



ADULT PERFORMER ADVOCACY COMMITTEE



November 3, 2015

Dave Thomas, Chair  
State of California  
Department of Industrial Relations  
Occupational Safety and Health Standards Board  
2520 Venture Oaks Way, Suite 350  
Sacramento, CA 95833  
Via e-mail: oshsb@dir.ca.gov

**Re: 15 Day Notice Comments on Proposed Modifications to Sexually Transmitted Infections Standard (Title 8, Section 5193.1)**

Dear Chairman Thomas and Members of the Standards Board:

We are writing to voice our shock and disappointment for the blatant disregard of expert testimony, facts and information provided to the Standards Board at and before the May meeting in San Diego. The modifications wholly ignore the clear and convincing evidence presented to the Board and no rational basis exists for the proposed regulations.

Testimony and written statements in support for the PASS (Performer Availability Screening Services) program and the changes to the proposed regulation submitted by the Free Speech Coalition (FSC), Adult Performer Action Committee (APAC) and organizations like AIDS Project Los Angeles, American Civil Liberties Union (ACLU), Being Alive LA, Center for HIV Educational Studies and Training (CHEST), Chicago AIDS Foundation, Equality California, Gay Men's Health Crisis (GMHC), HIV Law Center, Lambda Legal, Los Angeles LGBT Center, San Francisco AIDS Foundation, Transgender Law Center, The Wall Las Memorias Project, and the Woodhull Sexual Freedom Foundation, The Thrive Tribe Foundation, Project Inform, Senator Mark Leno, San Francisco Supervisor Scott Wiener, and the Los Angeles County Commission on HIV.

Medical professionals testifying and writing statements in support of the PASS program and the changes to the proposed regulation submitted by FSC, APAC and coalition partners included Jeffrey Parsons, PhD, Professor, Department of Psychology and Public Health, David Holland, MD, MHS, Assistant Professor of Medicine, Infectious Diseases, Robert Grant, MD, Assistant Professor of Medicine, Infectious Diseases, Jack Carrel, MPH Health Education, HIV/AIDS Prevention, Kimberly Sommers, MD, Infectious Diseases, Peter Miao, MD Infectious Diseases and Bernard Branson, Retired (2014) Associate Director, Laboratory Diagnostics, Division of HIV/AIDS Prevention, Centers for Disease Control and Prevention (CDC).

Amendments made to the regulation after the hearing in May 2015, appear to rely significantly on the input from the retired industrial hygienist Deborah Gold. It is important to point out Ms Gold's apparent bias against the Adult Film Industry began early as evident in her selection of stakeholder committee members. Ms Gold chose, as the performer representative, a woman working in a Nevada brothel, who had not performed in the adult film industry for nearly 10 years. Ms Gold further selected a producer who instead of using professional performers, used consumers as partners for female performers—not a typical practice for the industry. These unorthodox selections were made after an email had been sent to Ms Gold with the offer to provide access to hundreds of active California performers and producers for representation on the committee.

Once the committee meetings began, industry stakeholders, relegated to the audience for participation, attended meetings and did our best to participate in a hostile environment. In one meeting in which all parties brought their recommended bloodborne pathogen plans to the table, it looked like the parties may have reached agreement on some issues. When it was AHF's turn to speak to proposed plans, instead their representative read a newspaper article insinuating that adult film industry representatives were criminals. Even after protest, Ms Gold, who was running the meeting, allowed the AHF representative to continue reading the article to the end. The process was completely derailed and no further progress was made. The Division is mandated to provide a safe workplace, not to take on the fight of special interest groups such as Aids Healthcare Foundation.

During the stakeholder meeting process, a large number of adult film performers took off work to attend another meeting held in the LA area. The attending performers became outraged when AHF stated that they had to be the voice for performers. Not only were the performers profoundly insulted by that statement, but also in complete disagreement with CalOSHA and AHF's position. Outraged, the performers spoke up to provide valuable insight and input in response to which Ms Gold threatened to end the meeting. It is evident that the voices of the actual workers, the real stakeholders, did not matter and were not considered or included in the proposed regulations.

The Standards Board replied to our comments with a statement that there were ample number of meetings for input. It was never the number of meetings, but the bias, substance, caliber and quality of meetings that were in question. Clearly, the process was a complete disaster.

Furthermore, it is impossible to understand how the Standards Board weighs the opinion of one retired, biased industrial hygienist against the majority of HIV and LGBT organizations nationally and in the state of California, as well as leading medical professionals focused on HIV, sexually transmitted infections, infectious diseases, psychology, public health, and laboratory diagnostics.

In your comments, the "sex worker" condom breakage study from a Nevada brothel was cited. The "sex worker" study has absolutely no bearing on the issue at hand. First, the study does not analyze an employee-employer relationship where professionals engage in creation of adult content, but instead it analyzes a employee-consumer relationship, which is very different and therefore not relevant to adult film production. Moreover, the length of time, comparable penis size and the athletic nature of penetration is significantly different for adult film production than the Nevada brothel. Also, the lighting on adult sets renders lube rapidly ineffective which is not the case in the Nevada brothel. Comparing the

two makes no sense and shows a serious and worrisome lack of understanding of adult film production sets. This lack of understanding is consistent throughout this process.

During his testimony at the Standards Board meeting May of 2015, Dr Holland cited the CDC condom study by Dawn Smith, MD, MPH, for the CDC Division of HIV/AIDS Prevention, which reported condom efficacy at 70% with consistent 100% use. With the understanding that condom breakage on an adult set—due to the type and duration of penetration, typically larger than normal penis size and set lighting conditions—likely would be much higher, the industry's current protocols and PASS program offer a higher preventative effect and reliable alternative. Dr Holland, along with fellow researchers, is studying a mathematical model to compare the PASS-like testing protocols based on bi-weekly HIV-RNA testing with the use of condoms to prevent HIV infection. In his model, Dr Holland “stacked the deck” by assuming the worst case scenario: All infected performers were men who have sex with men (highest prevalence of HIV in the population) who only performed insertive anal intercourse (highest transmissibility of HIV) on set. He also assumed condoms were 85% effective, which is somewhat greater than recent studies have shown for men who have sex with men. Even under these extreme circumstances, both condoms and the PASS testing strategy reduced HIV transmissions by approximately the same amount. Under both systems, the rates of HIV transmission are EXTREMELY low, which suggests the PASS system would be at least as effective as condoms and would be a safe option for performers to prevent infections. This is based on the simple principle that a person without an untreated HIV infection can not transmit the virus.

Additionally, during the Standards Board meeting in March of 2010 when the Board voted to investigate creating regulations specific to the Adult Film Industry a great deal of data and information was presented from both sides of the issue. The Board directed CalOSHA staff to obtain an epidemiological analysis of the data presented. Staff ignored the request and did not obtain such analysis. In the absence of action from CalOSHA staff, the FSC (Free Speech Coalition) commissioned the aforementioned requested analysis from a Johns Hopkins epidemiologist, Dr Mayer. In his analysis, Mayer dismisses data presented by Kerndt and Farley:

*If the number of tests is used as the denominator for prevalence calculations, as recommended by the CDC, chlamydia and gonorrhea prevalence among AFI performers is much closer to that of the general population than Kim Farley and Kerndt claim. The difference lies in the frequency with which AFI performers are tested. As illustrated in the table below, prevalence estimates for chlamydia are lower than those reported among women in high-risk subgroups, based on the CDC 2008 Surveillance Study. It is clearly not appropriate to compare prevalence rates of AFI performers to those of Los Angeles County residents using differing methodologies, as Drs. Kim Farley and Kerndt have done. Their methods do not take into account multiple tests and re-infections. Their comparison data, based on similarly-aged subgroups and all ages do not take into account the fact that many people are not tested each year for sexually transmitted diseases. Drs. Kim Farley and Kerndt did not document their data or methodology and have produced reports and presentations inconsistent with scientific data. Their reports are not only inaccurate, but also misleading and inflammatory toward the risk of contracting an STD in the adult film industry. Estimating this risk is a serious issue, it should have been given serious analysis.*



Another issue that the of focus for the Standards Board is the "Occupational Health Alert" of December 2014. Sadly, this situation appears to be yet another politically motivated maneuver at the expense of the performers and professionals in adult production. The incident in question did not happen in the state of California, was on a set that did not utilize industry standards and protocols or the PASS program, and drew questionable conclusions about transmission. Not only was this alert implemented void of contact with the adult film industry representatives, but also information about the infection was leaked to AHF's political action committee (FAIR) which then broadly tweeted the information. Later that week, AHF staffer Adam Cohen discussed the performer/patient viral levels during a radio interview in clear violation of California privacy laws. The fact that the information was leaked to AHF was not only inappropriate, it borders on violating HIPAA regulation concerning medical privacy.

After being notified of the egregious behavior of his staff, the then Director of California Department of Public Health, Ron Chapman called a meeting in Sacramento of his staff and adult industry representatives to make sure that this did not happen again. It is important to note that Dr Chapman had retired when the "Occupational Health Alert" was presented in support of the proposed CalOSHA regulations at the Standards Board meeting. It is also important to note that among those cc'd on the letter introducing the aforementioned health alert, the *current* Director of California Department of Public Health, Dr. Karen Smith is not included. Hence it is questionable as to whether the letter is an official position of the California Department of Public Health and will need clarification.

Clarification is further warranted in light of the letter of opposition to the CalOSHA proposed regulations provided by the LA County Commission on HIV. This commission is a government body, charged with distributing federal Ryan White Funding and strategizing to improve public health. This official body consists of commissioners appointed by the LA County Board of Supervisors, it advises the Department of Public Health and the Board of Supervisors on policy, regulatory, budget, and other issues surrounding and concerning sexual, mental, and behavioral health.

It is important to note that individuals and organizations providing written and in person testimony to the Standards Board in favor of the changes submitted by FSC and APAC to the proposed regulation have done so voluntarily and without compensation--with the exception of Kevin Bland our CalOSHA attorney. They were not paid to provide testimony or to be there. Conversely, it has been brought to our attention that performers testifying on AHFs behalf are well compensated for their testimony. Moreover, none of the four performers presented by AHF contracted HIV on an adult film set, and have repeatedly refused to testify they did so under oath.

When considering expert testimony delivered in support of the proposed CalOSHA regulations it is crucial to note that no medical professionals and/or infectious disease specialists gave the board any reason to misclassify all STIs listed in this document as chronic and life threatening. The Board has actively ignored a letter by medical and public health experts provided in support of changes to the proposed regulations without any supporting evidence and/or testimony. We urge the board to request all medical professionals in favor of this regulation to take a position on cited facts in the aforementioned opposition letter to clarify their own understanding, knowledge and expertise on these matters.

At the May Standards Board meeting, the room was filled with performers and adult production staff, people who took off from work, many who got on a bus at 6am to be there. Representatives from APAC (Adult Performer Advocacy Committee) spoke on behalf of the group that filled the hall and the balcony. Out of respect for the Board and at your request, we limited our testimony. Surely it is a rare sight for Standards Board members to see all of the workers, and business owners stand in unity and solidarity to wholly oppose regulation as our industry did at that May meeting.

We took a professional approach and we participated in the process that was supposed to be just, fair, and unbiased. As a result, again we voice our shock and disappointment for the blatant disregard of the factual information as well as the input from the actual stakeholders. If the Board is reluctant to consider the regulatory suggestions we proposed for industry appropriate regulations that will keep performers and industry workers safe and healthy, then we urge you to vote "no" to the proposed regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Chanel Preston". The signature is fluid and cursive, with the first name "Chanel" written in a larger, more prominent script than the last name "Preston".

Chanel Preston, President  
Adult Performers Advocacy Committee

A handwritten signature in black ink, appearing to read "Diane Duke". The signature is stylized and cursive, with the first name "Diane" written in a larger, more prominent script than the last name "Duke".

Diane Duke, CEO  
Free Speech Coalition