

Specialized Investigators’ Basic Course Workbook Series Student Materials

**Learning Domain 61
Administrative Procedures
Version Two**

**Basic Course Workbook Series
Student Materials
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Administrative Procedures
Version Two**

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THE ACADEMY TRAINING MISSION

The primary mission of basic training is to prepare students mentally, morally, and physically to advance into a field training program, assume the responsibilities, and execute the duties of a peace officer in society.

FOREWORD

The California Commission on Peace Officer Standards and Training sincerely appreciates the efforts of the many curriculum consultants, academy instructors, directors and coordinators who worked with POST to develop this workbook. The Commission extends its heartfelt appreciation to the California law enforcement agencies who freely offered personnel who gave of their time to participate in the development of this training material.

This student workbook is part of the POST Basic Course Training System. The workbook component of this system provides self-study documents for every learning domain that makes up the basic course. Each workbook is intended to be a supplement to, not a substitute for, classroom instruction. Its objective is to improve learning and retention of information by a student attending the academy.

The content of each workbook is organized into sequenced learning modules to meet requirements as proscribed both by California law and the POST Training and Testing Specifications for the Basic Course.

It is our hope that the collective wisdom and experience of all who contributed to this book helps you, the student, to successfully complete the academy course, to advance to the Field Training Officer program and to enjoy a safe and rewarding career as a peace officer serving the communities of California.

A handwritten signature in black ink, appearing to read "Hal Snow". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

HAL SNOW
Interim Executive Director

LD 61: Administrative Procedures

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Preface

Introduction

Student workbooks

The student workbooks are part of the POST Basic Course Instructional System. This system is designed to provide students with a self-study document to be used in preparation for classroom training.

Specialized Investigators' Basic Course training requirement

All law enforcement officers occupying positions as peace officers, as recognized by the California Penal Code and where the POST-required standard is the POST Specialized Investigators' Basic Course, must complete the course prior to the exercise of peace officer powers. The Specialized Investigators' Basic Course is comprised of 42 instructional units, called learning domains (LD), from the Regular Basic Course and four LDs specifically developed for the Specialized Investigators' Basic Course.

The content of each workbook is organized into sequenced learning modules designed to meet the requirements of the training specifications for the Specialized Investigators' Basic Course.

Student workbook elements

The following elements are included in each workbook:

- chapter contents, including a synopsis of key points,
 - supplementary material, and
 - a glossary of terms used in this workbook.
-

How to Use the Student Workbook

Introduction

This workbook provides an introduction to the training requirements for this Learning Domain. You may use the workbook in several ways: for initial learning, for test preparation, and for remedial training.

Workbook format

To use the workbook most effectively, follow the steps listed below.

Step	Action
1	Begin by reading the: Preface and How to Use the Workbook, which provide an overview of how the workbook fits into the POST training program and how it should be used.
2	Refer to the Chapter Synopsis section at the end of each chapter to review the key points that support the chapter objectives.
3	Read the text.
4	Complete the workbook learning activities at the end of each chapter. These activities reinforce the material taught in the chapter.
5	Refer to the Glossary section for a definition of important terms. The terms appear throughout the text and are bolded and underlined (e.g., <u>term</u>).

Chapter 1

Administrative Inspections and Subpoenas

Overview

Learning need Investigators should know that government agencies have limited inspection authority and related powers defined by statute.

Learning objectives The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to:	E. O. Code
<ul style="list-style-type: none">state the statutory grounds for inspection warrants.	61.01.EO1
<ul style="list-style-type: none">explain the requirements for issuance of an inspection warrant.	61.01.EO2
<ul style="list-style-type: none">explain the requirements for execution of an inspection warrant, including operational planning.	61.01.EO3
<ul style="list-style-type: none">describe the investigators role in collecting and preserving evidence.	61.01.EO4
<ul style="list-style-type: none">state the statutory grounds for an administrative subpoena.	61.01.EO5
<ul style="list-style-type: none">discuss parties authorized to issue an administrative subpoena.	61.01.EO6
<ul style="list-style-type: none">differentiate between the necessary components for issuance of an administrative subpoena duces tecum and an administrative subpoena.	61.01.EO7

Continued on next page

Overview, Continued

Learning objectives
(continued)

After completing study of this chapter, the student will be able to:	E. O. Code
<ul style="list-style-type: none">• discuss the service requirements of an administrative subpoena.	61.01.EO8
<ul style="list-style-type: none">• discuss the service requirements of an administrative subpoena duces tecum.	61.01.EO9
<ul style="list-style-type: none">• discuss the requirements of service to a minor.	61.01.EO10

In this chapter

This chapter focuses on administrative inspections and subpoenas. Refer to the following chart for specific topics.

Topic	See Page
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Administrative Inspections

[61.01.EO1, 61.01.EO2, 61.01.EO3, 61.01.EO4]

Introduction

Government agencies have limited authority and related powers to conduct administrative inspections and issue administrative subpoenas.

Warrantless administrative inspections

Many state agencies can conduct warrantless administrative inspections to ensure compliance with laws within that agency's scope of authority. Each agency's inspection authority is defined by a specific statute.

Statutory grounds for inspection warrants

Per *Code of Civil Procedure Section 1822.50*, an **inspection warrant** is a written court order that directs a state or local official to conduct any inspection necessary to enforce any law or regulation relating to any of the following areas:

- building
- fire
- safety
- plumbing
- electrical
- health
- labor
- zoning

NOTE: Peace officers cannot subvert the legal requirements of a search warrant by using inspection authority.

Continued on next page

Administrative Inspections, Continued

Requirements for issuance

An inspection warrant is issued upon a showing of cause (*Code of Civil Procedure Section 1822.51*). The inspection warrant must be supported by an affidavit that contains all of the following:

- particular description of the place to be inspected,
 - the purpose of the inspection, and
 - a statement that consent has been sought and refused, or reasonable justification for failure to seek consent.
 - authority for issuance of inspection warrant will vary by agency.
-

Time requirements for execution

Once an inspection warrant has been issued, it must be executed and returned to the issuing judge within the time specified, not to exceed 14 days. After 14 days, the judge can sign an extension of the original inspection warrant if the judge is satisfied that the extension is in the public interest.

The inspection warrant must be executed between the hours of 8:00 a.m. and 6:00 p.m. The owner of the place to be searched has a right to be present unless the issuing judge has authorized the search to be conducted in the owner's absence (*Code of Civil Procedure Section 1822.56*).

Unless the judge specifically authorized immediate execution of the inspection warrant, before attempting service, investigators must give at least 24 hours notice to the person or property subject to the inspection warrant.

Continued on next page

Administrative Inspections, Continued

Examples

- Example: A judge issued an inspection warrant on June 1. The investigator gave 24 hours notice to the property owner and executed the warrant on June 11 in the afternoon. The inspection warrant was properly executed.
- Example: An inspection warrant was issued by a judge who authorized immediate execution based on the investigator's representation that critical evidence would otherwise be destroyed or removed. Without giving any notice to the property owner, the investigator executed the inspection warrant that same morning. The inspection warrant was properly executed.
- Non-example: After securing an inspection warrant from Judge Smith, an investigator executed the warrant and returned it to Judge Jones. The inspection warrant has not been properly executed because it was not returned to the issuing judge.
-

Continued on next page

Administrative Inspections, Continued

Operational planning

Operational planning for execution of a warrant is required. Special circumstances may impact the planning of execution of a warrant. The following list of factors may be important in assessing risk:

- location
- criminal history
- type of violation investigated
- other intelligence
- fortifications
- emergency services support
- officer safety considerations
- contact information

NOTE: There is always a level of risk in executing a warrant. The above factors may be important, but they are not exclusive in determining the risk to officer safety.

NOTE: Please refer to LD 60: *Surveillance* for details of operational planning.

Forcible entry to serve inspection warrant

No forcible entry is permitted unless specifically authorized by the issuing judge. The judge will only authorize a forcible entry if the facts demonstrate one of the following:

- reasonable suspicion of a violation that poses an immediate threat to health or safety, or
 - previous unsuccessful attempts to serve a warrant.
-

Continued on next page

Administrative Inspections, Continued

Denial of inspection authority

Denial of an investigator's inspection authority may be grounds for administrative action. Please refer to specific agency policy or statutory authority for details.

Refusing to allow an inspection pursuant to an inspection warrant is a misdemeanor (*Code of Civil Procedure Section 1822.57*).

Collecting and preserving evidence

Investigators executing an inspection warrant may be required to collect and preserve evidence. When executing inspection warrants, it may be most effective to designate one or two investigators as **finders**. Each investigator should memorialize in a written report what he or she found and where he or she found it. This principle applies equally to inspections of rooms, vehicles, persons, computers, and any buildings.

All evidence should be carefully recorded and marked for identification. This ensures the **chain of evidence**, or the proof that the item has been maintained in the condition in which it was found. It may be most effective to designate one investigator to secure and control each item of evidence after it is found. If an investigator accepts an item to be booked as evidence, he or she must mark the item so that he or she can immediately identify the item at a later time.

NOTE: Please refer to LD 30: *Crime Scenes, Evidence and Forensics* for information regarding chain of custody record.

Administrative Subpoenas

[61.01.EO5, 61.01.EO6, 61.01.EO7, 61.01.EO8, 61.01.EO9, 61.01.EO10]

Introduction An investigator can use an administrative subpoena to compel a person to appear at a hearing or to produce documents pursuant to *Government Code Sections 11180-11191*.

Definitions An **administrative subpoena** is a written order for the presence of a witness at a hearing.

An **administrative subpoena duces tecum** is a written order for the production of certain documents, books, or items from the person with control over those documents, books, or items (the custodian).

Validity An administrative subpoena is valid throughout California, if properly served.

Preparation The preparation and use of administrative subpoenas may vary by agency. Different agencies may have specific formats and requirements. Please refer to specific agency policy for details.

Who can issue Under *Government Code Section 11450.20*, at the request of a party, either an administrative subpoena or an administrative subpoena duces tecum can be issued by any of the following:

- the agency or investigator, or
 - the attorney of record.
-

Continued on next page

Administrative Subpoenas, Continued

No affidavit required

No affidavit is required for an administrative subpoena. Under *Government Code Section 11450.10*, a witness can be subpoenaed to attend a hearing at any reasonable time or place.

Affidavit requirements

Under *Code of Civil Procedure Section 1985*, an administrative subpoena duces tecum must include an affidavit that states the following:

- good cause for the production of documents, books, or items,
 - a specific description of the matters desired to be produced,
 - why the items sought are material to the case, and
 - that the witness has those items in his or her possession or control.
-

Custodian of records

An administrative subpoena duces tecum requires the custodian to execute an affidavit stating that the custodian has produced the documents requested. The custodian must either:

- deliver the documents or a copy of the documents,
- make the documents available for inspection or copying.

NOTE: Some costs may be involved when obtaining records. Refer to agency policies and procedures.

Continued on next page

Administrative Subpoenas, Continued

Possible records

It may be possible to issue an administrative subpoena duces tecum for some or all of the following records. The person whose records are sought by the investigator may provide written authorization, in lieu of an administrative subpoena duces tecum.

Records	<i>Code of Civil Procedure Section</i>
Consumer	1985.3
Employment	1985.6
Medical	1985.7

NOTE: Always refer to specific agency policy for details.

Proof of service

All served subpoenas must be accompanied by a **proof of service**. (a sworn record attesting to compliance with the legal methods of service and agency policy)

Service requirements of an administrative subpoena

A subpoena must allow a witness a reasonable time for preparation and travel to the place of attendance.

Under *Code of Civil Procedure Section 1987*, the following are valid forms of service for an administrative subpoena:

- personal delivery by any person,
 - certified mail with return receipt requested, or
 - messenger when the witness acknowledges receipt of the subpoena by telephone or mail, or in person, and provides personal identifying information (e.g., date of birth, DMV identification number, etc.).
-

Continued on next page

Administrative Subpoenas, Continued

Due diligence

To locate an individual for service of a subpoena, investigators may consider some or all of the following resources:

Resource	Type of Information
Neighborhood canvas	Personal information, confirm identification
Employers	Work history, personal information and future employment
Police departments	Agency contacts, firearms records
State/federal agencies	Criminal, licensing, personal information
Post Office	Forwarding history, mail cover, address owner information
Utilities	Personal and subscriber information
Investigative search engines (e.g., Autotrax, Merlin Information Services)	Property and personal information
Schools	Personal information
Welfare data system	Asset and personal information
Court records	Judgments, convictions, restraining orders, liens
UCC records	Business interests, liens
CLETS	Personal and vehicle information

Continued on next page

Administrative Subpoenas, Continued

Due diligence
(continued)

Resource	Type of Information
Internet	Virtually unlimited depending on privacy laws. Investigators should check the reliability of internet sources.
Real estate/rental agreements	Ownership and renter information
Subscriber information	Personal information
Phone books	Personal information

Service on peace officers

An officer or public employee can be served personally or through his or her employer or agent (*Government Code Section 68097.1*).

Examples

Example: A witness is required to appear at an administrative hearing before a state agency. The witness lives in northern California, but the hearing is being held in southern California. An agency investigator prepares the subpoena in southern California and has it signed by the agency's attorney of record. The investigator mails the completed subpoena to another investigator in northern California, who then personally delivers the subpoena to the witness at his residence. The subpoena has been properly issued and served.

Continued on next page

Administrative Subpoenas, Continued

Examples (continued)

- Example: An investigator wishes to interview a witness who may have information relevant to the investigator's case. The investigator prepares an administrative subpoena that is issued by the investigator's agency, commanding the witness to appear at the investigator's office. The investigator then sends the administrative subpoena by certified mail, return receipt requested. This is a valid form of service for an administrative subpoena.
- Non-example: An investigator prepares and has issued an administrative subpoena requiring the witness to appear on the morning of September 2. The investigator personally serves the witness late in the evening on September 1. The service is invalid because it does not allow a reasonable time for preparation and travel.
-

Service requirements of an administrative subpoena duces tecum

A subpoena duces tecum must include a copy of the subpoena, affidavit, and proof of service (*Code of Civil Procedure Sections 1985, and 1987.5*). These items must be served according to one of the following methods:

- personal delivery by any person,
- by certified mail, return receipt requested,
- personally or by mail to the attorney of record of a party, or
- designated agent for service of process.

A subpoena duces tecum must be served according to the following parameters:

- mailed at least ten days before the specified date of production, or
 - personally served on the custodian of records, at least five days before the specified date of production.
-

Continued on next page

Administrative Subpoenas, Continued

Service requirements for a minor

Under *Code of Civil Procedure Section 1987*, if the witness or custodian is a minor, then service must be made to one of the following:

- the parent, guardian, conservator, or similar fiduciary,
 - any person with care or control of the minor,
 - any person with whom the minor resides,
 - any person with whom the minor is employed, or
 - the minor, if he or she is at least twelve years old.
-

Examples

Example: A fifteen-year-old undercover informant is subpoenaed to appear at an administrative hearing. The investigator personally served the administrative subpoena on the minor. This is valid service of the administrative subpoena.

Example: An investigator is given an administrative subpoena to serve on a seventeen-year-old male witness. The investigator gives the administrative subpoena to the witness' work supervisor. This is valid service of the administrative subpoena.

Non-example: A seventeen-year-old female is a witness whose presence is required at an administrative hearing. An investigator attempts to serve a subpoena on the witness at her home, but no one answers the investigator's knock on the door. The investigator notices a next door neighbor watering the lawn and engages the neighbor in conversation. The neighbor provides the investigator with the home address for the witness' twenty-year-old sister. The investigator drives to the sister's house and gives her the subpoena for the witness. The subpoena service is invalid because the sister does not reside with the witness, and there is no evidence that the sister has care or control of the witness.

Continued on next page

Administrative Subpoenas, Continued

Objections

Any person who objects to his or her appearance, or to the production of items, may bring a **motion to quash** or a **motion to modify**. The court will make any reasonable orders relating to the subpoena to protect from unreasonable or oppressive demands, or violations of any privacy rights (*Code of Civil Procedure Section 1987.1*).

Chapter Synopsis

Learning need Investigators should understand that government agencies have limited inspection authority and related powers defined by statute.

Statutory grounds for inspection warrants [61.01.EO1] Per *Code of Civil Procedure Section 1822.50*, an inspection warrant is a written court order that directs a state or local official to conduct any inspection necessary to enforce any law or regulation relating to building, fire, safety, plumbing, electrical, health, labor, and/or zoning.

Requirements for issuance [61.01.EO2] An inspection warrant is issued upon a showing of cause (*Code of Civil Procedure Section 1822.51*). The inspection warrant must be supported by an affidavit that contains a particular description of the place to be inspected, the purpose of the inspection, and a statement that consent has been sought and refused, or reasonable justification for failure to seek consent.

Time requirements for execution [61.01.EO3] Once an inspection warrant has been issued, it must be executed and returned to the issuing judge within the time specified, not to exceed 14 days.

Collecting and preserving evidence [61.01.EO4] Investigators executing an inspection warrant may be required to collect and preserve evidence. When executing inspection warrants, it may be most effective to designate one or two investigators as finders. Each investigator should memorialize in a written report what he or she found and where he or she found it.

Definitions [61.01.EO5] An administrative subpoena is a written order for the presence of a witness at a hearing.

Who can issue [61.01.EO6] Under *Government Code Section 11450.20*, at the request of a party, either an administrative subpoena or an administrative subpoena duces tecum can be issued by the agency or investigator, or the attorney of record.

Continued on next page

Chapter Synopsis, Continue

Affidavit requirements [61.01.EO7]

Under *Code of Civil Procedure Section 1985*, an administrative subpoena duces tecum must include an affidavit that states good cause for the production of documents, books, or items, a specific description of the matters desired to be produced, why the items sought are material to the case, and that the witness has those items in his or her possession or control.

Service requirements of an administrative subpoena [61.01.EO8]

A subpoena must allow a witness a reasonable time for preparation and travel to the place of attendance.

Service requirements of an administrative subpoena duces tecum [61.01.EO9]

A subpoena duces tecum must include a copy of the subpoena, affidavit, and proof of service (*Code of Civil Procedure Sections 1985 and 1987.5*). These items must be served by: personal delivery by any person, by certified mail, return receipt requested, or personally or by mail to the attorney of record of a party.

A subpoena duces tecum must be served by mail at least ten days before the specified date of production, or personally served on the custodian of records, at least five days before the specified date of production.

Service requirements for a minor [61.01.EO10]

Under *Code of Civil Procedure Section 1987*, if the witness or custodian is a minor, then service must be made to one of the following:

- the parent, guardian, conservator, or similar fiduciary,
 - any person with care or control of the minor,
 - any person with whom the minor resides,
 - any person with whom the minor is employed, or
 - the minor, if he or she is at least twelve years old.
-

Workbook Learning Activities, Continued

Student notes

Chapter 2

Search Warrants

Overview

Learning need Investigators should know the requirements for a special master when executing search warrants.

Learning objectives The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to:	E. O. Code
• describe the purpose of a special master.	61.02.EO7
• describe circumstances in which a special master is required for search warrant execution.	61.02.EO8
• describe a search warrant execution with a special master.	61.02.EO9
• discuss the need for a court order to release or dispose of evidence.	61.02.EO10

Continued on next page

Overview, Continued

In this chapter This chapter focuses on search warrants. Refer to the following chart for specific topics.

Topic	See Page
Legal Procedures	2-3
Chapter Synopsis	2-5
Workbook Learning Activities	2-6

Legal Procedures

[61.02.EO7, 61.02.EO8, 61.02.EO9, 61.02.EO10]

Introduction

An investigation may result in administrative, civil, and/or criminal action. Legal procedures may impact the outcome of some or all of these actions.

Special master

A **special master** is an attorney selected from a list of attorneys maintained by the State Bar and is considered a public employee. The purpose of the special master is to hold any information seized pursuant to a search warrant confidential, except in direct response to inquiry by the court.

Circumstances when a special master is required

The court must appoint a special master for any search warrant seeking documentary evidence in the possession or control of a lawyer, physician, psychotherapist, or a member of the clergy. However, no special master is necessary when that professional is reasonably suspected of criminal activity that is the target of the search warrant (*Penal Code Section 1524(d)*).

Evidence seized as the result of a search warrant may be used in civil, administrative and/or criminal proceedings.

Search warrant execution with a special master

Any search conducted by a special master may be conducted in a manner that permits the party serving the warrant or his or her designee to accompany the special master as he or she conducts his or her search.

However, that party or his or her designee may not participate in the search nor shall he or she examine any of the items being searched by the special master except upon agreement of the party upon whom the warrant has been served (*Penal Code Section 1524(e)*).

Continued on next page

Legal Procedures, Continued

Examples

Example: An investigator suspected an individual of submitting fraudulent insurance claims for psychotherapy visits. The investigator secured a search warrant for the psychotherapist's records. A special master will be needed for the search warrant execution.

Example: A lawyer is suspected of using his office to sell prescription drugs to underage minors. The investigator obtained a search warrant to look for evidence of the illegal activity at the lawyer's office. A special master is not needed for the search warrant execution.

Non-example: An investigator obtains a search warrant to search a chiropractor's office for evidence that the chiropractor is involved in illegal activity. The investigator asks the court to appoint a special master. No special master is necessary for the search of a chiropractor's office.

Court order to release or dispose of evidence

Once evidence has been taken pursuant to a search warrant that evidence cannot simply be returned upon request. All evidence seized pursuant to a warrant can only be returned or disposed of (e.g., destroyed, given to a third party's custody, etc.) pursuant to a court order.

Chapter Synopsis

Learning need	Investigators should understand the requirements for a special master when executing search warrants.
Special master [61.02.EO7]	A special master is an attorney selected from a list of attorneys maintained by the State Bar and is considered a public employee.
Circumstances a special master is required [61.02.EO8]	The court must appoint a special master for any search warrant seeking documentary evidence in the possession or control of a lawyer, physician psychotherapist, or a member of the clergy.
Execution with a special master [61.02.EO9]	Any search conducted by a special master may be conducted in a manner that permits the party serving the warrant to accompany the special master as the search is conducted.
Court order to release or dispose of evidence [61.02.EO10]	Once evidence has been taken pursuant to a search warrant, then that evidence cannot simply be returned upon request. All evidence seized pursuant to a warrant can only be returned or disposed of (e.g., destroyed, given to a third party's custody, etc.) pursuant to a court order.

Workbook Learning Activities

Introduction

To help you review and apply the material covered in this chapter, a selection of learning activities has been included. No answers are provided. However, by referring to the appropriate text, you should be able to prepare a response.

Activity questions

1. An investigator seized evidence pursuant to an inspection warrant. The administrative and criminal proceedings were completed. Explain what steps the investigator should take to release the evidence.

Chapter 3

Hearings

Overview

Learning need Investigators should know how legal procedures may relate to administrative, civil and/or criminal hearings, and the basic mechanics of administrative hearings.

Learning objectives The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to:	E. O. Code
<ul style="list-style-type: none">describe how official information may be exempt from disclosure.	61.03.EO1
<ul style="list-style-type: none">discuss possible disciplinary actions by an agency.	61.03.EO2
<ul style="list-style-type: none">explain the standards of proof that apply to administrative hearing and criminal trials.	61.03.EO3

Continued on next page

Overview, Continued

In this chapter This chapter focuses on legal procedures that may be used in administrative hearings. Refer to the following chart for specific topics.

Topic	See Page
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Chapter Synopsis	3-6
Workbook Learning Activities	3-8

Administrative Hearings

[61.03.EO1, 61.03.EO2, 61.03.EO3]

Introduction Investigators should understand the fundamentals of administrative hearings.

Definition An **administrative hearing** is a legal proceeding regarding applications for license or disciplinary action against a licensee.

Disclosure of official information **Official information** is information acquired in confidence by a public employee in the course of the investigator's duty. If disclosure of official information is forbidden by law, or is against the public interest because of the necessity to keep the official information confidential, then an investigator may refuse to disclose it and request an *in camera* hearing (*Evidence Code Section 1040*).

***In camera* hearing** An **in camera hearing** is a hearing conducted by a judge who determines whether official information should be disclosed.

NOTE: For details of *in camera* hearings see LD 62: *Case Management and Sources of Information*.

Hearing procedures Administrative hearings are presided over by an administrative law judge. Testimony and evidence may be presented by both parties. All testimony is taken under oath and recorded by a court reporter.

Administrative law judges have broader discretion to admit hearsay testimony.

Continued on next page

Administrative Hearings, Continued

Licensing and disciplinary actions

Certain agencies have the authority to issue or deny licenses. Those agencies also have the authority to discipline licensees. Disciplinary actions may include the following:

- warnings,
 - notice of corrections,
 - fines,
 - license suspension,
 - license revocation,
 - administrative citations, and/or
 - civil penalties.
-

Examples

Example: During trial, a DMV investigator stated that he had identified a stolen vehicle by its secondary vehicle identification number. The defense attorney asked the investigator where the secondary number was located on the vehicle. The investigator refused to answer the question because the secondary vehicle identification is official information.

Example: An investigator was called to testify at a preliminary hearing. The defense attorney questioned the investigator about the identity of the confidential informant involved in the investigation. Because the investigation was ongoing, the investigator refused to disclose the identity of the confidential informant as it was official information and requested an *in camera* hearing.

Non-example: During a hearing, an investigator was asked to state his agency's policy for collection of evidence. The investigator refused, claiming it was official information. Agency policies are not official information and must be disclosed.

Continued on next page

Administrative Hearings, Continued

Standard of proof

The **standard of proof** is the amount of evidence that must be shown to prove an allegation.

The standard of proof at an administrative hearing as established by statute, regulation, or case law is either:

- preponderance of the evidence, or
- clear and convincing evidence.

Unless otherwise specified, the standard of proof in any administrative hearing is preponderance of the evidence.

The standard of proof at a criminal trial is the highest, **beyond a reasonable doubt**. This standard does not apply to administrative hearings.

Clear and convincing evidence

Evidence indicating that the thing to be proved is highly probable or reasonably certain. This is a greater burden than preponderance of the evidence, the standard applied in most civil trials, but less than evidence beyond reasonable doubt (the norm of criminal trials).

Preponderance of the evidence

The greater weight of the evidence; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

This is the burden of proof in most civil trials, in which the jury is instructed to find for the party that, on the whole, has the stronger evidence, however slight the edge may be.

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Administrative Hearings, Continued

Administrative hearsay Administrative hearsay is admissible to supplement or explain direct evidence (*Government Code Section 11512(d)*). Applies only in administrative hearings.

Examples

Example: An accusation is filed by the California Medical Board (CMB) against a doctor. In addition to criminal charges filed by the District Attorney's office, the CMB seeks to revoke the doctor's license to practice medicine in California because the doctor allegedly had sexual intercourse with several of his female patients while they were under anesthesia. Based on CMB statutes, clear and convincing evidence will be the standard of proof at the administrative hearing to revoke the doctor's professional license.

Example: The Department of Alcoholic Beverage Control files an accusation against a licensee charging that the licensee sold alcohol to underage minors. At the hearing to revoke the license, preponderance of the evidence will be the standard of proof.

Non-example A bartender is accused of criminal negligence for serving alcohol to a customer who died of alcohol poisoning after consuming 15 drinks in an hour. At the criminal trial, the case investigator testified that he thought that the standard of proof was preponderance of the evidence. The correct standard of proof is beyond a reasonable doubt.

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Administrative Hearings, Continued

Hearing decisions

The administrative law judge will render a proposed decision and send it to the agency director. The director of the agency has the power to accept, reject, or modify the proposed decision (*Government Code Section 11517*).

Right to appeal

The licensee has the right to appeal the agency's decision. The licensee must exhaust all administrative processes before appealing the matter to Superior Court.

Chapter Synopsis

Learning need Investigators should know how legal procedures may relate to administrative, civil and/or criminal hearings, and the basic mechanics of administrative hearings.

Disclosure of official information [61.03.EO1] Official information is information acquired in confidence by a public employee in the course of his or her duty. If disclosure of official information is forbidden by law, or is against the public interest because of the necessity to keep the official information confidential, then an investigator may refuse to disclose it and request an *in camera* hearing (*Evidence Code Section 1040*).

Licensing and disciplinary actions [61.03.EO2] Each agency has the authority to issue or deny licenses. Each agency also has the authority to discipline licensees.

Standard of proof [61.03.EO3] The standard of proof is the amount of evidence that must be shown to prove an allegation. The standard of proof at an administrative hearing is either preponderance of the evidence, or clear and convincing evidence.

Workbook Learning Activities, Continued

Student notes

GLOSSARY

Introduction **The following glossary terms apply only to Learning Domain 61:
Administrative Procedures.**

administrative hearing A legal proceeding regarding applications for license or disciplinary action against a licensee

administrative subpoena A written order for the presence of a witness at a hearing

administrative subpoena duces tecum A written order for the production of certain documents, books, or items from the person with control over those documents, books, or items (the custodian)

chain of evidence The proof that the item has been maintained in the condition in which it was found

finder Verifies and documents that the evidence collected falls within the scope of the warrant and that the item was maintained under a continuous chain of accountability

in camera hearing A hearing conducted by a judge who determines whether official information should be disclosed

inspection warrant A written court order that directs a state or local official to conduct any inspection necessary to enforce any law or regulation relating to any of the following areas: building, fire, safety, plumbing, electrical, health, labor, and/or zoning

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Glossary, Continued

motion to modify Any person who objects to either his/her appearance, or to the production of items, may bring a motion to modify.

motion to quash Any person who objects to either his/her appearance, or to the production of items, may bring a motion to quash

official information Information acquired in confidence by a public employee in the course of his or her duty

proof of service A sworn record attesting to compliance with the legal methods of service and agency policy

special master An attorney selected from a list of attorneys maintained by the State Bar, who is considered a public employee, and will hold all information confidential unless the court requires otherwise

standard of proof The amount of evidence that must be shown to prove an allegation
