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**Report of the Subcommittee on Sex Clubs**  
**AIDS Advisory Council**

**January 13, 1993**

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**from the Subcommittee on Sex Clubs**

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On September 24, 1992, New York City Health Commissioner Dr. Margaret Hamburg wrote to Dr. David Rogers inviting the thoughts of the AIDS Advisory Council on public health concerns regarding the recent opening and operation of commercial establishments "whose primary function," as described in her letter, "is to provide a public or semi-private space in which patrons may engage in consensual sexual behavior." Given that various forms of unprotected sex carry a high risk of HIV transmission, the City requested advice in formulating public policy to promote risk reduction. Shortly thereafter, Dr. Rogers named the undersigned as a subcommittee to consider this subject, promising Dr. Hamburg that the group would proceed to the assignment "as quickly as possible."

Responding to that mandate, we have met together on five occasions. We have interviewed or received reports from a number of people, including owners of establishments of the type in question, present and former public officials concerned with the

problem, knowledgeable professionals in the AIDS Institute and elsewhere, journalists, church representatives, and others.

The period since the formation of our subcommittee has been too short for the formulation of anything like comprehensive or definitive positions, and we have not in any event deemed ourselves either commissioned or qualified to do that. Instead, mindful of the expectation that we would proceed speedily, we have arrived together at a framework for policy development that we hope will be of some service to Commissioner Hamburg and others, in both public and private positions, concerned with these matters.

We report now as follows, leaving open the prospect that the AIDS Advisory Council may have further and more mature contributions in the future.

¶ 1. The concern of the Commissioner and other officials relates to the public health, not matters of morals or aesthetics. Measures to be taken, or avoided, with respect to businesses generally known as sex clubs should be informed and limited by this premise. Specifically, it is inappropriate to act explicitly or implicitly on preconceived biases relating to homosexuality, the desirability of these commercial establishments, or particular minority groups of any kind. Commissioner Hamburg's letter to Dr. Rogers reflects appropriate sensitivity on this score, and we applaud this attitude.

¶ 2. The relevant legal authority of the Commissioner and others is found in State health regulations, specifically the following provisions of Subpart 24-2 of Title 10 of the New York Codes, Rules, and Regulations:

- "No establishment shall make facilities available for the purpose of sexual activities in which facilities high risk sexual activity takes place. Such facilities shall constitute a public nuisance dangerous to the public health." § 24-2.2.
- "High risk sexual activity shall mean anal intercourse and fellatio." § 24.2.1(b).

The Commissioner and other officers are empowered to close down facilities that are public nuisances within the quoted provisions.

¶ 3. A preliminary but basic fact about the regulations is that they are narrow, skewed, and inaccurate. Based on a careful review of current scientific data, the Subcommittee is convinced that fellatio is not a high risk activity, that unprotected anal intercourse is high risk but protected is not, and that unprotected penile-vaginal intercourse, omitted from the definition, also carries a high risk of HIV transmission. The regulation should be amended to reflect current data about the relative risks of different sexual activities and the distinction between protected (that is, involving the use of a condom) and unprotected activity. This is important both to insure that enforcement efforts target activities creating a significant

public health threat and to encourage the broadest possible voluntary compliance with the regulation.

¶ 4. The so-called sex clubs cater to both homosexual and heterosexual clientele. Both types exist to facilitate various forms of sexual behavior between and among people who are casual acquaintances or anonymous. In the nature of these encounters, at least without suitable monitoring and regulation, there is substantial risk for transmission of HIV infection and other sexually transmitted diseases, as well as the opportunity to educate patrons about such risks.

¶ 5. The Subcommittee met with a number of sex club operators who are prepared to engage in educational and monitoring efforts to reduce the risks of the sexual activities they facilitate. A number already distribute condoms and other protective devices, supply educational literature, variously monitor the behavior of their patrons, and even in some cases eject or bar those insisting on unsafe practices. There is no solid information at present as to the efficacy of these efforts. It is reasonable to presume, nevertheless, that the clubs are in a position to educate and engage in some useful preventive activities. These efforts could lead to risk-reducing changes in sexual behavior by club patrons not just within the clubs, but wherever they choose to engage in sex. We believe that the City, in developing

enforcement mechanisms, should endeavor to maximize the educational potential of these establishments.

¶ 6. Self-regulation is not enough and is not widely claimed to be enough. The Commissioner of Health and allied officials must continue, as they have begun, to exercise regulatory oversight: specifying required modes of self-monitoring, inspecting and overseeing promised performance, and standing ready to take harsher measures in cases of noncompliance. Suitable regulations, revised from time to time as experience dictates, should spell out the specific measures required, covering a necessary range that includes the posting of educational materials, distribution of condoms and other protective devices, provision and training of monitors, and delineation of lighting and architectural arrangements.

¶ 7. With regard to the specific issue of closed rooms, we are not prepared to recommend at this time that closed rooms should be forbidden in the sex clubs. The objective on this specific topic is, as it is throughout, the protection of the public health. There is a permissible, indeed compelling, purpose to discourage or even prevent high-risk sex in these establishments. There is, however, an open question as to how far this purpose is disserved by the provision of private rooms in sex clubs. At the moment, subject to experience and on the principle of parsimony

in restrictive police measures, the banning of private rooms does not seem to be warranted.

¶ 8. Our references to the need for more experience and knowledge touch a subject of pervasive concern. While we commend much of what the City contemplates in the way of program, our sense is that there is a dearth of necessary information and a lack of sufficient plans to supply it. For example, as part of the initial background information needed to regulate intelligently, it would be useful to know why sex clubs are proliferating right now. There appears to be no coherent information about the patrons of sex clubs, their knowledge of safer sex practices, their frequency of attendance, or where they would otherwise go to pursue their sexual interests. The factual questions we mention, together with an undoubtedly much larger number we are too uninformed to ask, should be identified and explored by the responsible officers and agencies.

¶ 9. City agencies are in the process of drafting programs for supervision, inspection, and warnings before resort to the ultimate and drastic remedy of closure. Having seen and discussed some of the drafts, we think they move generally along sound lines. The club operators should be required to monitor themselves in large measure. A scheme of inspections to insure compliance with the types of measures outlined in paragraph 6

should be put in place. Reasonable but not excessively lenient provision should be made for correcting deficiencies and achieving compliance. Given the nature of the problem, one or two warnings should be sufficient. The power to order closure where compliance cannot be achieved by other means should be exercised without undue delay so that it functions as a meaningful inducement.

Respectfully submitted,



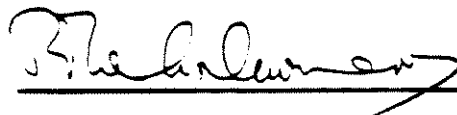
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