



AIDS HEALTHCARE FOUNDATION

February 29, 2016

Dave Thomas, Chair
Marley Hart, Executive Officer
Occupational Safety and Health Standards Board
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OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Juliann Sum, Chief
Division of Occupational Safety and Health
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RE: Petition for Revision of Bloodborne Pathogens Standard

Dear Mr. Thomas, Ms. Hart, and Ms. Sum:

Pursuant to Labor Code sections 144.7 and 142.2, AIDS Healthcare Foundation hereby petitions the Occupational Safety and Health Standards Board to amend California Code of Regulations, Title 8, Section 5193 “Bloodborne Pathogens” to clarify required protections for workers in the adult film industry. Although workers in adult films should enjoy protections under the current phrasing of the regulation, as well as the Board’s determination that adult film workers are employees, the adult film industry has steadfastly refused to take any steps to protect its workers from diseases spread by bloodborne pathogens and other potentially infectious materials.

The Los Angeles County Department of Public Health has documented an epidemic of sexually transmitted diseases among workers in the adult film industry. It attributes the epidemic to a variety of high-risk acts that workers are required to engage in, including “pervasive use of ejaculation into the mouth,” “growing use of internal ejaculation with vaginal and anal sex,” “pervasive use of unprotected anal sex,” “multiple partners over short time periods,” and “double-vaginal and double-anal sex” (Kim-Farley 2011). Most importantly, the Los Angeles County Department of Public Health attributes the epidemic of sexually transmitted diseases in the adult film industry to a lack of condom use on set.

Unlike other workers, such as health care workers for whom protective prophylaxis are required in the workplace, most workers in the adult film industry perform sexual acts without any protection from exposure to sexually transmitted diseases. The vast majority of adult film industry employers do not provide condoms for their workers. According to a study by Javanbakht et al. (2014), only six percent of adult film performers said they always used a condom on set.

Incidences of infectious disease exposure and transmission are well-documented and occur with alarming regularity in the adult film industry. According to a study by Goldstein et al. (2011), between 2004 and 2007 there were 2,633 documented cases of chlamydia and/or gonorrhea among 1,849 adult film performers in Los Angeles County. Adult film performers were found to be 64-times



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more at-risk for gonorrhea and 34-times more at-risk for chlamydia than the general Los Angeles County population. Compared to a similar age group, adult film performers were still found to be at greater risk: 18-times more at-risk for gonorrhea and 8.5-times more at-risk for chlamydia than 18-29 year olds in Los Angeles County (Goldstein et al. 2011). To add, Goldstein et al. found that a quarter of adult film performers experience a re-infection within one year.

Adult film industry representatives claim their self-regulated voluntary testing scheme prevents the incidence of sexually transmitted diseases among adult film performers. However, according to a study by Rodriguez-Hart et al. (2012), 28 percent of adult film performers tested positive for gonorrhea and/or chlamydia and 23 percent of those infections would not have been detected through the adult film industry's current testing scheme. In fact, according to a study by Lilleston et al. (2013), the adult film industry's testing scheme misses both infections (e.g., human papillomavirus) and modes of transmission (e.g., oral/rectal swabs). Lastly, according to a study published this year by the Centers for Disease Control and Prevention in the Morbidity and Mortality Weekly Report, there is strong evidence that an adult film performer became infected with HIV on set despite following the adult film industry's testing scheme (Wilken et al. 2016). The Centers for Disease Control and Prevention argues it may in fact "...underestimate the extent of HIV transmission in this cluster" (Wilken et al. 2016).

Because the risk to workers in the adult film industry is severe and ongoing, AIDS Healthcare Foundation asks that the Occupational Safety and Health Standards Board amend its current regulations governing workplace exposure to bloodborne pathogens as follows:

- Current section (i) Appendix is renumbered as section (j) Appendix.
- Current section (b) is amended to include the following definitions:

“Adult Film” means the production fo any film, video, multimedia or other recorded representation of sexual intercourse in which performers actually engage in oral, vaginal, or anal penetration, including but not limited to penetration by a penis, finger, or inanimate object; oral contact with the anus or genitals of another performer; and/or any other activity that may result in the transmission of blood and/or other potentially infectious materials.

“Sexually Transmitted Disease” means any infection commonly spread by sexual conduct, including but not limited to HIV, gonorrhea, syphilis, chlamydia, hepatitis, human papillomavirus, and herpes simplex virus.

- A new section (i) provides as follows:
 - (i) Adult Film Production:
 - (1) Each employer engaged in the production of adult films is required to maintain engineering and work practice controls sufficient to protect employees from exposure to blood and/or other potentially infectious materials. Engineering and work practice controls include, but are not limited to:



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- (A) Simulation of sex acts using acting, production, and post-production techniques;
 - (B) Ejaculation outside workers' bodies;
 - (C) Provision of and required use of condoms whenever acts of vaginal or anal sex are filmed;
 - (D) The provision of condom-safe water-based or silicone-based lubricants to facilitate the use of condoms; and,
 - (E) Plastic and other disposable materials to clean up sets.
- (2) Employers engaged in the production of adult films are required to maintain an exposure control plan in compliance with section (c), but are not required to maintain a sharps injury log under section (g)(3) and are further exempt from the requirements of section (c)(4) and (5).
- (3) Employers engaged in the production of adult films are required to comply with section (f), regarding the pre-exposure provision of hepatitis B vaccine to employees. Any employer engaged in the production of adult films shall make available the hepatitis B vaccine and vaccination for any employee engaged in the production of adult films at the employer's expense.
- (4) Employers engaged in the production of adult films are required to comply with section (g)(2) regarding information and training to be provided to employees at the employer's expense. The training requirements of this subsection may be satisfied by proof that the employee has received appropriate training at another workplace or from an appropriate third party in the prior twelve months. Employers engaged in the production of adult films are not required to ensure that employees have received the training specified in section (g)(2)(13) regarding signs and labels.
- (5) Where any worker engaged in the production of adult films is exposed to any blood and/or other potentially infectious materials, its employer shall provide the employee with access to post-exposure prophylactic treatment for HIV, comprehensive testing for other sexually transmitted diseases, and appropriate treatment for any subsequently diagnosed sexually transmitted diseases.

As you know, AIDS Healthcare Foundation has fought for years to protect workers in the adult film industry from the threat of sexually transmitted diseases. We respect and appreciate all of the work Cal/OSHA has done to make the adult film industry in California a much safer place for workers. Despite what the adult film industry claims in the media, condom use in the adult film industry is not a First Amendment issue. According to a 2013 ruling by US Federal Judge Dean Pregerson and a 2014 ruling by the US Court of Appeals for the Ninth Circuit, condoms are not a violation of free speech in the production of adult films. Condoms are a reasonable form of barrier protection.



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Unfortunately, Cal/OSHA's enforcement efforts have to date been met largely with open defiance and contempt by the bulk of the adult film industry. When informed that Cal/OSHA regulations already require condom use to protect workers from exposure to blood and other potentially infectious materials, Jeffrey R. Douglas, the chair of the adult film industry trade group Free Speech Coalition, told LA Weekly the following:

"The reality is they don't have enough personnel to stop people from dying of dehydration in the San Joaquin Valley," Douglas says of Cal/OSHA. "They don't have a prayer of enforcing this against the industry" (Romero 2010).

The intransigence of this industry is inexcusable. Worker safety is not a joke, and I am unaware of any other industry that is as consistently dismissive of reasonable government oversight as the adult film industry.

Major adult film studios have been particularly flagrant in their disregard for workplace safety. Adult film studios Treasure Island Media, Inc. and Cybernet Entertainment, LLC—both represented by adult film industry attorney Karen Tynan—argued in front of the California Occupational Safety and Health Appeals Board that California Code of Regulations, Title 8, Section 5193 "...should not apply to the adult entertainment industry" and are "...void for vagueness" (Cybernet Entertainment, LLC appeals decision 2015). Larry Flynt Productions has also publicly disregarded workplace safety. Its President, Michael Klein, has flatly stated that "[w]e won't budge when it comes to condomless productions... [t]hat's what the consumer wants and we deliver it" (Associated Press, 2010). Treasure Island Media, Inc., Cybernet Entertainment, LLC, Larry Flynt Productions, and many more California adult film studios seem to feel that they can operate outside the law with little concern for the health of its workers who are exposed to hazardous working conditions every day.

On behalf of AIDS Healthcare Foundation and the thousands of workers who are needlessly exposed to sexually transmitted diseases during the production of adult films in California, we look forward to your timely and favorable response to this petition.

Very Truly Yours,

Michael Weinstein
President



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