

December 17, 2009

John MacLeod, Chair
Marley Hart, Executive Officer
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

Len Welsh, Chief
Division of Occupational and Health
1515 Clay Street, Suite 1901
Oakland, CA 94612

Re: Petition for Revision of Bloodborne Pathogens Standards

Dear Mr. MacLeod, Mr. Hart and Mr. Welsh:

Pursuant to Labor Code sections 144.7 and 142.2, AIDS Healthcare Foundation hereby petitions the Occupational Safety and Health Standards Board (the “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 employees¹, the adult film industry has steadfastly refused to take any steps to protect its workers from diseases spread by bloodborne pathogens, resulting in thousands of employees becoming infected with sexually transmitted diseases. Clarification and enhanced enforcement of the rules are called for.

The adult film industry accounts for thousands of workplace disease infections in California every year. During the production of adult films, workers, including but not limited to performers, are exposed to a number of bodily fluids and discharges that may contain sexually transmitted diseases, including semen, blood, urine and feces. These discharges meet the definition of other potentially infectious materials under California Code of Regulations, Title 8, Section 5193 “Bloodborne Pathogens”.

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 communicable diseases that may be contained in bodily fluids and discharges. LADPH officials estimate that

¹ See, Vital Information for Workers and Employers in the Adult Film Industry, <http://www.dir.ca.gov/DOSH/AdultFilmIndustry.html>



Petition for Revision of Bloodborne Pathogens Standards

condoms and other protection are used in less than 20% of hardcore heterosexual pornography.

LADPH has documented an epidemic of sexually transmitted diseases among workers in the adult film industry.² It attributes the epidemic to a variety of high-risk acts which 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.” Most importantly, LADPH attributes the epidemic of sexually transmitted diseases in the adult film industry to a lack of protective equipment for performers, including condoms.

According to LADPH, workers in the adult film industry are ten times more likely to be infected with a sexually transmitted disease than members of the population at large. LADPH documented 2,013 individual cases of chlamydia and 965 cases of gonorrhea among workers between the years 2003 and 2007. LADPH has observed that many workers suffer multiple infections, with some performers having **four or more separate infections over the course of a year.**

Because the risk to workers in the adult film industry is severe and ongoing, AIDS Healthcare Foundation asks that the Board amend its current regulation 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 of 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 any potentially infectious materials.

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

- A new section (i) provides as follows:

² Copies of two PowerPoint presentations outlining the threat of sexually transmitted disease in the adult film industry prepared by LADPH are attached as Exhibits 1 and 2.



Petition for Revision of Bloodborne Pathogens Standards

- (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 any potentially infectious materials. Engineering and work practice controls include, but are not limited to:
 - (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



Petition for Revision of Bloodborne Pathogens Standards

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 or potentially infectious materials, the 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.

On behalf of AIDS Healthcare Foundation and the thousands of workers who are needlessly exposed to sexually transmitted disease 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

