productions are made for less than \$25,000 for an entire movie. To digitally remove condoms for two minutes of a movie would take the entire budget of the movie.

T. Bryant said that as a performer, there are certain things she is okay with, and certain things she is not okay with. She feels okay with cum, pee or feces on her skin if she has no gaping holes in her skin, and with cum on her face and in her mouth, with a penis in her mouth or on her skin or breasts, and with oral/vaginal contact. She is not okay with cum in her eyes or with a penis in her vagina or her anus without a condom. Performers are okay with many things based on risk. Most performers are pretty okay with oral sex, and she would like to see that be an option.

P. Tavrow said that in terms of production values, she's talked to several people, including a porn editor who was paid for days and days of work to remove scar lines from a bad boob job. If the industry wants to pay for things, they will pay for certain things. You can't put a price tag on removing condoms digitally, because there are things that could be put in place if you had to do it, and ways to shoot a scene that would reduce costs, such as use of transparent condoms or use of certain colors that are removed easily. He said he couldn't put a price tag on it, but if he had to he'd say it would certainly be less than \$5000. D. Gold asked if that were per minute or per scene, and she said he wasn't that specific, but if it needed to be done, they would find a way to do it economically.

W. Engeran said that he has a problem, if the OSHA standard is what a worker is comfortable with. A stuntman may be comfortable shooting a scene without a seat belt, but they're not going to get insured and they're not going to be able to do the stunt. He said he understood the concerns about the financial impact on an industry in regards to sales, and he asked where in the deliberative process financial burden for the industry is considered. A. Martin responded that all of that matters and is taken into consideration. Comfort of the worker is not the determining factor, and frequently cost, while a consideration, is not a determining factor. There are many workers who don't want to comply with certain safety regulations, but they have to do it anyway.

D. Gold added that we are not creating a new rule, but we are talking about possibly modifying a current rule. The costs of depicting or not depicting a condom are included in the current standard, and are not new costs.

M. Greer asked T. Bryant if she didn't mind having feces on her. T. Bryant said she didn't mind on her skin. M. Greer said that you can contract Giardia from rimming by women or men, or from drinking unclean water.

Shelley Lubben said that her organization, the Pink Cross Foundation, is educating people in the porn conventions, night clubs, porn star karaoke, and other places about OSHA regulations. She said she would like to have an alliance with Cal/OSHA to help with training and education, and she has prepared a draft proposal that she will provide.

C. Tibbals said that in regards to not regulating people out of a job, in 1998 six of the largest companies in the industry instituted a voluntary condom-only policy. By 2004 only two companies have stayed in business with condom-only policy. In 2006 Vivid reported a 20-30 percent decline in sales with their condom-only policy, so they quietly dropped the policy. It is a consumer issue. The four companies that dropped their policies as of 2004 are currently out of state.

D. Gold said that one of the purposes of OSHA is to set a floor, where everyone has to comply. It's cheaper to bid a job without fall protection, at least until people fall. OSHA sets a standard everyone must meet, and so no one is at a competitive disadvantage. Some things are beyond the scope of Cal/OSHA rulemaking, and you may need to go to the Legislature. For example, if you don't want to comply with the BBP standard, or you don't want to consider this "occupational exposure," that may be beyond the scope of our rulemaking. She said that it may be more productive to follow the approach suggested by T. Bryant and K. Bland and others to look at the risks associated with specific jobs or acts, and how those risks can be controlled. For example can the risk for oral sex without ejaculation be separated from ejaculation into the vagina and discussed separately. The AHF petition focused on the higher risk activities in their petition. If we want to build a risk-based approach, we will need the science that says that this specific activity is at lower risk, and addresses how the remaining risk can be controlled.

Jeffrey Douglas, chair of the FSC Board, said that it is important that we are engaged in this dialog. He has been representing adult entertainment companies for almost 30 years. There has been a consistent failure to engage in dialog from regulatory agencies. He said that you can not cite any group of regulations of any industry that have been imposed on an industry without a dialog. You can not have effective enforceable regulation without knowing about the industry. There have been less than 10 opportunities for there to be dialog. The diversity of views expressed here illustrates how difficult it is to regulate when the regulators are not knowledgeable about the industry. He is grateful that the process is involving the industry but the idea that this review of existing regulations can be accomplished in one or two meetings is wrong. He urged Cal/OSHA to come up with an agenda that gives an opportunity for small groups to do fact-finding. The first step is defining what the acts are. How can you do that if your primary interest is hostility towards the industry? He said that he believed we are trying to do this in good faith, and doing a better job than he would have thought. There need to be multiple

meetings with various interest groups. Most regulation of this industry at any level is imposed out of hostility to the industry. There needs to be more fact finding with the straight industry, the gay industry, northern and southern California, and recognize that there is an enormous range in this industry.

Diana Grandmason identified herself as a former performer in the AFI from November 2007 through June 2009. She left the AFI to work in the legal brothel system in Nevada. She said that we shouldn't waste time re-creating the wheel. In Nevada there have been zero cases of HIV and no STDs in the brothel system. They test weekly for Chlamydia and gonorrhea, monthly for HIV and syphilis, and annually for hepatitis C. If a woman is found to be positive for hepatitis C, she can not work during her menstrual period, whereas in the AFI, women work during their periods all the time. They use just make-up sponges to keep the blood from flowing out, but some still comes through. There's a lot of exposure to menstrual blood in the industry. Dennis Hof would argue about the possibility of using condoms vs. not using condoms. Customers continue to go to the legal brothels every single day, having to wear condoms themselves, not just watching them, to protect themselves and the workers. This is a program that works. In the brothel system they don't have as much hard extreme brutal sex as they have in the porn industry, although it may happen occasionally. So they're using a more stringent program, even though there aren't as brutal sexual acts. In regards to oral sex, in Nevada you have to use condoms for vaginal, anal and oral sex. The only thing you don't have to use condoms for is your hand (skin to skin contact). In the porn industry it's a common practice to deep throat oral sex which causes abrasion, scratches, and ripping of the throat. It's common for male performers to grab the woman by the back of her head and shove it down her throat, without regard to whether a female performer agrees to deep throat. She said she'd like to ask whether Wicked isn't one of the top companies? She said that Wicked's profitability has not been affected and is in the top companies. Joy King said that she did not want to discuss Wicked's business or profitability.

Brook Haven said that she has been a performer since October of 2004. She is in favor of condom optional. She's never had an STD and thinks that AIM has done a good job. D. Cummings said that there should be some way to reach equivalency with some combination of measures. There are three ways to work out a cream pie – pina colada mix, egg whites and milk, or Cetaphil (a hand cleaning lotion). He worries that fans will find out, and sales will go down. There won't be an industry to regulate unless the solution helps them survive. Costs go up, jobs go away. Condoms don't work for sale. If we go out of business, our product will be replaced by Euro versions from Russia and Europe, with harsh activities. The tube sites are pirating the products. Where will the money come from?

D. Gold suggested putting off further discussion of economic feasibility in order to finish the discussion of a program of controls. Ged Kenslea from the AHF agreed that we are not creating a new rule but are talking about modifying the existing rule. He said that in 1980 there were 51000 automobile deaths in the U.S. By 2004 the death rate had dropped to 25,500 deaths, and there were more people driving. The AHF is not trying to put this industry out of business. We should approach this issue incrementally through the use of existing regulations and laws, and amend them if we need to.

T. Bryant said that sex is a legal consideration in a contract. Companies make more money on certain things such as high risk activities. Some company profits are based on niche markets and certain high risk acts.

G. McMenamin said that what he has taken from the last 5 hours of discussion is that this multi-billion dollar industry is in flagrant disregard of existing regulation and in denial regarding what the regulation is. He has two recommendations. 1. Cal/OSHA has the expertise to control this industry. Cal/OSHA should also take advantage of the expertise that the Labor Commissioner has on regulating minors on movie sets. Performers in this trade deserve the same type of in loco parentis supervision that the Labor Commission currently gives to minors. Cal/OSHA should consult with the Labor Commissioner staff on how this can be done. 2. Cal/OSHA should consider adopting a permitting system similar to the recent construction industry rule for a project permit. Producers who want to make an adult movie should have to come in to a Cal/OSHA office with an IIPP, and tell you what they're going to do, how they're going to do it, and where they're going to do it, so Cal/OSHA can be there too.

J. Steele said that the coal mining business is very deadly and people take risks because they either need to or because of the pay off. To what degree has that been regulated and can it be regulated? He said he isn't advocating outlawing coal mining because people make their living at it and it's profitable. There's no way to make something absolutely safe. They can do things to make it safer. A stunt man can choose to do something without certain protections because of the aesthetic value of the performance, such as not using a helmet. D. Gold replied that there are strong separate regulations on coal mining under the Mine Safety and Health Administration. We are all disappointed when things happen such as the recent accident when 29 people lost their lives, which is just the kind of event the Administration was established to prevent. There are regulations that should have prevented the collapse, and we take it all very seriously.

K. Bland said that minors don't belong within the scope of this rulemaking. The AFI has an IIPP that they use. If the people here weren't interested in having a good regulation, they wouldn't be in this room. If we want a permit regulation, we need to do a different rulemaking.

M. Greer said that a lot of talent agencies are not insured or licensed and need to be looked into. D. Gold said that the Division of Labor Standards Enforcement, a separate agency, regulates talent agencies. M. Duggan said that she is concerned that the proposed regulation puts economic sanctions on producers, but there are no incentives for workers to size their own condoms. Workers would have to suffer if they had to work underground. We need to empower the workers. Even if it is outside the scope, there should be anti-discrimination legislation to protect employees and so they can take responsibility on their jobs. Workers need the flexibility to use or not use condoms. The regulations cover everybody, including prostitutes and anyone else exposed to blood on their job. D. Gold responded that prostitution is not a legal industry in California, although it is a legal industry in Nevada. Cal/OSHA has no jurisdiction over prostitutes at this time, because we only have jurisdiction over legal industries. The regulation exists and puts the responsibility on the employer to provide a safe and healthy work environment. The employer has to provide all required safeguards, including condoms, including properly sized condoms, and including training on using condoms. M. Duggan responded that the Cal/OSHA rules are not being enforced, and D. Gold answered that the rules are being

enforced but may not be being followed. She said that people should not be confused between an effort to change the rule to be more specific and useful to this industry, and the fact that there is a current rule that is in force, and is being enforced.

M. Duggan said that some people are not in compliance, so how are you going to get the buy-in that will bridge the gap. You need to do something for the workers to help them do that.

J. Mesa said there is a consensus that there is a lack of training and monitoring. The workers don't know what kind of industry they are getting involved in. Porn 101 [AIM training program] doesn't cover it. Jessica Nealy said that she is a current performer under the screen name is Angela Aspen. She said that she is over 18 and she knows what she is doing when she signs the release at AIM. She is an adult, she has the ability to leave set if she chooses to. She supports having the option to use condoms. She feels happy to have her job, she fucks for a living, how cool is that? She is empowered, and she makes a choice. M. Greer said that she wasn't able to walk off the set when she was raped. She was held captive and forced to do various acts to which she didn't consent. D. Gold said that the law requires that employees be afforded certain protections. No employee is permitted to forego using fall protection when standing 60 feet above the ground at the edge of a building. If the employer has a policy that permits employees to choose to not use fall protection, the employer will be cited. People need to understand that there is a system of occupational safety and health regulations and law that is different than what people do in their private lives. B. Haven said that she has an agent, and she has never been forced to do anything in this industry that she didn't want to do.

T. Tritch said that the porn industry has been operating in the San Fernando Valley for 20 years and there have been hundreds of thousands of scenes performed that according to the regulations are not in compliance. Obviously the amount of enforcement is minimal. One of the problems is the lack of enforcement over all the years. The Legislature has been more negligent than OSHA or the LA County Health or AIM. There is not a single California law specific to the multi-billion dollar adult film industry in this state. There are lots of specific laws for other industries such as banking or making cars or restaurants, but there are none in California specifically addressing this industry. For the last 25 years the industry has literally gotten away with flouting all these laws, and now here we are, and what is the compromise? But the precedent set by 25 years of lack of enforcement has emboldened the industry to continue their practices. The Freeman court decision made the production of pornography legal in California. On the date on that set, there were no condoms in use, and the court ruled that what was happening there was legal. A September 2009 letter from Dr. Fielding to the Board of Supervisors stated that County Counsel indicate that further local regulation of the AFI would likely face constitutional challenges on free speech grounds. D. Gold responded that we are trying to make progress on protecting employees in this industry, not to debate that issue, and that some of these issues are Legislative, not regulatory. J. King said that the entire industry is made of thousands of small independently owned businesses. The eleven billion dollar figure includes the overseas portion of the industry, and it also includes distributors and cable companies that make much more money than the production companies.

D. Bleak said that she has to do a lot of work when people who don't protect themselves come into her hospitals and clinics. She has to report sexually transmitted diseases on certain forms. She has to do contact investigations. She has to go to the bedside and watch people die and hold

their hand and give them the right medications. She has to make sure that HIPAA [Health Insurance Portability and Accountability Act] is followed and do consent. She has to teach her fellow health care workers how to take care of people compassionately. It hasn't always been done compassionately. She works in an arena where we also have to pay for the care. So what you do as individually or as a company also affects her personally, and that's why she's here. She doesn't only want to see statements on films that no animals were harmed in making the movie she'd like to see statements that people weren't harmed. Christian, a performer, asked D. Bleak whether she had said that ejaculate or semen on skin is not in compliance with Cal/OSHA. D. Bleak said that in terms of the Cal/OSHA regulations she would refer to Cal/OSHA. She said that in her previous comment she was referring to a developmentally disabled person who was raped, and in that context you have to investigate who the source is and all potential routes of exposure. She wasn't speaking specifically about the AFI. You have to do a source investigation per the bloodborne pathogens law. D. Gold suggested that the discussion of specific exposures could continue later.

D. Gold then talked about plans for future meetings. She said that Cal/OSHA's initial plan was to have this meeting and a follow-up meeting in the San Francisco Area at the end of October. The reason for that plan was to allow participation from people in each region. She said that there are significant differences in the industries between the north and the south, and different local health departments. She asked if people thought there is value in adding some subcommittee meetings, as some participants suggested, to that plan to provide further discussion on certain issues, and what those issues would be. She suggested two issues: 1. What is appropriate medical screening in this industry and 2. What are the control measures that could be used for specific job tasks or acts. By job tasks she means tasks such as a camerawork, scene set-up or cleaning may be protected in a different way than performance, whereas acts refers to for example different sexual acts that all may be done by performers. She said that economic feasibility might also be a separate discussion. She asked if there were other topics for a subcommittee. M. Duggan said that D. Gold's statement that prostitutes aren't covered by Cal/OSHA regulations was contrary to what A. Martin had told her earlier, and D. Gold said that she would check with A. Martin.

Karen Tynan, an attorney who represents companies in this industry, said that in talking about medical protocols, we should consider the transitory workforce, particularly in the north. She said that it would be helpful to talk to some producers, directors, agents, and performers about where performers are coming from, how long their cycle is. D. Gold agreed that we need to discuss the issue of mobility not only in terms of medical services but training and other issues. C. Tibbals said that the CDC reported that generally there are about 1200 active performers in the industry who last anywhere from six months to three years. G. McMenamin asked if given the itinerant nature of the workforce, the Cal/OSHA had considered licensing performers the way that electricians are licensed. D. Gold responded that Cal/OSHA doesn't license electricians.

K. Bland said that the FSC could put together a regulatory proposal within the next 60 days to address some of the issues and provide it to the Division to be shared with everyone as a starting point. D. Grandmason said that in Nevada a prostitute is required to get a license from the local sheriff's department. The license is held by the brothel or by the agency through which the individual works. C. Tibbals said that in Nevada, it's the responsibility of the worker to be licensed and tested, and to keep it updated. It's not on the employer's responsibility. D. Gold said

that the brothel system is constructed legally very differently. Jennifer Lawson said that it would be very hard for the producer to pay for testing because she hires talent and they work for her for one day, and then they work for someone else the next day. D. Gold said that might be something that could be discussed. There are other systems where employers pay into a pool, some of those are done through union halls. M. McGrath said that they would like to see a system where the performer would not have to use a specific provider, but could use their personal health care provider or the County testing agencies for clearance. C. Tibbals said that part of the reason why AIM has become the industry standard was because during the 1998 outbreak one of the performers had falsified his tests. One advantage to AIM is that it's a trusted source. D. Leal agreed there should be a subcommittee, and asked if that meeting could be scheduled now. D. Gold said that the Cal/OSHA staff needs to discuss the issue with Cal/OSHA's management, and would get back to people through the e-mail list. She said that individuals or groups were all welcome in the mean time to develop proposals and provide them to Cal/OSHA to share with people. She also requested that the people who mentioned studies or data provide those materials to her, and said that Cal/OSHA would make them available on the website. She asked that people who are interested in specific issues to e-mail her. K. Bland said that they did want to go forward with the October meeting.

D. Gold thanked people for participating, and said that Cal/OSHA hopes that this process can produce better health and safety conditions for employees in this industry. A participant asked whether the committee would also discuss issues such as enforcement, and how it can be more effective. D. Gold said different enforcement models could be discussed. Cal/OSHA typically enforces by doing inspections and issuing citations. However, when an employer is found to have committed certain violations of the field sanitation standards, for example, the employer must provide an annual report to the Division for 5 years indicating how they have provided bathrooms and drinking water to the people in the fields. Another model, as suggested by G. McMenamin is to require a permit be obtained before the activity, but that might require legislation, and is not currently part of the BBP regulation. A participant asked if the statement from the AMA supporting condom use in this industry could be made part of the record. D. Gold said that all statements provided in response to the email, in the timeframe provided, will be included in the record.