

**Draft Meeting Minutes of the**  
**Cal/OSHA Sexually Transmitted Infections (STI) Advisory Committee Meeting**  
**Held on 1/31/2017 in Oakland, CA**

Attendee Name	Affiliation
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**Advisory Committee Members**

Eric Paul Leue	Free Speech Coalition, executive director
Karen Tynan	Free Speech Coalition (attorney for AFI since 2009)
Dr. David Holland	Free Speech Coalition (public health physician, STD treatment specialty)
Siouxie Q	Free Speech Coalition (performer since 2010)
Suzanne Marria	AIDS Healthcare Foundation
Adam Cohen, PhD, MPH	AIDS Healthcare Foundation, Director Policy and Research
Jennie Ketcham Crooks, MSW	AIDS Healthcare Foundation (MSW Seattle Polyclinic, ex-adult actor)
Jeffrey Klausner, MD, MPH	AIDS Healthcare Foundation (UCLA SPH, former CDC global AIDS program, Former SFPHD STD dir. and former CA STD Control Assoc. President)
Gary Richwald, MD, MPH	AIDS Healthcare Foundation (STD epidemiologist, once FSC consultant)
Chanel Preston	Chairperson, Adult Performer Advocacy Committee (APAC)
Mickey Mod	APAC, Vice President
Verta	APAC Secretary
Ela Darling	APAC President
Peter Miao, MD	Cutting Edge Testing
Mark Schechter	Licensed Adult Talent Agency Trade Association (LATATA)
Israel Nieves	City of San Francisco Department of Public Health

**Interested Parties in Attendance**

Elliot Miao	Cutting Edge Testing
Whitney Engeran	Aids Healthcare Foundation
Kevin Bland	Free Speech Coalition; Ogletree, et al
Thomas J. Aragon, MD	City of San Francisco Department of Public Health
Shine Houston	Producer
Justin and Alyce	A & J Studio
Mr. Pam (Pamela Doré)	Naked Sword
Alex S. Morgan	Sexual health educator
Joel Berman, CIH	Health Sciences Associates
Don Parret	Xbiz.com
Mark Kernes	AVN Media Network
Julia Ann Tanella	Performer
Riley Reyes	Performer
Stefanie Special	Performer

Koko Kitty	Performer
Dennis Ts	Support for adult filmmaker
Mark Khazanov	
Kimberlei Evans	Attorney
Michael Kemp	
Lionel Michale Strunk	
Jiz Lee	
Charles Bolton	Videographer for "Sex, Condoms and Propaganda"
Andrea Pezda	
Trevor Michael Christian	
Amber Rose	Area Director, Federal OSHA
Tom Caraisco	Film agent
Johnny Starlight	
Firestar	
Sexto Pacheco	talent service
Jason Wilker	CDC
Marcello	performer
Ruckus	performer/model
Isabella Sorrenti	TS performer
Doug Parker	Executive Director, Worksafe
Jonathan Buren	APAC member
Steve Derman	Medishare
Kevin Quintero	Casting Director, Treasure Island Media
Karla Lane	
Rachel Bernard	
Mo Reese	MOXXX Productions
Dr. Hernando Chavez	sex educator and scientist
Sam Solo	Producer
<u>Cal/OSHA Attendees</u>	<u>Title</u>
Julianne Sum	Chief Cal/OSHA
Nathan Schmidt	Assistant Chief Counsel Cal/OSHA
Eric Berg	Deputy Chief Research and Standards
Steve Smith	Principal Safety Engineer
Brandon Hart	Senior Safety Engineer, Region III
Michael Horowitz	Senior Safety Engineer Research and Standards
<u>Standards Board Staff</u>	<u>Title</u>
Marley Hart	Executive Officer, Occupational Safety and Health Standards Board
David Kernazitskas	Senior Safety Engineer, Occ. Safety and Health Standards Board

Juliann Sum opened the meeting, noting that this advisory committee meeting was being convened in response to two differing petitions to the Standards Board on the topic of sexually transmitted disease risks and safe practices in the adult film industry. Before turning direction of the meeting over to Nathan Schmidt, She said the Division was committed to receiving every participant's input and with full transparency.

### **Agenda/Introduction**

Ms. Sum introduced the Cal/OSHA and Standards Board staff present. Ms. Sum said the agenda was designed to elicit information about the important employment relationships in the adult film industry. Cal/OSHA only has jurisdiction when employee/employer relationships exist. We also want to examine existing federal and state bloodborne pathogen rules and to explore whether additional precautions are necessary for sexually transmitted diseases not covered by the bloodborne pathogen regulations, Sum said. Finally, we have learned about the privacy concerns about employee health records. We want to look at what exactly is lacking or needs amendment regarding these concerns.

Susanne Marria introduced the advisory committee members representing the AIDS Healthcare Foundation (AHF) who were sitting at the front table.

Eric Paul Leue introduced the advisory committee members representing the Free Speech Coalition (FSC) who were sitting at the front table. He said the Adult Performer Advocacy Committee (APAC) represented 700 adult performers and deserved their own voice. He questioned Ms. Marria on Gary Richwald's prior status as a consultant to FSC as the financial arrangements for an FSC consultant contract had never been finalized with Dr. Richwald. Mr. Leue said the FSC was primarily focused on their workers' health, and hoped for a meeting that would produce the first scientifically based regulation in the US dealing with this industry's unique intersection between public health, sexual health and workplace safety.

Chanel Preston, Ella Darling and Verta --members of APAC, an adult film employee organization representing the rights and needs of the workers in the industry that were seated at the front table-- introduced themselves. Their introductions were followed by Peter Miao, Cutting Edge Testing clinic and Mark Schechter; licensed Adult Talent Agency Trade Association (LATATA) who stated he was representing the talent agency side of the adult film industry which he said represents approximately 70% of adult performers.

Israel Nieves said he represented one vantage point of a municipal health officer; he works for the City and County of San Francisco, Department of Public Health

Nathan Schmidt thanked all for their introductions and gave the ground rules for rest of the meeting. Mr. Schmidt said that all in attendance could speak on each agenda item. We understand that the members of the advisory committee may disagree with each other on some issues, but please be courteous and respectful. Five minutes will be given to each of the petitioners for opening remarks.

Ms. Marria spoke on Petition No. 557 which was submitted by the AHF. We are pleased to be participating in the advisory meeting that, as Chief Sum said, will focus on listening to each other rather than simply making position statements. Our goal is to ensure that all employees in the adult film industry--who are exposed to the risks of infection and illness caused by blood borne pathogens, like HIV, or other sexually transmitted infections, like HPV, Herpes, or Chlamydia--get the best possible protection that CA safety and health regulations can provide. The foundation of this protection is already embodied in Section 5193 and the proposed Section 5193.1 which reflect a hierarchy of controls for protecting employees. The AHF recommends there should be discussion of resubmitting Section 5193.1 to the Standards Board because so much work went into developing the standard that specifically addresses the exposures of the employees in this industry. The AHF would like possible amendments to Section 5193 be considered, if the decision is for Section 5193.1 not to go back to the Standards Board. Such amendments should be limited, addressing only those items that are really necessary because they were not included in the original standard. Hopefully adding limited amendments would preserve the basic framework and protections of the standard. We ask that the entire rulemaking record of the prior advisory process and Standards Board proceedings be incorporated by reference into this proceeding. In addition, we ask that this body recognize the Decisions After Reconsideration (DARs) by the Occupational Safety and Health Appeals Board (OSHAB). Specifically we would like official notice of the issues of employment addressed in the DAR in Treasure Island Media (TIM). The AHF is aware that several questions on today's agenda that relate to business structure and employment relations in the adult film industry. In our view, many, if not most of the issues have been litigated before the Appeals Board, and the OSHAB is the proper venue under Division 5 of the CA Labor Code which governs safety in employment. The Appeals Board decision in TIM, weighed the 9 factors that the CA Supreme decided in *S.G. Borello and Sons* were relevant to deciding employee status.

Mr. Schmidt interrupted and asked Marria to exclude from her opening statement comments on agenda items to be discussed in full later in the meeting.

Ms. Marria continued, stating that the TIM DAR held that the bloodborne pathogen standard, Section 5193, applies to this industry. The OSHAB and courts will ultimately resolve issues of employee status as they arise. The purpose of this committee is to assist the Standards Board and its staff in developing rulemaking proposals to protect employees in affected industries. The AHF respects the time of all parties and is hopeful that the committee does not repeat the hundreds of hours of work invested by prior advisory committees and the Board in finding appropriate regulatory language to address the hazardous exposures in the adult film industry. In summary, the AHF supports the application of Section 5193 as addressed by the OSHAB, and supports resubmission of 5193.1 to the Board, perhaps with supplemental material or amendments based on discussions.

Mr. Leue gave a brief opening statement for the FSC, the submitter of Petition 560. It is important that the other side talked for ten minutes about alternative facts and it is sad. Hundreds of workers took time off their work and showed up to argue against the originally proposed Section 5193.1, which the Standards Board did not pass. The idea to reintroduce Section 5193.1 as it was is sad, wrong and not right.

Mr. Leue said that science has evolved and knowledge accumulated since the 2010 proposal of Section 5193.1. To resubmit the old proposal with a few amendments is not acceptable for the safety of adult film workers. If resubmitted, the proposal should include all of the changes that these workers have worked out together with the proposals of medical counsel that understands their work. That is our counter-offer to the AHF proposal to resubmit Section 5193.1 unchanged or with unspecified minor amendments to the Board.

Mr. Leue asked if judicial notice is addressed in the agenda?

Mr. Schmidt said that the judicial notice concept is not on the agenda, because this is an advisory committee meeting. It is an informal process, not a hearing. So questions of judicial notice are not in order at this point. This is a fact-finding mission today. Rest assured, however, in going forward from today we do have the history of the other advisory meetings and Appeals Board precedent. Our determination of whether or not regulations are called for and whether the Division will make a recommendation to the Standards Board will consider that history. We will listen to what everyone has to say to day on every issue.

Mr. Schmidt introduced the first agenda item for discussion: business structures and employee relations in the adult film industry. As Sum mentioned at the outset, this is a crucial issue because Cal/OSHA's jurisdiction is over employee workplace safety. Whether or not employer relations exist in a given workplace is crucial in determining our jurisdiction. Therefore, we want to open with a discussion on that. Beginning with the first bullet point:

- **Who makes hiring and casting decisions?**

Mark Schechter said the decisions for hiring and casting comes from the producer level who decide who they want to put into their films. Those decisions trickle down to the director who reaches out the talent agency or to the performer if they do not belong to a talent agency.

Karen Tynan said if you look at both those represented by agencies and those representing themselves. The latter might solicit their own work via phone calls or social media. Adult film companies may also seek out particular performers. Hiring and casting decisions are made with reference to what is called the No List. This list indicates the preferences of activities the performer is interested in doing or not doing. That list does play a role in hiring and casting, along with a list of preferred partners that is a nuance in this industry that has been missed in prior meetings and that should be looked at as part of the hiring and casting process.

Ela Darling said many times the performers themselves produce content themselves; the majority of the work many performers do is produced by themselves or in partnerships with other performers. On the No List--a standard in the industry is that all performers maintain a list of people they prefer to work with or will not work with. The decision of who to do a scene with is left ultimately to the performers. The type of scene that is to be performed is not decided on the set; it is determined ahead of time and negotiated by the performers. The model bill of rights established by APAC requires that the type of scene to be shot must be negotiated ahead of time. Since we adopted this bill of rights, when a

performer arrives on set, the essence of the shoot has been preset and only minutia is negotiated on set.

Jennie Ketcham said she when she performed there was no push for performers to come together and advocate for their rights, so she thanked APAC for its work. An important concept to consider is saturation; when a performer comes into the business it creates a certain notice. Over a performer's time in the business, this notice changes as the performer becomes saturated in the market. There is enough content of you, too many people have shot you. So it is a natural progression of doing something for a long time that unless you are doing something new, the likelihood is you are required to push the boundaries. Just as in any career, you want to grow; you want to learn to do more.

Noting that the AHF represented a number of employees not present, Ms. Marria asked if the meeting sought to seek a representative sample of the industry or was to be based on the number of that present and offering testimony today. Mr. Schmidt said decisions would be made on the basis of all the information presented today, not on the relative preponderance of speakers.

Dr. Richwald said the No List, in terms of who you will have sex with and what acts you will actually perform, certainly speaks to choice. However, one of the inadvertent effects of the No List is to concentrate the risk for the yes people, those that do not say no. While I recognize the god given ability to make a choice, by making choices you can inadvertently create a greater risk for the yes pool. This is a well-established principle seen in many environmental and occupational settings.

Siouxie Q, performing since 2010, said a lot of things have changed, including the way we share content. I have always been independent and not represented by an agency. As an entrepreneur and small business owner, these nuances about hiring are real for her. It is a start-up culture. Some people in this room only shoot with their spouse. This industry intersects with the most private parts of our lives: the intersection of occupational health, sexual health, and reproductive rights at a time when women's reproductive rights are under attack. Prioritize our voices, prioritize our choices. Understand a multitude of experiences exist in this industry, so please listen to these voices. The industry is diverse and we want the time to explain these nuances; we are performers, workers and entrepreneurs.

Mr. Leue said when hiring and firing and saturation are discussed in a language that implies coercion, I find that to be untrue. There are about 35,000 productions in CA/year with about 12, 200 performers. These numbers put the ideas of coercion and saturation in a more realistic perspective. Second, it is important understand the diverse culture and background of the workers (straight, gay, LGBTQ, AIDS+ performers) of the industry to understand the hiring and firing processes. The variety of diverse relationships in the industry is misrepresented by the conception of a worker at one end of the camera and employer at the other.

Ms. Preston said, concerning Dr. Richwald's point that the No List causes a concentration of risk--that is not necessarily true because there is a high turnover rate in the industry. The No List should not be associated with risk because there are many other reasons why performers have preferences besides considerations of risk. Perhaps you got in a fight with a person on your list, or it is your boyfriend's ex.

Some people don't shoot certain sex acts, not because of risk, but because they are uncomfortable with it. There are many other reasons besides risk for a performer to be on another performer's No List.

Verta asked if it was true that Cal/OSHA did not have employer/employee definitions for the adult film industry, and that the distinction between the two was an important concept for this meeting.

Mr. Schmidt replied that there are general employer and employee definitions, but the Division has not adopted specific definitions for the adult film industry.

Ms. Marria said Cal/OSHA has cited the adult film industry a number of times and a document AHF has submitted demonstrates an employer/employee relationship existed as basis to issue citations for these examples. The employed can file an appeal at which employment status issues can be examined.

Mr. Schmidt said one of the purposes today was to explore the issue more fully to help decide whether we need some regulation to more properly define categorically what employment is in the adult film industry. Ms. Marria asked for an example of another regulation in which the Division defined an employment relationship, as this would help refine the discussion about anything that may have been omitted from previously proposed Section 5193.1.

Chief Sum noted that among the roles of Cal/OSHA are outreach and education and therefore we may not entirely focus on a particular regulatory result at this meeting.

Ms. Ketcham said her use of the term saturation did not imply coercion. It is a market economics term referring to flooding of the market by a product.

Israel Nieves said the SF Department of PH looks at industry participants ethically, either as employee or contractor the same way. We don't have rules that are different for people who work at a restaurant or whether you cater. From a scientific ethical viewpoint, one should not treat performers differently based upon work status; from the public health perspective, that is the way to implement healthcare.

Ms. Tynan stated there is no DAR on the Cybernet citations. Second, Cal/OSHA is stuck with the S.G Borello definition of the employer/employee relationship. The nine factors of this decision concerned cucumber pickers in the Central Valley that did not get to choose their co-workers. We are stuck with this case law that has not evolved. We have not heard from performers who are corporations in contrast to the cucumber pickers who did not have their own LLC.

- **How is supervision and control handled, directed and by whom?**

Ms. Marria again pointed to the Appeals Board decisions that went through the legal factors describing supervision and control. Mr. Schmidt clarified that the Division is aware of precedent, but is looking for new information about the forms supervision and control take in the context of the adult film industry. Ms. Marria said the fact that someone wants to create a vehicle of limited liability through an LLC does not preclude someone from the person also being an employee. The legal entity of a Limited Liability Corporations serves certain purposes, but it is not an absolute answer to the Labor Code question of whether a person is within the definition of a person being in service to another. An LLC does not

change what the facts are as to who is supervising and controlling who is being filmed, what is produced, edited, and how it is sold and distributed. Performers are not generally in control of those many factors--unless they were to negotiate those specific factors prior to the production. The example that a performer has created a LLC business leaves us with the same problem of ascertaining the facts of the various relationships pertaining to a particular shoot.

Adam Cohen said, he would love to see numerical data about the number of adult performers who were also producers and therefore employers as well. Before August 2016, APAC claimed 75% of the performers were also producers, but in August APAC said they did not have hard data when asked how many performers are producing their own videos. Asked for a reference for the 75% figure in October APAC said that they do not have that information published anywhere.

Ms. Preston said her citation of the 75% figure in court referenced 75% of APAC's membership base--not that percentage of all California performers. While not published, we can certainly get that information to you.

Mr. Schmidt said numerical information was good, noting that part of the rationale for this portion of the agenda is to gain knowledge of the industry's employment relations and structure. That information will help Cal/OSHA outreach efforts and public presentations to give proper guidance to people about whether certain employment relations are covered by existing and future regulations or not.

Mr. Schechter questioned the accuracy of Ms. Marria's comments about who makes decisions of and supervises on a production set. Performers are in control of what they do and do not do. When a production is offered, the performer gets all pertinent information about the shoot-- what they will do and with whom. Many times performers decline a shoot I have offered them, as is their right. Performers are in control of what they do on set. Performers call me to ask advice if there are circumstances on a set that were not covered in their contract. This industry has such a vast number of diverse types of production that one regulation cannot cover the full spectrum. A husband and wife performing at home with a webcam is very different from a Wicked Pictures production using condoms or a Hustler production that has its own way of creating content and marketing and selling it. Supervision vastly differs on these many different types of production. In the case of an individual producer/director who hires a woman for a solo shoot, that individual is the supervisor. For huge productions that involve dozens of people, there are hierarchies of supervision from directors to production assistants to production managers who oversee activity on the set. But ultimately, the performers have the choice over what they do or do not do.

Siouxie Q said labor rights are very important to her. She grew up in a union household, her dad an IATSE (International Alliance of Theatrical Stage Employees) local officer. Her first job in the adult industry was a union job at the Lusty Lady Theater in San Francisco. In that sector of the adult industry--shows and cabaret theater--the issue of employee versus independent contractor has come up before. I was very cognizant that I was a union employee at the Lusty Lady. I was equally clear that I became an independent contractor when around the same time I began my adult film career in locally produced films. I chose the adult film career because of the freedom it allows, a career that allows women a



higher pay rate than men and allows me to be in charge of my own hours and destiny. Employer/employee status is complicated. In this room are independent workers that make custom video requests from in France. Who is the employer then? Is it the person in France making the wire transfer? Is it the husband and wife making the video or does one of these employ the other? These are not hypotheticals; these are realities.

Ms. Darling said the people who own the content supervise the structure and timing of events on set. However, when it comes to control as to what actors are doing—such as changing the position, lube, etc. that is up to the performer. Realize that the adult industry is composed of adults that have agency; these are professionals. Performers together share the right decide how to fulfill the shot list. Control of what performers are doing is up to the performers. This is true for camming [webcam performance] as well as video shoots. When someone asks for an undesirable action, performers make the decision to refuse.

Mr. Leue asked if the discussion includes classic recorded content (DVD, online, VHS), or live content like webcam shows or personal performances requested by a fan. We need to understand this aspect of content because this dictates the method of payment, level of supervision, etc. Secondly, perhaps CAL/OSHA could in the future do a white board session separating the parties into two rooms, one for adult performers and one for AHF. I also know that APAC would work with Cal/OSHA and the Standards Board to build a survey to collect anonymous data asking specific questions of the performers to build a substantive database to move forward.

Mr. Schmidt said the comments point out how large the variation is in content and potential relationships.

Ms. Kecham said It is complicated, and she likes the idea of a whiteboard session. Ms. Kecham said choice does not happen in a vacuum; environmental factors outside conscious awareness influence performers. I have no regrets about having been an adult performer but I have a much different perspective today. As we discuss choice, it is important to consider there are factors decisions that are outside our awareness that influence the decisions we make while on set.

Dr. Richwald noted that one performs laboratory testing only on individuals, not LLCs.

Ms. Marria said the ALJ decisions, particularly in Cybernet, have many details on the number of performers hired per year in thousands, what the director controls and the payment scale, including base rate, plus additional fees for a number of acts. Look at pages 13-15 of the foundations' handout, in which performers own words describe how they really did not have control. The performers also mention instances of workplace violence. They discuss the reality of weather condom use adversely determines employment possibilities with some companies. The industry also has some huge problems with workplace violence, which while not a topic related to bloodborne pathogens, but is one of the realities of the industry connected directly to the issue of control in the productions.

Mr. Leue said discussion of workplace violence was out of place in this forum, as was the continued reference to specific legal cases. Further, the performer statements on pages 13 -15 are from 2010--long

before significant changes in the testing and efficacy of the AFI medical testing program. He urged that the discussion focus on the questions asked by Cal/OSHA and on the truths about their needs spoken by the adult industry as workers, community, and family.

Ms. Marria said there is an area of consensus on protecting workers in this industry.

Mr. Cohen said, regarding the handout mentioned by Ms. Marria, the performer quotes are from 2013 and beyond. Everyone should instead focus on the bottom of Table 1 of the study of 360 adult performers that came out just this month. The study asked three questions pertinent to employment situations: the percentage of those who had worked in the previous 30 days that got hurt during a shoot; performed an act they did not want to; or did not get pay at the end of a job.

- **Brief diversion from the agenda to accommodate those who could not stay until the scheduled open comment period**

Shine Houston said her company functions in a unique way, utilizing a flat fee so that performers do not have to do anything they do not want to. So all I do is film the performance. I do not ask the actors to do anything. I am interested in the actors' performance and my job is just to document it. In that sense, we have a very different working relationship. I am concerned with the physical and emotional safety of my crew. There were two times that I felt the performers were emotionally uncomfortable, so I cut the scene.

Jiz Lee said that performers who work together often self-cast together instead of as the result of director choice. Self-casting happens not just with couples, but performers often link up on-line for this purpose. I have worked in both kinds of environments; I prefer this kind because I can decide the testing, condoms, and the kind of sex acts. I have also worked for companies where the kind of sex act you are having is accepted. The decision on which environment I work in is mine. I prefer sex with males to be with condoms. I understand performers who question the suitability of condoms for long scenes, but I choose the scenes I shoot.

- **Is it necessary to amend or expand upon the current bloodborne pathogen standard or to create a new regulation under 5193.1? Are there any alternative methods that have been medically documented to be at least as effective as barrier methods required under the federal rule?**

Dr. Klausner said the question of equally effective alternative methods to condoms begs the question, "for what?" There are over 22 sexually transmitted infections, caused by bacteria, protozoa and at least 15 different families of viruses. Papilloma virus (HPV) has 120 types. As for prevention, there are vaccines for Hepatitis A, B, and some types of HPV. There are no vaccines for HIV, Hepatitis C, chlamydia, mycoplasma, trichomoniasis, cytomegalovirus, Epstein Barr virus. There is new evidence about the efficacy of pre-exposure prophylaxis (PREP) for HIV. When taken every day, it is highly effective to prevent contraction of HIV. In many parts of the country, PREP is being adopted as an important prevention intervention. PREP would be very valuable in this industry where on-set transmission of HIV has been documented. I would certainly recommend PREP, but unfortunately, this

still leaves dozens of other infections transmitted via the various types of genital fluids. Recently sexually transmitted Ebola Virus and Zika Virus has become a concern. Therefore, to maintain adequate worker protection, I recommend the continued use of barrier protection such as condoms for exposure to potentially infectious bodily fluids.

Dr. Holland agreed that PREP is equally effective if not more effective than condoms for protection against HIV. The bloodborne pathogens reference to diseases other than hepatitis and HIV is rather vague. If we are talking about BBP, we are talking about HIV with this one good alternative and we can discuss the efficacy of the testing program. We have Hepatitis B, which has an effective vaccine. Risk of sexual transmission of Hepatitis C is confined to certain exposed populations. We have to discuss only a limited set of bloodborne infections. Realistically, if we have Ebola transmitted on set, then we have major problems. Many other illnesses could be transmitted on set that no one has brought up. Influenza, for example. So I suggest we limit the discussion to things that are in the standard.

Mr. Nieves said from the public health viewpoint, we are concerned about everyone, not just the workers. In this case, we are talking about an industry and we are talking about sex. I wanted to contextualize why we are having this conversation. From the public health perspective, we are also concerned about the next disease of which we are not aware. We talk about the unknown as well as the known. We are not just checking the box. We are also concerned about resistance to treatment of gonorrhea. You can create a resistant strain by over-treating. This may not fit for every model. In public health, we have volunteer HIV testers as well as paid employees follow the occupational standard to protect themselves. That is the context of this discussion; the statement that there are so many different models is a very good point.

Mr. Leue said mixing skin transmissible diseases into this conversation muddies the waters. It is important for people to understand disease impacts, transmission, symptoms, and available, tests, treatment and protective options. However over 90% of the American public has herpes, specifically HSPV1, which can cause genital herpes. Are we creating a needless public health oriented regulation to prevent any skin-to-skin contact in the adult film industry in order to protect against something that 90% of Americans already have? It is important to inform everyone in the adult film industry of the recommendation for those under 26 to receive the effective Gardasil 9 vaccine for HPV. We are talking about a worker population of about 2000 people compared to the millions who already have HPV or get it each year. A condom does not prevent skin-to-skin contact; no matter how we want to see it, it does not cover the largest area of skin on the body. To include HSPV and HPV creates an environment in which the adult industry cannot function, where human touch is forbidden. That is something we don't do anywhere else. The general adult public has been tested once for HIV, while adult film performers are test 26 times a year. If this testing interval were universal, there would be a huge drop in HIV incidence. In the industry we test, detect, and treat, cure or render non-transmissible. When we identify an infection, we remove it from the pool. It is important to achieve consensus and understanding of each other about the key focus lines, what are the additional benefits that we can provide without infringing upon the rights of workers.

Mr. Cohen said that because the last hearing on this issue was 2012, the AHG wanted to assure legal decisions since that time are included in the record. I want to note that the 360 adult performers interviewed for the 2017 study (page 2) had a medium of two sexual partners outside the industry, with a range of one to four (Table 2).

Ms. Kecham said the CDC says nationally only 15% of persons between 14 and 49 have HSV2, although genital herpes is increasing because of transference of HSV1 cold sores on the mouth to genitals. Globally, World Health Organization has estimated that 67% of the world has HSV1.

Ms. Marria said Dr. Klausner spoke to a number of different type of infections. AHF has four pages of information that are helpful when looking at some of the exposure issues. This information should help focus the discussion, including, as Dr. Holland asked, if the bloodborne pathogen regulation is the right place to address these infections. If we have before us a list of the typical infections, it will help us decide which to include in a regulation and then talk about methods of protections that are available such as prophylaxis. We can better use of our doctors if we follow this suggestion. Mr. Schmidt said Cal/OSHA would make sufficient copies of the documents over the lunch break to facilitate that discussion.

Correcting a previous assertion by Mr. Leue, Dr. Richwald said Mr. Leue's FSC predecessor, Diane Duke, did pay him for consulting in 2011. Protecting the public health does not reduce risk to zero; the purpose is to mitigate to as low as practical. While it is important to note the many pathogens out there, clearly influenza is not classified anywhere as a sexually transmitted or sexually associated infection. We need to focus on the kinds of infection that are important. I can tie bacterial infections, like trichomoniasis to bloodborne pathogens very easily. Infections like gonorrhea, chlamydia, HPV, trichomoniasis, and particularly herpes (which has the unfortunate characteristic of recurring inflammation, or possibly asymptomatic shedding which is micro-inflammation)—all of these strongly enhance the acquisition of HIV. From my 2011 experience offering testing to a few hundred adult film performers, I still have some of them as patients who still have recurrent herpes. Usually these patients' first experienced chlamydia infections, because that is most common, then herpes, or sometimes the reverse. The individuals who ended up with HIV were those who had those pre-existing acquired infections. Bacterial infection is a critical risk factor for contracting HIV. Not every intercourse with HIV results in transmission, but the co-factor of bacterial infection is a long well known important connected risk factor.

Ms. Preston challenged the validity of the study brought up earlier, saying its data were skewed. Our industry tests regularly regardless of the existence of symptoms; the industry has two testing centers. Some performers chose to go to the testing center that had a dual function as a treatment center. Naturally, more patients with STIs are found at the treatment center. Therefore, I don't think the sample in the study is representative of adult film performers. Some of the study's questions also misrepresent the reality. For example the question, "Have you ever performed a sex act you did not want to do?" That implies force, which is not necessarily the case. We have all done things we did not necessarily want to do, but that doesn't necessarily imply force. I do things I don't necessarily want to do not

because I am forced but it is the choice I made; it is work. I do things I don't love to do sometimes but not because I am forced.

Dr. Holland said in his earlier comments he was not saying we do not have to worry about gonorrhea, chlamydia and all these things. The question presented here is the standard that Cal/OSHA has to meet—a standard related to bloodborne infections not designed for STI. In the hospital, there are BBP work practices to prevent these infections while there are other regulations to address other infections like difficile colitis or influenza. While important to consider all of the other infections, there is a question about whether there are other methods of prevention for them.

Mr. Schmidt asked Dr. Holland, about peer-reviewed studies on PREP for the committee.

Dr. Holland said there were many studies although none that put 50% on PREP and 50% on condoms, which would be unethical. There is literature on men who have sex with men with everyone encouraged to use condoms but about half did not--yet everyone was protected by PREP. We can infer a lot from that. I'm not saying that everyone needs to be on PREP; I'm saying we have options.

Ms. Sum clarified the purpose of this session. The bloodborne pathogen standard is not just limited to the few diseases identified; the standard lists these, but says "including but not limited to." Anything that capable of transmission by blood or other potentially infective materials (OPIM) is covered.

Ms. Tynan said adult performers currently in litigation are being asked by Cal/OSHA if the PASS panel detects Zika virus and Ebola. We need clarity on either the narrowness or the breadth of the standard because these are the questions asked right now by Cal/OSHA of adult performers.

Ms. Sum said Ebola was both a bloodborne and an airborne pathogen. In hospital settings, use of barrier protection is necessary to reduce risk of Ebola transmission. Today focuses on the bloodborne pathogen risks.

Ms. Darling, to clarify an illness rate previously challenged, quoted from *Human Herpesviruses: Biology, therapy and Immunoprophylaxis*, by Gabriella Campadelli-Fiume, et al [ [http://ebookstraffic.ru/Human-Herpesviruses--Biology--Therapy--and-Immunoprophylaxis\\_377182.html](http://ebookstraffic.ru/Human-Herpesviruses--Biology--Therapy--and-Immunoprophylaxis_377182.html)]. This source stated the total worldwide combined infection rate of HSV1 and HSV2 is approximately 90%.

Dr. Klausner said effectiveness of use of PREP was highly dependent upon adherence. The IPEX trial Dr. Holland mentioned showed an overall effectiveness of 44%, based on the individual's consistency taking the PREP. When people adhere to PREP, it is much more efficacious. How would PREP use be implemented and monitored? Via blood level testing to evaluate the level of active ingredient? If the level of active ingredient were low, would that place the individual on the no shoot list until achieving an active level? I think we can agree PREP adds an additional intervention that adds further protection to use of condoms. All international health bodies—the WHO, UN, CDC--recommend consistent condom use alongside PREP. We have seen PREP users have high infection rates of other sexually transmitted diseases, showing that PREP use without condom use does not protect against risk of STI among those with high-risk behavior. My interpretation of the bloodborne pathogen standard includes OPIM, which

includes cervical and vaginal secretions and semen, which may contain other infectious agents. Therefore, though we need to look at all exposures, it should be conceivable to implement PREP among adult film workers.

Mr. Cohen said regarding Dr. Holland's comments that the bloodborne pathogen applies only to illnesses borne in the blood like HIV: Citations issued to the adult film industry have specifically mentioned bacterial STI such as gonorrhea, chlamydia, syphilis, etc. These citations indicate Cal/OSHA agrees this is not just an HIV related issue. The CDC and FDA say PREP is an effective tool to prevent HIV, but must include use in tandem with condoms. Any proposal to use PREP from the industry would have to include required condoms per the FDA and CDC requirements.

Mr. Leue pointed out that Dr. Richwald's HIV statistics were global and not on-set transmissions. He said PREP users receive the HIV test four times a year. The more individuals test for HIV, the more disease we discover and treat. This removes disease risk from the public pool. There are blood tests that can confirm the amount of PREP in the bloodstream is prophylactic. PREP is highly effective even without condom use. However, the CDC views condoms as protection for failing to take the pill. Let us put all options on the table and let the performers build a protective regimen they deserve, require and need. Let us look at each STI one by one, decide if a condom will prevent this disease, and decide if we need to test for it. Regarding universal precautions in hospital settings, vaccinations are not required, though recommended. Refusal of vaccination does not preclude employment in the hospital setting. Adult film performers should similarly receive information and options about vaccinations, but the vaccination should not be a requirement. In contrast to the hospital setting in which a patient's disease status is not initially known, adult performers have a rigorous way of talking to each other about their sexual health; they are well informed of each other's testing status and the relation of that status to the shoot. Therefore, universal precautions are not something we need to include in a regulation. We need to look at it in a different way. We all recognize the power of treatment and therefore open discussions should occur. It is important that we empower the performers to engage in a meaningful way in protecting themselves. Performers in control this way, public health practitioners will agree, creates an environment where there is trust and respect and consent and where it is highly unlikely that transmissions will occur.

Dr. Peter Miao, an infectious disease specialist, said this is an extremely complicated topic to discuss; this is a unique population. There is no one size fits all. When Mr. Leue says "we", he is referring to the people in the adult film industry. The industry has adopted a way of detecting infection. We test every two weeks for seven infections. Our test protocol catches many infections early on. In the US, most of the public is at risk, does not test and does not know their disease status or that of their sexual partners. More testing detects illness and gets infected people out of the risk pool and increases the safety of all.

- **Are there any alternative methods that have been shown to be at least as effective as condoms? If so, what is the scientific data showing the effectiveness of the alternative methods compared to condoms?**

Mr. Schechter said we don't want to over-regulate the industry, causing it to move it out of California and out of the US. Risk is involved in every industry; there are high-risk industries. Just as these industries are not regulated to the point of destruction, adult film cannot be regulated in that fashion, because the end result would be far more damaging to public health as the industry potentially would go underground. As a talent agent, I have seen over dozens of years in the adult film industry continuing improvements in safety practices now adhered to day in and day out. Performers do want safer guidelines but we need to consider the cause and effect of over-regulating. We certainly would not regulate high-risk industries like police and fire to the point they could not do their jobs. In adult film, producers, and individuals earn a living shooting production pornography. These people will continue to produce pornography even if over-regulated; they will continue to do it but go underground without the protections they have today.

Verta said in 2007 I tested positive for HPV and it was terrifying because there was a huge cancer scare at the time. The vaccine covers none of the three types of HPV I tested positive for. When I spoke to my doctor, she told me I should not be vaccinated. I do not think I should be forced to take the vaccine; the vaccine protects against only nine of the many strains of HPV.

Dr. Klausner said vaccines for Hepatitis A and HPV are reasonable, safe and effective. The CA DPH recommends both, and they are cost effective. I am not sure why Hepatitis B is not specifically mentioned here, but we should include it. The previous speaker indicated the HPV vaccine protects against only nine HPV types. Fortunately, the nine covered types are 90% of the HPV that is out there. The possibility of infection by the other HPV types indicate why requirements for condom use are important for this industry. I support adding regulatory language for testing HIV, hepatitis C with nucleic acid based tests and current tests for syphilis, For gonorrhea, it is important to test not only for urogenital types, but testing extra-genital sites such as the throat and rectum is important as well. There are other these nuances of recommended testing need clarification as well. One solution for regulatory language is to use such phrases such as "as recommended by the California Department of Health." It is laudatory that the industry has developed its testing protocol. However, in order to protect workers, the state of California must mitigate the risk that the type of sexual activity may present. Overregulation is always a concern, but there are only two states, California and New Hampshire, in which adult film production is legal. For the past 100 years, every industry in California faced with regulation has indicated that costs of the regulation would force it out of the state. People of California want to improve the health and safety of workers; we have an ethical responsibility to do what is best to protect the workers. As a health advocate, I see any additional costs as OK. I also note that under California law the costs of these tests are borne by employers not the employees. Much of the cost of the current adult film industry testing protocol is borne by employees, and I don't think this is legal. The costs of Hepatitis B vaccination for workers in the medical field are borne by employers, and we should be consistent across industries.

Dr. Richwald said it would be helpful to have two sets of short lists, which are not in front of you but we prepare. One list concerns the expansion to the infections covered in Section 5193.1 to cover vaccine series. One is for Hepatitis A. The HPV series was reduced last month to only two vaccinations. Though the recommendation is for those under 26, the HPV series should be provided to older persons with

exposures. These are the two vaccine series. Dr. Klausner also mentioned Hepatitis B vaccine, though I thought it was already covered in the regulation. In terms of testing, Hepatitis C testing and extra-genital (oral and anal) should be included because about 30 percent of gonorrhea and chlamydia are missed by most of the current testing, which omits those areas. We have another table to illustrate why we want expansion of 5193.1. This table lists situations where condoms are primary protection and there is no anti-microbial pre-exposure prophylaxis or vaccine--condoms are essentially it. They include testing for gonorrhea; chlamydia, Trich, Hep C, Hep A, syphilis and HSV. , HSV2 is the most reactive, with the most asymptomatic shedding. In terms of genital HSV 1 and 2 infections, and oral infection in the US, 70% of individuals are infected with either HSV1 or 2. Other countries have overcrowding, and that is why you may see it be up to 90%. We are trying to be resources in this process, and we want to listen to what Mr. Mr. Leue and the actors say. We are in favor of PREP for high exposure individuals, but condoms have to accompany it. No public health agency in the world speaks of only PREP.

Mr. Cohen said California prohibits employers from sending employees to an unsafe environment such as a location not enforcing bloodborne pathogens. Threats to leave or go underground remind me of circumstances surrounding the initial prohibition of smoking in bars; many bars claimed they would go broke. As Dr. Klausner noted, the current adult film testing process requires employees to pay out of pocket. I have heard that some companies have paid for the testing or reimbursed employees. I would like to hear more about that, because \$150 every two weeks can be very expensive for a performer earning \$400-\$1200 in that time.

Ms. Tynan asked if there were a vaccine requirement, would the person have to have the vaccine prior to signing up at a talent agency? Would the talent agency have records of that vaccination? Would the production company have records? Would performers who produce content together keep records? We have not gotten to feasibility and how we could do this properly. Under the Health and Safety Code are requirements for the confidentiality of health records. Concerning costs, I would like to hear from performers. The concept of testing every two weeks has been here for seven years. How would one know if a performer hired by a producer had worked last week? How would companies maintain medical records? We can't ignore reimbursement for costs, and the timing and the fact performers work for a variety production companies over a period of months. In the Cybernet case, the average employee worked for Cybernet two times in one year. There is a huge problem maintaining records if you have 800 performers in one year. I have not heard anything about feasibility or implementation for these concepts of reimbursement and vaccination.

Mr. Leue said Dr. Krausner was incorrect in his statement that adult film production was legal in only two states; it is constitutionally legal everywhere in the US. In the rulemaking for 5193.1, FSC wanted the voluntary testing that Dr. Krausner suggested was a good tool, put into the regulation. The performers and producers in adult film production all support this voluntary system. The 557 petitioners refuse to acknowledge the efficacy of this system. Concerning swabbing for STI: We combine the swabs with the urinary sample in a study our testing clinic has undertaken. This results in one lab analysis instead of the three or four otherwise necessary. This reduces cost tremendously. We don't need to know the site of the infection, because the treatment is the same. WE are also interested in other studies of the condom rash issue. There is evidence that the vaginal tissue in trans men is far



more susceptible to rips and tears. Therefore, there may have to be a separate requirement for this group. The third and the last study we are still conducting is on the effectiveness of PREP, where we are running a mathematical model. I also have a question about Cal/OSHA's perspective when it talks about "additional methods of protection." Which ones are you presuming to already be there and how do these look?

Mr. Schmidt replied that the existing interpretation of the regulation in place requires condoms. Before lunch, the discussion asked about medically effective alternatives equal in effectiveness to condom use. The discussion now asks what else could be added for additional worker protection independent of the condom issue.

Mr. Leue asked if we talking about a whole slew of potential barriers or just condoms. Mr. Schmidt said the whole slew. Mr. Leue said that brings up issues like goggles and other fun stuff. Mr. Schmidt added, "dental dams." Concerning vaccinations, Mr. Leue asked if we were discussing requiring them. Is the cost to be covered? Is there no way to opt out of the vaccination?

Eric Berg said the existing vaccination-requiring regulations say that the employer has to offer and the employee has a right to accept or decline.

Mr. Leue said he again wanted to point out the unique circumstances of this industry. I urge Cal/OSHA to look at existing universal precautions requirements with an eye to contrasting the different circumstances for which they were written with an adult film industry that has consenting parties; please consider if universal precautions are feasible in these differing circumstances.

Mr. Nieves said the Hepatitis B vaccine was a series of three shots over six months. PREP requires additional metabolic screens. With Hepatitis C tests, you have to be careful. There is very little data on sexual transmission of Hepatitis C and a positive result in the antibody test does not mean that you have a Hepatitis C infection. Testing in the adult industry is currently voluntary, while making testing mandatory will introduce problems with disclosure laws. These would allow a performer to say to an employer that they had been to a doctor, but the performer could not be required to disclose the results of those tests or that they were treated.

Dr. Miao said that today most people receive Hepatitis A, B and HPV vaccinations by middle school. Checking immune status could be really simple. Hepatitis B vaccination can be two doses combined with Hepatitis A vaccine. Our clinic is swab testing the throat, rectum and vagina for gonorrhea and chlamydia infection but are combining the tests to save money and because it doesn't matter which one is positive; ultimately treatment is the same. We test every two weeks for Hepatitis C antigen, not antibody. We do seven tests, picking up a lot of infections and treating them. The process reduces the pool of exposed performers. This is what we are trying to do: protect the performers.

Mr. Leue said the industry created the PASS system to protect the privacy of performers' medical information through the adult industry medical foundation AIM. We test for HIV RNA, Hepatitis C antibodies and antigens, syphilis, chlamydia, gonorrhea, trichomoniasis, Hepatitis B and A. These are the seven diseases we test for every 14 days. The medical provider discusses the results with the performer.

If no transmissible conditions exist, the performer is listed as available to work. No medical information passes on. Performers can look each other up or show another performer that their clearance for work. Performers can verify each other's cleared status without having to disclose any further medical information. The industry created a performers subsidy fund filled via donations from production companies. The fund reimburses performers to alleviate the costs of the tests. Other options include negotiated conditions within the contract between the studio or agent and the performer. Other studios, for example, Kink.com pay in full and reimburses for testing. Some performers bill on top of their daily performance rate for the tests. There are different modalities. We are happy to build on the PASS system to supervise additional tests, etc. The good thing about this system is that it is under the joint control of performers and producers. In response to questions, Mr. Leue clarified that the contribution information was available to the performers. Medical professionals that preside over the testing protocols.

Dr. Richwald said Mr. Leue talked about on the one hand the actors, and the other hand the producers; but in California, licensed physicians must order all laboratory testing. You have added an additional responsibility using the PASS system, where that physician has to ensure all of the tests performed, that the tests were negative and that the results transmitted to the PASS system as a "yes" or "no". Making those decisions is not a standard part of health care; it takes special understanding of the PASS system, STI, performers and other issues. Those clinicians play a critical role in ensuring that this system is working. We need to make sure that these clinicians are performing all of these functions to make sure the PASS system is working.

Mr. Leue said there are only two clinics performing this role. Dr. Richwald's description was beautiful testimony of the effectiveness of this system created by the industry. I thank you for that.

Dr. Miao said I actually have order the tests, the blood and the urine are matched, he sends them out to the lab overnight, and then they receive their status via the email. Then the PASS system is entered, totally anonymously. No names, just the performer's number. Pass or no pass indicates clear or not clear. Performers cannot perform until clear in the PASS system. Mr. Leue said only performers who give informed consent are in the PASS system for inclusion of their blinded information in the PASS database. He said FSC is happy to build on this system to make it better.

Ms. Kecham asked how easy is it to sign up for PASS? APAC works on informing performers how to sign up for PASS, it is very accessible, Mr. Leue replied. A red X does not mean a diagnosis of disease; it means a test was inconclusive, the test was expired, or the performer is simply not available.

Ms. Kecham asked, what is the vetting process for access to the data? In a perfect world, access would be limited to active performers having bookings, for example. Mr. Leue said some of these protective steps are in place. FSC is fine with additional provisions as long as medical privacy is preserved, he said. Ms. Kecham said Mr. Leue mentioned voluntary contributions. What if people (not performers) who access PASS paid a fee for access based upon amount of usage, and that would subsidize the database. Mr. Leue replied FSC had learned that a pay-to-play system drives people away.

Mr. Leue said the elimination of paper records of tests was one reason for the creation of PASS. Paper records are subject to manipulation. I don't think performers should be prevented from sharing their individual PASS information with each other.

Dr. Richwald spoke on the issue of the incubation period for HIV. For fourth generation HIV tests, a two week testing period will miss some individuals who have HIV but show up negatively on the tests because of low antibody numbers. It is a small number, but not zero. Reducing the testing period to one week, would push the missed HIV case number to a much, much smaller number. It is a very technical area. For example, you could be taking medication for HIV, which blocks the test from showing positive status. Other issues are even more esoteric.

Mr. Leue said we need an entire day talking about testing. Number two, every seven days is a whole lot of needles. Three, this is why we want to engage with Cal/OSHA to demonstrate that our testing protocol is just as effective as condoms in the prevention of HIV. This is based upon a study of the highest risk population; men who have sex with men with anal intercourse. We are happy to share this data and work together on the study.

While it is true that STI are co-factors in HIV transmission, Ms. Preston said, I spoke to multiple doctors, and learned that vaginal infections not classified as STI such as yeast infections and bacterial vaginosis were co-factors in STI transmission. Many women who use condoms are very susceptible to yeast and bacterial infections; this should be considered. In the current regulations and Petition 557, the health concerns of performers are being ignored; they are not being ignored in Petition 560. We haven't talked much about issues with condoms, and there are plenty of issues with condoms. Lastly, APAC's position is that producers should pay for testing, but logistically this has not proven feasible so far, but APAC is open to discussing how to make that happen.

Ms. Darling said condom rash should be on the record. Your body does not provide sufficient natural lubrication if you are not attracted to that person. Friction from condom use could create condom rash inside the vagina. Condom rash increases the likelihood for yeast infections and bacterial vaginosis, which in turn increases the likelihood for STI. My second point is the possibility raised earlier that the industry could be driven underground. This is not a threat, but a realistic prediction of what the workplace could look like for workers in our state. Production has already moved to other states and countries. If workplace standards are adopted that don't make sense for the actual worker, and the industry is driven underground, performers will have less power to report issues. There will be less ability for community input and reporting because the industry will no longer be centralized in California. Performers will not have access to the same groups of physicians, or APAC meetings, where there are panels and education. We would lose a critical mass.

- **Do the recordkeeping requirements of Section 5193(h) include adequate confidentiality requirements, and if not, what can we do to make them better?**

Mr. Cohen said one of the interesting things about the PASS system is if there is a green check, then that means that the person accessing the database knows the HIV status of a performer (HIV negative).

Mr. Leue disagreed. The negative HIV test means you do not have a reactive viral load. If we were to showcase a performer's HIV status this way, we would be violating the law. We vet all login requests and investigate by confidential discussions with APAC to ensure it is secure.

Mr. Cohen said not all studios tests every 14 days. Some performers post test results on-line which indicate some studios accept a 14 day, some 30 day, and some don't require it at all. One of the attorneys mentioned in the handout I provided, at the fourth bullet point, Michael Fattorosi, raises the issue of whether a test is still valid after sex with a person following the test, that is, the issue of the window period. The *Morbidity and Mortality Report* (MMWR) handout I also provided documents the case of an adult performer who had negative HIV test results who transmitted the disease on set. It was a false negative.

Mr. Leue said the reason why FSC supports the proposal for a 14-day testing regulation, is because we want all studios to test at the 14 day interval.

Mr. Nieves said, again, this falls into the larger conversation. One, the person has to be your employee, because you have their social security number. California law does not allow the release of information about a positive HIV antibody test or hepatitis test. Secondly, you would be setting a requirement for unspecific tests. You would have to be sure you are not violating a California health law.

Dr. Richwald said right now the PASS system consists of the person's name and the word "yes" or "no" after it. Yes, a red x or green check mark, but functionally, yes or no for work availability. I question whether that is adequate, because if you are going to have quality, someone needs to sample the physician's records to ensure the system is running properly. These are serious matters and mistakes happen. Some type of quality assurance system is needed. I have made recommendations for implementation of an assurance system to ensure the performers are safe; though not exactly about confidentiality; it is a critical issue about system performance.

Dr. Krause said it seems this is more information provided than an employer should have. The medical provider should have this information, but employers need only know availability for work.

Ms. Tynan said the word "surveillance" was used when 5193.1 was discussed, and I think it is important to talk about what medical surveillance means. Who would be doing the medical surveillance, who gets to look at the records, who walks in, who walks out? "Surveillance" is a word that rings some alarm bells regarding performers' ability to have medical privacy. I don't think we are adequately addressing this today, in this compressed timeframe. The medical surveillance issue, requires the input of performers, talent agencies, the California Department of Public Health, clinics and treating physicians as opposed to those of us relatively uneducated lawyers, to only guess about the privacy concerns of performers.

Dr. Miao said as far as the privacy is concerned, when the performer comes to the clinic for testing they have to explain in writing who is allowed to review the medical information. If a performer does not fill

out the forms completely then we do not load the information into the system. Performers choose the method by which they want to receive test results, paper or electronically. Sharing information with another performer is at their own discretion. Producers, I think, only see a green or red check. One last thing, for HIV testing we use the qualitative test which has the shortest window, around 9 days.

Mr. Nieves aid in public health, we are talking about a case that is reactive and we ask the industry to do follow up. We have a great relationship in San Francisco, with full access when there is an outbreak. When there is an out-break the industry opens all doors because they want to protect their employees. Quality assurance boils down to making sure the labs work well.

Mr. Cohen If you look at page 113 of the study I referenced earlier, the summary says a non-work related partner infected the performer who had tested HIV negative within the previous 14 days. This performer, unaware of his recent infection, infected another performer and a different non-work related partner. I highly recommend in depth analysis of incidents as part of medical surveillance.

Mr. Leue said we want to recognize that there has not been an on-set transmission in California in over 10 years. We are looking at an evidence-based system and want to make sure we have the best possible system to empower performers to protect themselves. We are looking at thirty thousand performances per year over ten or eleven years versus possibly one transmission thus demonstrating we have a proven system that works. We urge Cal/OSHA to work with us towards improving that system.

- **Open to comments from the floor**

Kevin Quintero, casting director at TIM. Today was supposed to be about testimony from performers; my job has always been about keeping the performers safe. That was impressed upon me by my producer and general manager and even more so by the community. Employment relationships, in terms of hiring and casting decisions, is not only up to the casting director and the producer but also up to the performer. Many times performers look to work for specific producers. In production, there are certain actors that are looking for a certain role. Performers really do control the scene, I have stopped the scene because the performer has felt uncomfortable; again performers really are in control of the scene. I have been told that it is more important that the performer feels safe than we get the shot we want. We are documenting a work of art, a performance. In terms of alternative methods or barrier protection, I want to bring up a big example. SF City Clinic, great space downtown offers their services free if you can't afford to pay them. They do everything: swabs of the throat, rectum swabs, blood tests, urine testing. It is a place that people can go and feel safe even if they don't have access to PASS. We should promote places like SF City Clinic more—places where you can get free, extensive, concrete testing. When I went there, after exposure to syphilis, I tested negative but was still interviewed to determine who my partners were. I totally agree that PREP requires adherence, but so do condoms, and occasionally they fail. Testing is a backup, just like condoms, to help minimize the risk, which I don't think we will ever get down to zero.

Pamela Doré still directs and has been in the industry a long time, including producing condom porn. With PREP, bareback may be coming back, but I do not feel it is my personal responsibility to educate everyone on STIs. I would feel comfortable with shooting bareback sex because of PREP. I am directly

involved in hiring of people I shoot but I shoot only what the performers are comfortable with. While I date a lot with performers with the full range of disease status, I only recently contracted oral gonorrhea for the first time—from someone outside the porn industry.

Ruckus said he has been a condom-only performer for four years. I have a lot of faith in the testing system, but there is room for the industry to improve upon. I use condoms by preference because of my personal situation; if not for that situation, I would not use condoms because the system works. Should a test result be delayed, the shoot will be delayed. We are immediately notified by the clinic if there is a problem with the sample and a retest is necessary. Cutting Edge Testing (CET) has been invaluable, particularly for its stigma-free atmosphere.

Sam Solo, a small producer in Oakland, said that this process would move much faster when everyone understands the stigma that industry performers face. We should examine ourselves to ensure we are not affected by that bias.

Coco Kitty is a web stream only performer who performs on a web channel and produces custom requested clips since February 2016. I am a 14-day only performer, which means I solo perform or the actors I perform with have up-to-date tests. I use barriers at my discretion or my co-performers' request. I also have done one professional BDSM film, which took 5 hours of filming. Most of the time I perform with women and do not use talent agencies; we are independent contractors who connect on twitter. Consent is a very important safety concern, and performers discuss difficult physical or emotional issues with me before performing. I ask my co-performers for their actual physical test results. I have learned how to really be safe and in control of myself through the adult industry. The full test panel I uses costs \$90, and I am in full control of the results. It was very difficult to when I went to my regular physician instead of the clinic for testing due to lack of understanding of the adult industry.

Isabella Serente, a transsexual and lifestyle dominatrix, had been tested ever since leaving the Marines once a month but now does it every 14 days by force of habit. I have never tested positive for anything. I find the testing system very effective. Condoms cause rashes. I feel that the idea that women and trans men get the most infections is wrong. When I perform I make sure the co-performer gets tested. Performers are not forced.

Nicky Darling, an adult performer for five years, said the industry is trying to mitigate risks for STIs. Condoms are one option to lower risk, but it is not the only or best option. Secondly, I would like to discuss polarity. Some speakers have implied coercion as it relates to the yes and no list. I do very heavy BDSM. I have never had an issue on set; I am up front about what I will and will not allow, and those boundaries are respected. Just as work for everyone is sometimes hard, it is wrong to imply that the varying conditions of work amount to coercion.

Johnny Starlight is a performer just getting started in producing. Many comments are focused on mainstream AFI companies. All of my productions are filming myself or myself with friends. Discussions and generalizations focused on the whole industry raise concerns in me about the way these things may affect me. On employment, is the person who commissioned a shoot from me now my employer because they are paying? If the shoot requires costumes, a trade shoot, am I paying for that, is my

customer? The assumption that performers don't take their safety into account is wrong. I have a day job—if you want to talk about things you don't want to do, I am a dog-walker who has to pick up. But I am not coerced to do it. On one shoot, I decided to use a condom and got a condom rash. It is not fun.

Carla Lane has performed for 12 years. I make films with my husband in my home and sell the films from a website, often custom films. I have done everything from a 40-guy gangbang to a solo act in the bathtub. I do not use condoms because it affects me and then I'm out of work for two to three weeks. My husband and I get tested very two weeks. I'm comfortable with the existing system but would like to see improvement. The industry is different now than the old-fashioned way of producing porn. I am now an employer and like most of the people I work with, can be both an employer and a performer.

Rachel, a former performer, said I wish that when in the industry I had worked with these people represented here today. It seems that everyone here cares about who they work with. There is another side of the industry that is not accounted for. You go on set and don't know the people. Because most of you follow the rules does not mean everyone follows all of the rules. We are talking the entire industry, not just top tier. There is an underground industry that already exists; a lot of new performers have to start there. Regarding the yes and no list. I was on sites where I had told my agent about my limits (no forced anything), but then 10 minutes into the shoot I realize the scene is a forced blow job. I could not convey my discomfort because it was supposed to look forced. After I left I felt like it was a rape situation. Though there was a yes or no list, it was not abided by. The spectrum of the industry represented should be broadened.

Five Star, in the industry for eleven years, said recently a number of Bay area producers have been packing up and moving to Nevada. The regulation is unclear on whether the use of barrier protection, such as dental dams, goggles and gloves, is required. If I have to do that for all my scenes, I will have to move out of state

Marcello is a performer and producer. The job combats his depression is the reason why he gets out of bed. I am paid by the job, not by the hour, and I never take a job unless it pays more than the costs of the tests. Tests are tax deductible, so I like to pay for them myself. Cheaper tests have windows of six months and are less than worthless. We are begging you to make the regulations flexible because we are the ones taking the chance. We are adults capable of making rational decisions. Please do not treat us like children.

Miley Reyes, a producer and performer, said that today it is easy to create your own content; everyone can be a producer these days. We are not necessarily employers. Most of the time we are co-creators of content. We need to communicate with one another. Please seriously look at what Mr. Leue said about how they have mitigated risk. I've had one case of chlamydia in my few years in the industry. I also got the common cold on set. On condom rash, I am very prone to yeast infections and get bad condom rash that put me out of work and give me medical bills. It becomes a big problem for me. I have seen how well testing works for me. I would much rather test than use condoms. "My body, my choice" doesn't mean I want the freedom to be unsafe. It means I want the agency to have a voice in the safety method

I choose—the one that fits me and my body. I know my body really well; I am a sex athlete. Please listen, and trust me and give me the resources I need, that fit me and fit my body.

Derek Burk, a former adult film performer living with HIV. This is a highly emotional topic to talk about but we are all here for the same reason—to see what is best for our personal health and safety. I am strongly in support of condom use. Other suggestions are great, but must be in combination with condoms. I got into the industry to make some extra money during some hard times. Making all kinds of money sounded great. My porn agent, OC modeling, told me that there was testing in place to protect me. I was only in the industry five months. In my first shoot, I came back with chlamydia. Then I got gonorrhea, then herpes about a month before contracting HIV. As has been pointed out, STI make you more susceptible to HIV. An article about my case by the LA Times reports on a Dr. Francisco Meza CDC investigation stating I had sex with female porn actors. Bottom line is when your job is having sex with multiple partners, you are at a much higher risk. Condoms are the gold standard, even though PREP is great it is not as effective as condoms for protection against the other STI. You have six human needs, one of which is certainty. We seek that in our relationships, jobs and health. For me, I feel that this industry has taken away my certainty about my health. Every day I wake up, I worry about my health. When I hear people in the adult industry say condoms should only be optional, that really hurts me.

Mark, a graduate of the Yale School of Management, said he had been working with the FSC for a while. He said the three things he wants to see are data, expertise and knowing your customer. He said FSC and APAC know the performers better than anyone else does. In the past year, I have spoken with experts at many institutions, but no one is more knowledgeable about the industry. Condoms may seem like a golden solution but there are always undercurrents in public health. APAC and FSC know the industry best. They are working with others to make the industry as safe as possible. That is why they are pushing Petition 560 to come up with a regulation that works for the industry.

Alex Sebastian-Morgan has been a sex worker since 2004, sex educator since 2009 and a non-solo performer. I am glad that condom rash came up today, because many people in the adult film industry—because of the inherent flexibility in the industry—are dealing with chronic illness or disability that are impacted by barrier use. That is the reason barrier use should be negotiable between the parties engaged in the scene. There is latex allergy, for example. Not all performers are going to be able bodied. An inclusive view of health needs to be applied.

Leandro Cordoba, a senior director of public health for AHF said AHF tests 4 million people a year and takes care of over 700,000 people a day. In LA in particular, I have spoken to many of these people who are adult performers seeking testing or medical care. To say that we don't have a stake in this process is simply untrue. I wish I could share with you the stories I've heard. Secondly, I wanted to review the February 2016 MMWR article reporting on the first well-documented work-related HIV transmission with an adult performer infected by a non-work-related partner. The adult film worker infected another adult film worker and an additional non-work-related partner. I just wanted to be clear that there has been on-set transmission. PREP and testing are great, but not a substitution. All of those things will work but not as substitution for condom use. The discussion has been great; AHF would be happy to support a more robust testing paradigm.



Stefanie Special, in the industry for six years, began testing every 30 days but now has the full panel of tests every 14 days. I am an independent booker, or contractor. I have complete agency in accepting or rejecting offered shoots. When I make my own productions, I think about which actors would be best for the scenes I envision. As a trans woman in the industry, I can't stress enough the stigma I combat, such as the idea we have a higher rate of STI. I completely support Petition 560 and I support working together towards something more suitable for the industry.

Alyce and Justin, her husband, have been in the industry a little over a year. We only work with each other, he said. We produce our own content; we do not work or perform with anyone else. We do everything from lighting, planning the shoot, filming, editing and sales. Our situation is not rarity, he said, thanks to technology. Many people can now create content from their homes. Almost everyone in the room produces their own content, as well as working for others. During today's meeting, he checked just one internet website and found in that one moment, 35 couples were actively shooting a live show while 235 solo shows were also in progress. Regulations will trickle down to affect us little guys, and may cause us to consider moving out of state. Alice said they do not use condoms and oppose a forced requirement to use them.

Dr. Hernando Chavez, a professor and sex educator in LA and past president of the Society for the Scientific Study of Sexuality, said he has worked with the adult industry on scripts and as an educator. I want to speak about misconceptions about condom breakage and effectiveness. We often utilize numbers like 98% effective. However, when we look at typical usage, rather than within specific population groups. That is when we combine error rates and breakage rates; then we see 78%. People in the porn industry are regular people, so it is unrealistic to expect people in the industry to have the high condom effectiveness rates achieved in supervised limited studies. In an NIH study, condom breakage rate was 3.5%. In a NIOSH study of men who had sex with men, breakage rate ranged from 0.5% to 12%. A study of heterosexual condom use demonstrated a 0.5% to 5.4% breakage rate. Think about that number, 5.4%. That is a high number even within the several thousand adult industry performer population. That is why I don't want to put all of our eggs in the one basket of condom use, and why I support the APAC testing program and Petition 560. Perform your own experiment by rubbing a condom on your arm. You will experience forearm burn. You will also find that condoms break after a minute or two of rubbing. Even as an expert, in my own personal experience I have had condoms break. Sometimes use of lubricants inappropriate for the condom material causes breakage. The adult performer population is more on top of these issues than the general population. Knowing the risk and accepting it is part of working as an adult. Compare acceptance of risk by adult industry performers with acceptance of the risk of concussion by football players. Finally, I encourage more open dialogue such as this meeting.

Julia Ann Tanella, a performer, said the industry has changed greatly, and I have seen it all since 1992. The internet has caused great change. In my case, my industry co-performers and I independently pay for respective medical tests. Often I will purchase my own wardrobe for performances. I like the freedom of being a corporation, deciding upon who, and where, and what. I can reject roles suggested by my talent agent. I started a social media campaign in support of Petition 560. By the end I had gotten to know 2000 adult performers—nearly the entire industry—and from every sector of it. It was

enlightening to learn that all wanted practical safety rather than single mandates. Performers want acceptance of some risk, the amount necessary to do the job. Did I ever do something on set I didn't want to do? Yes, use barrier protection, and I shortly realized it was very impractical. However, I had the right to refuse, and there would not have been a problem had I declined. Have I been injured on a set? Yes, through condom use. I've done anal with and without condoms. The one time I used condoms, I was injured, despite lubrication. It is also very common to get infections from condoms. Awkward body positions necessitated by the shoot are a contributory cause of condom rash. Pain and loss of work is the result. If someone has an STI throat infection, I will probably get it because we will kiss; condoms do not reduce all the risk. Risk is inherent to work and being human. I have never done a scene with one condom. Because they break, the minimum number per scene is five. Remember you are here to protect, and not here to save—we are adults.

Steve Derman said the local American Industrial Hygiene Association branch had a dinner meeting recently at which speakers from the FSC (Eric Paul Leue) and AHF (Adam Cohen) imparted information through meaningful dialogue. I may be working on a study and may reach out to several of you. In any case, this kind of dialogue and sharing of information is very useful.

Tanella suggested scheduling an advisory meeting for the Los Angeles area with its greater population of adult film industry participants.

Kevin Bland hoped Cal/OSHA will present actual regulatory language at the next meeting.

Marley Hart said this meeting came about due to both petitions, and the resulting dialogue is useful.

Mr. Schmidt said Cal/OSHA will consider everything we have heard today. We will let you know about the next steps. We will be in touch.

The meeting was adjourned.

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