

Via FedEx

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Dear Sirs:

AIDS Healthcare Foundation is a California non-profit corporation, whose mission is to provide cutting edge advocacy and medicine for people with HIV and AIDS, regardless of their ability to pay. We are very concerned about the rise in sexually transmitted diseases (STDs) among adult film actors in Los Angeles – a rise due to the adult-film industry's lack of respect for the actors' health and safety rights, as well as to local and state agencies' failure to enforce these rights. We believe adult film actors, like all workers in California, are entitled to a safe, healthy work environment. That is not the case now, where the industry blacklists actors who choose to wear condoms or insist on condom use by their fellow actors, and the local and state agencies do not enforce public health and workplace safety standards.

We write this letter to draw your attention to one contributor to the problem – a clinic called the Adult Industry Medical Healthcare Foundation, Inc. (AIM), run by Dr. Colin Hamblin and located at 4630 Van Nuys Boulevard, Sherman Oaks, California 91403-2915. As we understand it, adult film producers have conferred on AIM a virtual monopoly with respect to STD testing. An actor who wants to work in the industry first needs to be tested at AIM. Before testing, AIM requires the actor to agree to waive all confidentiality with respect to his or her test results, which AIM then publishes on a website where the highly confidential test results can be viewed by producers.

But this testing is a fig leaf. It does not protect actors from the risks of unprotected sex during filming. It is simply a ploy to deflect public scrutiny and government regulation – a ploy that is perpetrated at the expense of the actors’ statutory privacy rights, which would not be violated if the industry simply required actors to use condoms.

It has come to our attention that AIM has been using the attached “Authorization to Release Test Results” to obtain privacy waivers from the actors. The Authorization does not appear to conform to the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), California’s Confidentiality of Medical Information Act, or its AIDS testing laws. Most disturbingly, it conditions testing on the receipt from the actor of (a) an overbroad, irrevocable consent to disclosure of the actor’s STD test results by AIM to whomever AIM feels appropriate, in perpetuity and (b) an indemnification of AIM for any damages resulting from its disclosures. The Authorization is essentially a waiver of privacy rights that is against public policy. (Civil Code § 56.37.) Disclosures of testing results pursuant to such an invalid authorization would therefore appear to breach the actors’ privacy rights. We urge your office to look into this matter and take any needed action to protect those rights.

Deficiencies in Authorization:

- (1) The Authorization does not state “the name or functions of the persons or entities authorized to receive the medical information.” (Cal. Civ. Code, § 56.11(f); see also 45 CFR § 164.508(c)(1)(iii) [HIPAA: a valid authorization must contain “[t]he name or other specific identification of the person(s), or class of persons, to whom the covered entity may make the requested use or disclosure”].) Instead, the Authorization says vaguely and over-broadly that the patient authorizes Dr. Hamblin “to release the results of [his or her] Gonorrhea, Chlamydia and Syphilis, and Human Immunodeficiency Virus or Acquired Immune Deficiency Syndrome (HIV/AIDS) test(s) to any duly authorized agent of AIM or others as AIM may deem appropriate as to the safety of the community, and your Agent(s) of Record listed below.”
- (2) The Authorization does not state “the specific uses and limitations on the use of the medical information by the persons or entities authorized to receive the medical information.” (Cal. Civ. Code, § 56.11(g).) Again, the Authorization gives AIM nearly unfettered discretion to use the actors’ test results as it deems appropriate for “community safety.”
- (3) The Authorization does not state “a specific date after which the provider of health care . . . is no longer authorized to disclose the medical information.” (Cal. Civ. Code, § 56.11(h); see also 45 CFR § 164.508(c)(1)(v) [HIPAA: expiration date required].) Rather, the Authorization and its indemnity clause purport to last forever.

- (4) The Authorization does not state the individual's right to revoke the authorization in writing. (45 CFR § 164.508(c)(2)(i).) By signing the Authorization, patients forever lose the right to change their minds and ask AIM to keep their testing results confidential.
- (5) The Authorization allows for virtually unlimited disclosures of the actor's HIV test results to an unlimited number of unspecified individuals whenever AIM, in its unfettered discretion, deems appropriate. This violates California Health and Safety Code section 120980(g), which provides that "[w]ritten authorization is required for each separate disclosure of the test results, and shall include to whom the disclosure would be made."
- (6) The Authorization is drafted so that the signature has an impermissible dual purpose. Under California law, the authorization must be "executed by a signature which serves no other purpose than to execute the authorization." (Cal. Civ. Code, § 56.11(b); see also 45 CFR § 164.508(b)(3) [HIPAA: no compound authorizations].) Impermissibly, the AIM signature line has two purposes: (a) to execute the authorization and (b) to bind the signatory to a contract whereby the person signing agrees to disclosure of his or her STD test results in exchange for discounted testing and agrees to broadly indemnify AIM against any and all kinds of claims and damages associated with testing/disclosure.
- (7) The Authorization does not "[a]dvise[] the person signing the authorization of the right to receive a copy of the authorization." (Cal. Civ. Code, § 56.11(i).)
- (8) The Authorization does not state that AIM will not condition treatment on whether the individual signs the Authorization. (45 CFR § 164.508(c)(2)(ii).) Presumably, AIM can tell a patient it will not provide STD testing without the release – in violation of the patient's healthcare rights.
- (9) The Authorization is not in 14-point type. (Cal. Civ. Code, § 56.11(a).)

Sincerely,



Tom Myers
General Counsel

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AUTHORIZATION TO RELEASE TEST RESULTS (HIV+G/C+RPR)

THIS IS A LEGALLY BINDING AGREEMENT – READ CAREFULLY AND COMPLETE FULLY!

Under California State Law, you are entitled to anonymous or confidential testing for HIV/AIDS. This means that if you take an HIV/AIDS test, and provide personal information about yourself, you may request that the results be kept anonymous (your identity is not linked to your test result) or confidential (which prohibits unauthorized disclosure). Under California law, all healthcare providers are required to report all positive HIV/AIDS tests in an anonymous fashion to the local health department.

Furthermore, California State law requires all healthcare providers to report selected communicable diseases in a confidential manner to local health departments. This list includes, but is not limited to, Chlamydia, gonorrhea, chancroid, Hepatitis A/B/C and tuberculosis.

As a performer employed in the production of sexually explicit entertainment, it is critical for your safety and the safety of others with whom you perform that you undergo testing for **HIV and/or AIDS, Gonorrhea, Chlamydia (G/C) and Syphilis (RPR)** on a regular basis and that, under certain circumstances, the test results be disclosed to a limited number of individuals other than you. Accordingly, you are being offered the opportunity to obtain **HIV/AIDS, G/C and RPR** testing at a discounted rate and in a convenient manner by the Adult Industry Medical Health Care Foundation, Inc. (referred to hereinafter as "AIM"). As an additional incentive for you to obtain your testing through AIM, should your initial test results indicate a possible exposure to **HIV, Gonorrhea, and/or Chlamydia and Syphilis** a second test may be provided to you by AIM at no additional cost to you.

In exchange for such savings, convenience, and the possibility of free re-testing, the receipt and sufficiency of which you hereby acknowledge as adequate consideration to support this agreement, you hereby authorize Dr. Colin Hamblin (referred to hereinafter as "Physician") to release the results of your **Gonorrhea, Chlamydia and Syphilis**, and Human Immunodeficiency Virus or Acquired Immune Deficiency Syndrome (**HIV/AIDS**) test(s) to any duly authorized agent of AIM or others as AIM may deem appropriate as to the safety of the community, and your Agent(s) of Record as listed below.

You further authorize Physician, AIM, and your Agent(s) of Record to disclose a positive test result to any individual and/or entity that might have been placed at risk, or may subsequently be placed at risk by you, in the event that you are positive.

You hereby indemnify and hold Physician, Physician's Agent, AIM, and your Agent(s) of Record harmless for any claims, actions, causes of actions, demands, rights, damages, costs, loss of services, expense and compensation, of any nature whatsoever, which you now have or which may hereafter accrue on account of, or in any way related to any known and unknown, foreseen and unforeseen, emotional, bodily, and personal injuries resulting directly or indirectly from such testing and/or disclosure.

I have read and understand the above and agree to the Authorization Agreement.

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Signature of Patient

Date

* Printed Legal Name *

* Printed Stage Name *

Driver's License Number - State & Exp. Date

() / /
Area Code & Phone Number Date of Birth

Street Address

Agent of Record (Print)

City State ZIP Code

()

FAX NUMBER you'd like your test faxed to

* () Please check here if you are a first-time client

Work you are doing (please check all that apply):

How were you referred to AIM?

() Condoms Optional () Condoms Only
() Girl-Girl Only () Photo Model Only
() Other:

Web Site and/or

Email Address:

(Optional - for AIM news updates only; NOT for personal info)

*** Please note that your Original Results may not be given to anyone other than yourself without signed written authorization. If you wish to pre-authorize release of your Original now, please print that person's name below and your initials here:**

OFFICE USE ONLY

Witness & Method of Payment Received (LOG)

() Check - # Auth. by:
() CC - Type: Auth. #
() Cash Receipt # Amt. \$
() Corporate COD Approved By:
-- Name (Co. or Person):
() Personal COD Approved By:

PRINT Name of Authorized Person to whom AIM may release Original (VALID I.D. Required)

Date Paid in Full:

NO WII

Dr. Colin Hamblin (818) 981-5681 14741 Ventura Blvd. Suite 103 Sherman Oaks, CA 91413