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September 17, 2009

TO: Each Supervisor

FROM: Jonathan E. Fielding, M.D., M.P.H.  
Director and Health Officer

A handwritten signature in black ink that reads "Jonathan E. Fielding".

SUBJECT: ADULT FILM INDUSTRY

This is to provide you with an update on the Department of Public Health's (DPH) activities to investigate and address sexually transmitted disease related to the adult film industry (AFI). This is an update to our June 19, 2009 memo.

As outlined in this report, DPH has taken action to address sexually transmitted disease (STD) and HIV in the AFI, and continues to monitor and take action on AFI-related disease cases. DPH, in conjunction with County Counsel, has also explored expanded local regulatory strategies, however these methods have substantial implementation and enforcement challenges, are likely to be only partially effective because the industry extends beyond the reach of Los Angeles County, and may possibly be subject to legal challenge. Consequently, DPH continues to recommend State legislation to increase surveillance of occupational exposures, enhanced penalties and enforcement of condom use in the AFI.

**Background**

Working conditions in the AFI typically involve a worker having unprotected, prolonged and repeated sexual intercourse with multiple sexual partners over short periods of time, increasing the likelihood of transmission of sexually transmitted diseases including HIV. Since 2003, DPH has monitored the AFI by: working with health-related organizations associated with the industry to enhance education and outreach in the adult film industry to prevent HIV and other STDs; collaborating with Cal/OSHA to develop guidelines to reduce disease exposure in the AFI and request workplace investigations; and working with County Counsel, the CEO and County legislative advocates to support State legislation to implement regulations to ensure protection of workers in this industry.

### **STD and HIV in the Adult Film Industry**

The Adult Industry Medical (AIM) Healthcare Foundation and Talent Testing Services are organizations which provide STD and HIV screening and limited medical care to individuals working in the AFI and are required by law to report cases of HIV and STDs to DPH.

Since 2004 DPH received reports of 2,396 cases of Chlamydia (CT), 1389 cases of gonorrhea (GC), and five syphilis cases among AFI performers; 20.2% of performers diagnosed with STD had one or more repeat infections within a one year period. Between 2004 and 2008, repeat infections were reported for 25.5% of individuals. Due to the failure to routinely screen for rectal and oralpharyngeal infections, a sustained high level of endemic disease among AFI workers persists. Furthermore, these disease rates and reinfection rates are likely to be significantly underestimated as rectal and oral screening is not done routinely and these anatomic sites are likely to be a reservoir for repeat reinfection.

Analyses of 2008 data also indicated that AFI performers experience significantly higher rates of infection (20%) than the general public (2.4%) or in the area of the County (SPA 6) experiencing the highest rates of STDs (4.5%).

Data is less clear for HIV since occupation is not reported in HIV/AIDS reports. Since 2004, AIM has reported 25 cases of HIV. However, it is difficult to confirm the number of actual performers infected with HIV/AIDS as not all those tested are current performers and may have other roles in the AFI, or are partners of an AFI performer, or may otherwise be referred to AIM for testing. AIM claims that a minority of the 25 cases are performers, but even if this is accurate, it is reasonable to assume that some of the remaining 25 infected individuals were tested because they wished to work in the AFI in Los Angeles or were partners of AFI performers.

### **DPH Activities in Addressing the STD and HIV in the AFI**

In addition to its role in surveillance, DPH has taken several actions to address these public health issues in the AFI including:

- Worked with Cal/OSHA to develop a model Exposure Control Plan applicable to this industry based on existing standards, in Title 8, California Code of Regulations, specifically including the Injury and Illness Prevention Program standard (Section 3203), and the Bloodborne Pathogens standard (Section 5193).
- Following development of the model Exposure Control Plan, initiated discussion with the State Labor and Workforce Development Agency to develop educational outreach plans and materials for both producers and performers.
- In May 2004, secured technical assistance from the National Institute of Occupational Safety and Health (NIOSH), to investigate workplace hazards in this industry, and issue recommendations.

- In June 2004, testified before a California Assembly Committee in support of legislation to regulate the AFI to (1) require condom use for all high risk sexual encounters; (2) have screening requirements for STDs set by the state with screening costs paid by the industry, and offer vaccinations for appropriate preventable conditions; (3) mandate education and training of all adult film industry performers; and (4) assure monitoring to ensure compliance by state and local health departments paid for by the industry.
- Conducted periodic dialogue with producers and performers in both straight and gay male roles of the industry, as well as with other relevant agencies, including the California Department of Health Services, STD Control Program and the State Office of AIDS to better understand health and safety issues in this industry, and develop appropriate screening recommendations and interventions. During these meetings, DPH has consistently asserted that it is the responsibility of the industry to require male performers to wear condoms to minimize risk of preventable serious illness.
- Requested Cal/OSHA conduct investigations of recent incidents of presumed workplace infection with STDs and HIV. Between April 2004 and June 2009 nine requests were made to Cal/OSHA for investigations of presumed workplace STD infections. Although two of these cases are pending, the completed investigations resulted in ten violations.
- Initiated investigations, as needed, seeking to determine the extent of potential exposure and actual disease transmission.
- DPH offered additional HIV and STD testing services to performers, provided counseling and medical referrals for those performers who were infected with HIV, and offered partner contact and referral services to their private sex partners.

It has been the consistent position of the Department that screening alone is insufficient to prevent STDs and HIV/AIDS. Screening can only detect infection and while it is vital for containing new or existing infections, there are other preventive measures that should be employed in the AFI such as condom use and hepatitis B vaccination.

#### **Additional Local Regulatory Measures to Address STD and HIV in the AFI**

DPH has explored whether expanded local regulation of the AFI can be used to reduce exposure to STD and HIV. Our consultations with County Counsel have yielded the following approaches that could be used.

**Health Officer Order:** County Counsel has determined that existing health officer authority may be used to set health protection requirements on adult film production companies to protect performer health. In order to utilize health officer authority, a detailed written order would need to be served on all necessary parties outlining the nexus between the behavior and spread of disease within the industry.

DPH would then need to develop a mechanism to monitor compliance with the order, and enforcement of the order would require proof of service of the order on parties and evidence of an alleged violation. Violation of the order could be prosecuted by the District Attorney as a misdemeanor. A County health officer order would not apply to Long Beach and Pasadena, as they are separate public health jurisdictions.

County Code: County Counsel has also indicated that County Code could be amended to set requirements on the AFI. This approach could be similar to the County Code requirements on Commercial Sex Venues and require AFI production firms to secure a public health permit to operate.

The public health permit would be conditioned upon the entity's adherence to preventive measure requirements.

Similar to the health officer order approach, DPH would then need to develop a mechanism to monitor compliance with the order. Compliance time frames and penalties would need to be specified in the Code. This approach would be applicable in the unincorporated areas of the County and in those cities which adopt the County ordinance, and would not apply to Long Beach and Pasadena.

#### **Challenges with Local Regulatory Approaches**

Both the health officer order and the County Code amendment have inherent implementation challenges that would severely limit either approach in controlling STDs and HIV in the AFI. Under a health officer order approach the noticing requirements would be administratively challenging and resource intensive. There are an estimated 200 production companies in Los Angeles County, employing approximately 1,200 workers who engage in direct work-related sexual contact. Filming locations are difficult to ascertain, usually taking place at private homes or, to a lesser degree, in small film studios. Producers planning a film recruit performers independently or may use a talent agency to identify performers for their films. Performers are usually hired as independent contractors (not employees) for a specific film. Although there are regulations that require permits for filming, productions in homes or short term rental commercial space is often completed without permit. In addition, the fixed assets for filming in the AFI are limited and it is easy to change locations or move production to another county. Due to these factors, it is likely that there would be a high degree of non-compliance with a regulatory County Code approach.

Further, with either approach DPH would need to devote significant staff resources to identify sites of the production companies and to monitor compliance with performer protection requirements. This would likely also entail the viewing of commercial AFI video productions to ascertain compliance, assuming we could identify who produced each film, when it was produced and where it was shot. The staff resources that would be needed for this have not been determined, but would require significant new funding to accomplish.

In addition to these practical challenges, County Counsel indicates that an expanded local regulation of the AFI, would likely face constitutional challenge on freedom of speech grounds. The outcome of such a legal challenge could not be predicted with certainty.

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### **Conclusion and Next Steps**

DPH has taken an active role in addressing STDs and HIV in the AFI including disease investigation, surveillance, and outreach and education efforts to reduce the risk of infection. At present, DPH monitors AFI-related STDs and HIV cases, takes action to investigate cases of disease, and makes referral to Cal/OSHA, which has subpoena power and can impose penalties, for further investigation and action with respect to workplace safety violations.

A health officer order or a new requirement in County Code will be difficult to implement and resource intensive, possibly subject to legal challenge, and, overall, unlikely to be an effective approach to prevent AFI performers from acquiring preventable STDs including those that are life-altering.

The best scenario would entail expanded statutory requirements on the AFI. The County has supported these efforts in the past, but none of the legislative proposals have been successful. DPH recommends the Board sponsor or support measures to strengthen penalties and enforce condom use related to the AFI in the upcoming legislative session.

If you have any questions or need additional information, please let me know.

JEF:lm

c: Chief Executive Officer  
Acting County Counsel  
Executive Officer, Board of Supervisors