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Virginia Department of Behavioral Health  
and Developmental Services

# INVESTIGATING ABUSE & NEGLECT

## Module 3

Weighing Evidence and Drawing Conclusions



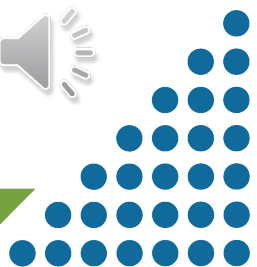
This course provides participants with information on how to perform one of the most difficult aspects of conducting an investigation: analyzing evidence and reaching a sound conclusion.

The program addresses those issues related to determining what “really” happened including standards of proof, how the quality of the investigation affects the ability of an agency to reach appropriate conclusions, the reconciliation of competing explanations for what occurred, and how organizations can develop administrative processes which will assist them in routinely arriving at valid investigatory conclusions



The course consists of five sections which must be completed for participants to receive credit for the training. The course consists of the following teaching methodologies:

1. Commentary: Participants will read commentary on each slide.
2. Audio: Recordings/short lectures will accompany many of the slides.
3. Video: Video lectures will need to be viewed by participants at certain points during the course.
4. Knowledge Check: After each section, participants will take a short quiz to demonstrate understanding of what they've learned.



The five sections that comprise the course are:

Section 1: The Investigatory Question

Slide 5

Section 2: Circumstantial Evidence and Exclusive Opportunity

Slide 14

Section 3: Standards of Proof

Slide 24

Section 4: Reconciling Differences in Evidence

Slide 29

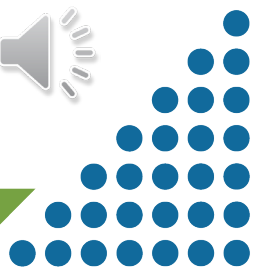
Section 5: Drawing Conclusions

Slide 37



## Objectives

1. To review the concept of the “investigatory question,” including its significance to the investigative process; and
2. To practice applying the concept of the “investigatory question” to a set of facts.



Before we talk about the investigatory question, let's review a few other key concepts:

- **Investigation:** In this context an investigation is the systematic collection of facts for the purpose of describing and explaining an event or series of events.
- **Fact:** Each piece of information collected about an incident.
- **Evidence:** Any information collected during an investigation that has the potential to help describe and explain the incident under scrutiny.
- **Conclusion:** Findings of fact, which are the investigator's ultimate determination about what occurred and why.

Always remember that the three values of an investigation are **speed, thoroughness and objectivity**.

What is the investigatory question?

- The investigatory question is the “ultimate question.” It’s the reason an investigation is being conducted.
- There can be more than one investigatory question.
- The investigatory question helps an investigator stay organized and on track.

1. An investigatory question should always include time (when) and space (location/where).
2. Most importantly, it needs to focus on the single issue (question) that needs to be solved above all others.

For example, if we have a scenario where a resident, Julie, is found in the living room of a community residence with a bruised cheek around 4:00 pm, how would we write the investigatory question?

One way we wouldn't write it is, "When did the incident occur?" Even though we know the time that the incident was discovered (4:00 pm) and knowing when the actual incident occurred would be something we would want to figure out over the course of an investigation, it's still not the "ultimate question."

Here's how we would want to write it:

"How did Julie sustain the injury to her cheek which was discovered in the living room of the community residence around 4:00 pm?"

1. If the time of the incident is unknown, then we would use the time it was discovered.
2. Likewise, if we don't know where the incident occurred, we would use the location where it was discovered.
3. While we typically frame questions as open ended ("How did...") we sometimes have to frame it as a close ended question depending on the circumstance.

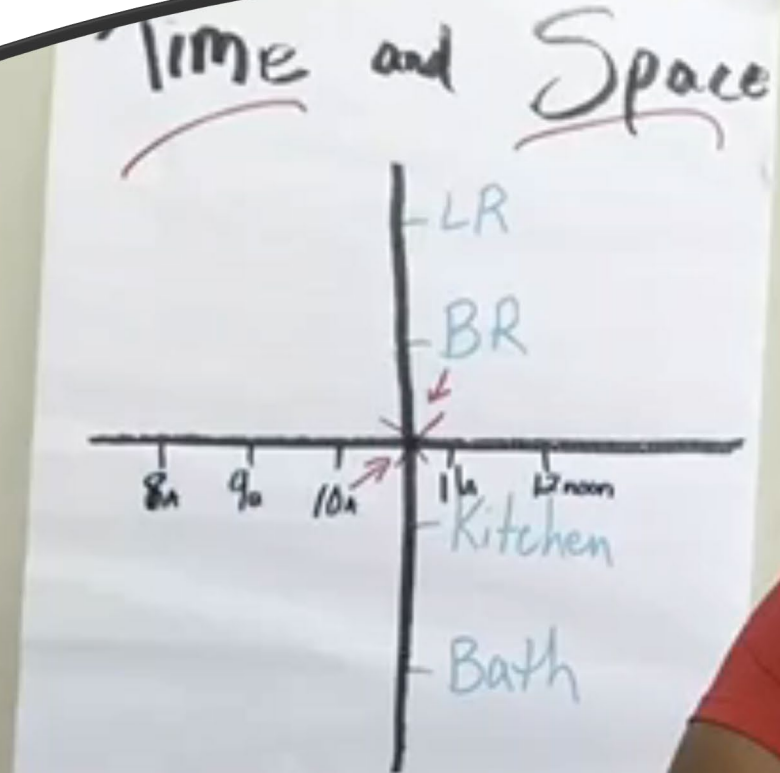
For example, if a nurse is alleged to have verbally abused a resident at 2:15 pm in the community residence, then we would use close ended framing because it is a yes or no question. Either the nurse verbally abused the resident, or they didn't.

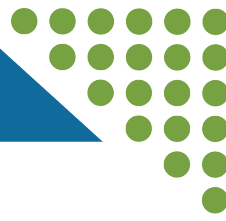
- The investigatory question in this case would be, "Did the nurse verbally abuse the resident at 2:15 pm in the community residence?"

Likewise, if there's an allegation that a direct care worker slapped a resident at 4:15 pm in the living room and the resident has a scratch on their cheek, we would still form a close ended question because it's possible that scratch was inflicted in some other way unrelated to the direct care worker's slap, thus we can't use it as part of the investigatory question when looking into this allegation.

- Here, the investigatory question would be, "Did the direct care worker slap the individual at 4:15 pm in the living room?"

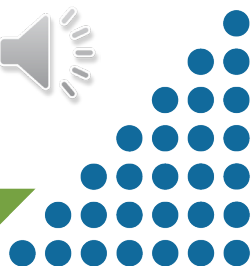






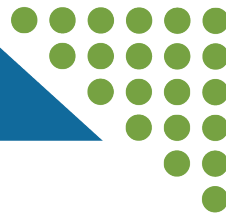
## Objectives

1. To discuss and understand the degree to which circumstantial evidence influences the investigator's ability to draw a valid conclusion.
2. To describe and analyze the concept of “exclusive opportunity” in the context of a circumstantial evidence case; and,
3. To practice applying the concept of exclusive opportunity to a set of facts.

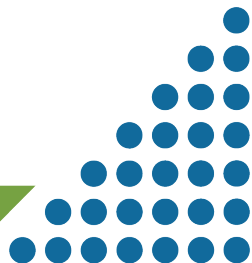


Circumstantial evidence is any evidence that is not direct evidence (eye-witness testimony). This includes:

- **Physical evidence** is often referred to as the thing itself. It can include objects, injuries, the spatial relationship between objects and the scene of an incident.
- **Demonstrative evidence** is a representation of physical evidence. This would include photos, diagrams, x-rays, video, etc.
- **Testimonial evidence** is opinion statements, expert opinion statements, or information from any person who isn't an eye-witness and who can provide information valuable to the investigation.
- **Documentary evidence** is any written evidence. This includes reports, notes, sign in sheets, etc.



- Circumstantial evidence is not “bad” evidence and can be useful in determining what happened even if it’s not direct evidence. Both types have the potential to help describe and explain what occurred.
- Circumstantial evidence helps to describe and explain what occurred, but no single piece of circumstantial evidence will answer the investigatory question conclusively.
- Sometimes a person is convicted – even in criminal trials – exclusively on circumstantial evidence



Review the information below after listening

## What is Exclusive Opportunity?

Exclusive Opportunity can be used when there is a case where there is no available direct evidence (eye-witness testimony) and where circumstantial evidence is most likely to justify a certain investigatory conclusion.

Exclusive opportunity is a very powerful concept that will allow an investigator to as objectively as possible analyze the evidence in a circumstantial evidence case. It is particularly useful in dealing with situations where a non-verbal individual is discovered with an injury, and there are limited possibilities of access, as well as sufficient observation of the location to establish who had access to the location.



Exclusive opportunity will require the following elements of proof:

1. Evidence establishing the conditions immediately prior to the event in question;
2. Evidence that there was no reasonable way those conditions could change without notice of a person in view of the location;
3. Evidence that there was a person in view of that location;
4. The introduction of a change -- e.g., someone walking into the location -- which is observed by the person in view of that location;
5. Evidence establishing the conditions immediately after the event; and,
6. No additional reasonable explanation for the change in conditions but the event observed.

**Investigatory Question:**

Who removed the resident's petty cash from the agency manager's office?

**Observation:**

Louise was working alone in the common area of the office. Within a few minutes, Frank entered the office and went down the hall where the individual offices were. Louise heard a door shut. Frank then left, walking by Louise in a hurry. A few minutes later, the manager came in and found the petty cash box was emptied.

**1. Evidence establishing the conditions immediately prior to the event in question;**

Louise had been in the common area of the office and observed no one else there, however, there is no evidence that she knew anything about the petty cash. It is altogether possible it had already been removed from the manager's office.

**2. Evidence that there was no reasonable way those conditions could change without notice of a person in view of the location;**

Although Louise sat in the common area of the office and apparently saw Frank enter (although the facts do mention that for certain), it is possible that there are other entrances to the manager's office area that would not have been in Louise's view.

**3. Evidence that there was a person in view of that location;**

We do not know for certain that Louise was in view of the location, only that she was sitting in the common area of the office.

**4. The introduction of a change — e.g., someone walking into the location — which is observed by the person in view of that location;**

If we credit that Louise saw Frank enter the office, then we have an introduction of change into the scene.

**5. Evidence establishing the conditions immediately after the event observed.**

At least with respect to the petty cash, we can establish that condition after the event observed.

**6. No additional reasonable explanation for the change in conditions but the event observed.**

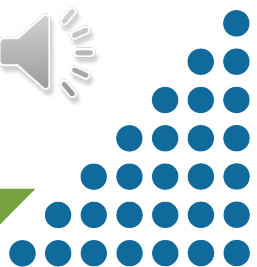
Given what we noted above, there are other possibilities. For example, someone else may have also entered the manager's office via a different route, or the money may have been removed at an earlier time.

**Conclusion**

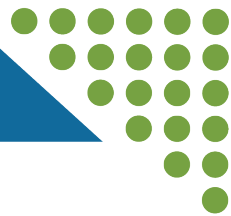
Given what we noted above, there are other possibilities, so we can not prove Frank removed the petty cash based on the elements used to establish exclusive opportunity.

## Objectives

1. To understand the difference between proof beyond a reasonable doubt and a preponderance of the evidence when seeking to draw investigatory conclusions
2. To practice applying the standard – preponderance of the evidence – to a set of facts.

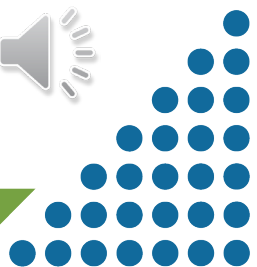


- In criminal proceedings the standard of proof is “beyond a reasonable doubt” which amounts to a conclusion being supported by 95 percent of the evidence.
- In administrative law cases that are often related to fraud and patient medical rights among other issues, the standard of “clear and convincing” is used. Conclusions in this case are supported by 75 percent of the evidence.
- In civil proceeding the standard is “preponderance of evidence.” This is the standard that agency investigators will adhere to.
- A preponderance of the evidence exists when **a conclusion is supported by at least 51 percent of the evidence.**
- In concluding that something meets this burden, it is possible that there will be even reasonable doubts to the contrary; however, it would appear to any reasonable person that the event is more likely to have occurred than not.




## Objective

Participants will learn how to evaluate different kinds of evidence in conjunction with witness statements to draw appropriate conclusions.



- An investigator will include what he or she believes to be relevant facts in the “**Summary of Evidence.**”
- That summary should include a description of all such facts regardless of whether they support what the investigator believes is the answer to the investigatory question.
- The “**Analysis and Conclusions**” section of the final report will allow the investigator to identify what he or she believes is the answer to the investigatory question and provide analysis that supports that conclusion.
- The investigator should never make reference to facts in the “Analysis and Conclusions” section that have not been referenced in the “Summary of Evidence.”

## It is difficult “to know.”

- Even cooperative people working quickly can exhibit disagreement as to what occurred in any situation; and, regardless of this human frailty, there are methods to resolve such potential conflict.
  - If there is a conflict in evidence, other pieces of evidence can help resolve that conflict.
  - For example, if you have two pieces of physical evidence that contradict each other, then perhaps an eye-witness account can provide the answer to this contradiction.
  - Likewise, if you have two witnesses that have contradictory statements, perhaps there is physical evidence that can help resolve the discrepancy between the two either by making both statements add up to a whole that makes sense, or disproving one statement in favor of another.
- 

The case that will be discussed over the next few slides will give you an idea of how to analyze and reconcile differences in evidence.

### **Investigatory Question:**

Did Louise Ajay bang the head of Mary Smith (a teenage resident) against the bathroom wall on June 12 at approximately 3:00 p.m.

### **Summary of Direct Evidence:**

A nurse, Lisa Marks, claims she entered the bathroom in Cottage #4 at approximately 3:00 p.m. on June 12 and, standing just inside the doorway, saw Louise Ajay, an aide, banging Mary Smith's head against the far wall. Ms. Marks claimed that Mary was standing with her back against the far wall and Ms. Ajay was facing Mary with her hands around her collar. Ms. Marks said she immediately left the room and went to the Unit Supervisor, Anne Right, to file an incident report.

Ms. Ajay said that she was in fact in the bathroom at that time with Mary; however, she was trying to remove burrs from Mary's hair which were the result of playful activity at a picnic earlier that day. Ms. Ajay claimed that she was trying to hold Mary still as Mary was fidgety during the time she was in the bathroom. She said one of her hands was around the collar as she tried to protect Mary from hitting her head on the wall.

Mary is non-verbal

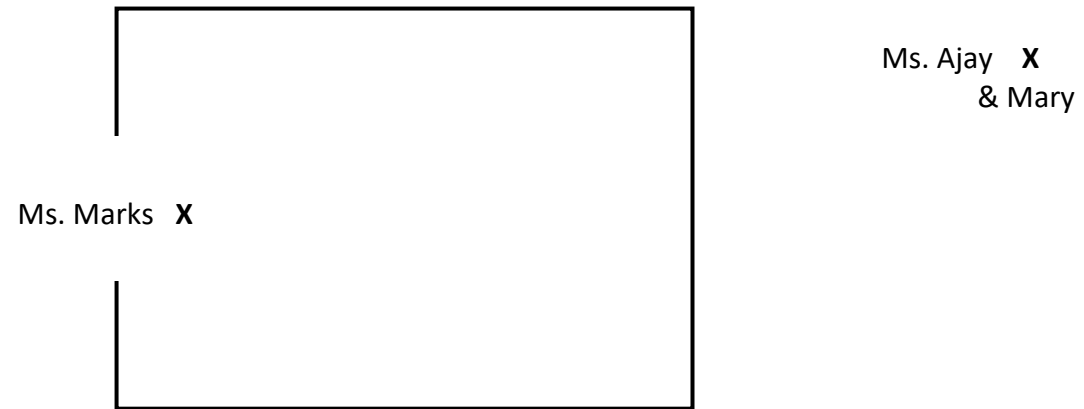
## Summary of Circumstantial Evidence:

The Unit Supervisor, Anne Right, indicated that Mary had been at the picnic and that Ms. Ajay was the person responsible for her on that outing. She said that this was the first time that Ms. Ajay had worked with Mary and that she, Ms. Right, was worried when she made the assignment that perhaps Mary was too active for Ms. Ajay, who sometimes has a short temper. Regardless, the employment record indicates that Ms. Ajay had never been charged with any act of abuse and/or neglect and last year was rated highly effective during the performance appraisal review.

Ms. Right also provided additional information about the relationship between Ms. Marks and Ms. Ajay. According to Ms. Right, Ms. Ajay had married Ms. Marks' ex-husband. They had a strained relationship at work, and the employment record of both indicates they had been counseled for exhibiting rude behavior toward each other in front of residents.

The medical report indicated that there was no visible trauma anywhere on the back of Mary's head, but there were red marks on the front, right (as you look at Mary) portion of her neck. During the investigation I created the attached diagram from a visit to the bathroom area and the statements received from both Ms. Ajay and Ms. Marks.

Diagram of the incident:



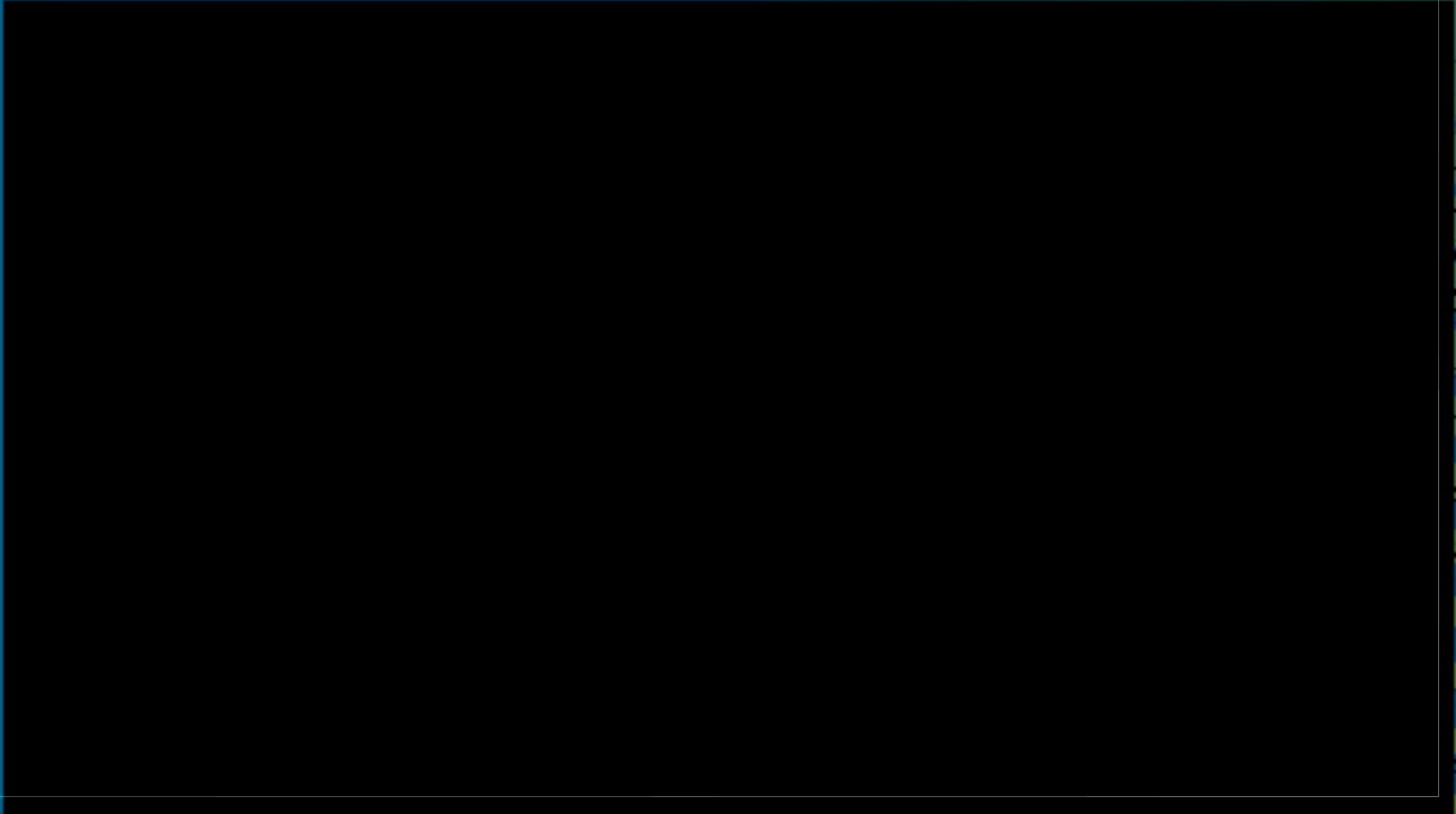
## Analyzing the Evidence:

The physical evidence in this case – particularly the condition of the back of Ms. Smith’s head – is quite compelling.

At the same time the case illustrates a situation where likely no one is “lying.” The facts provide a convincing argument with respect to how Ms. Marks might have so substantially erred. First, based on her position by the door, she did not have a good angle from which to observe what occurred between Ms. Ajay and Ms. Smith. And based on whatever she did observe, she appears to have been predisposed to believe the worst of Ms. Ajay given their shared history, thus she easily could have jumped to the conclusion that Ms. Ajay was intending to harm Ms. Smith.

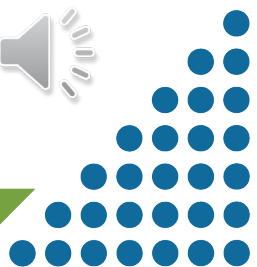
It’s these factors of shared history and where Ms. Marks was positioned in relation to the incident that can help resolve the discrepancy in testimony between Ms. Marks and Ms. Ajay.

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## Objective

Participants will understand how to properly analyze evidence and how to use that analysis to write a proper conclusion.



After listening, read the slide below.

### The Three Problems:

- Statements of conclusion are included in the summary of evidence. For example, a fact that would appear in the summary might be: According to the victim, she was in the room alone for about five minutes. A statement of conclusion would be: The victim of the attack was in the room alone for about five minutes.
- In the analysis, the investigator repeats facts reported in the summary without weighing or analyzing the evidence.
- In the analysis, the investigator introduces new facts, i.e., facts not mentioned in the summary of evidence.

This was in part covered in the previous section as reconciling differences in evidence will also be part of your analysis and will guide you to appropriate conclusions.




Clearly it is critical that investigators understand this distinction between analysis and conclusion so that their reports contain clear and concise reporting of all relevant evidence, and supportable conclusions which are based on a thorough analysis of the facts. Another way to understand this distinction is to consider the following two questions:

1. “What did you learn about the incident?” compared with,
2. “What really happened and why?”

Let's start by reaching a conclusion from the case from the previous section, Banging or Burrs. Recall that we found that despite Ms. Marks testimony, there were reasons to believe that Ms. Ajay was telling the truth as well. Let's weigh the factors one more time, shall we?

1. Ms. Marks said that Ms. Ajay assaulted Ms. Smith by banging her head against the wall.
2. Ms. Ajay said she was trying to get burrs out of Ms. Smith's hair and that the resident was struggling as she did so.
3. Our diagram of the incident showed Ms. Marks' position did not grant her the clearest view of the incident.
4. We know both Ms. Marks and Ms. Ajay have an acrimonious relationship predicated on past history.
5. Ms. Smith did have an injury to her the back of her head.

### Conclusion:

Remember that we have to use **preponderance of the evidence** (is more likely than not to have happened) when coming to a conclusion. Given that the differences in testimony have been resolved by other pieces of evidence and that Ms. Ajay's testimony explains the bruises on the back of Ms. Smith's head without implicating her in abuse, we can conclude that Louise Ajay did not bang the head of Mary Smith (a teenage resident) against the bathroom wall on June 12 at approximately 3:00 p.m. 

Let's try another one:


## **A Slippery Tale**

Betty reported that she had been helping Karen, a verbal individual, in the bathroom. As Karen approached a sink, Betty claims that Karen fell, hitting the top of her right bicep against the front edge of the sink. Betty thought it would be best to have Karen's arm examined for an injury. During the medical exam, Karen blurted out to the nurse that, "Betty punched me. That's why my arm hurts. She punched me!" At the time of the initial examination -- about ten minutes after the incident allegedly occurred -- there was no physical evidence of an injury. The investigator constructed the investigatory question in the following manner.

### **Investigatory Question**

Did Betty punch Karen in the right bicep at approximately 7:30 a.m. on January 15 in the bathroom at 17 Spring Street?

The investigator collected the following facts:

1. Karen said Betty punched her for taking too long to get ready to go to her day programming.
  2. Betty said that Karen had fallen as she approached the sink. Betty said that there was a patch of water at that spot and Karen had slipped on the tile floor. Betty said Karen fell so hard against the sink she ended up face down on the floor.
  3. Karen has no ambulatory problems.
  4. Karen has a well documented history of attention seeking, including allegations against virtually every staff member for physical abuse.
  5. Betty has an excellent work record and has never been accused of abuse by anyone.
  6. When the investigator looked at the bathroom about 1 hour after the incident occurred, he noticed a patch of water in front of the sink. He made a diagram and took a picture of the area. The bathroom, however, had not been secured.
- 

7. About 5 minutes after Betty reported the incident, her supervisor checked the bathroom and noticed a patch of water on the floor in front of the sink. The supervisor was quite sure no one else could have been in the bathroom since everyone was, by that time, at breakfast.
8. During a reexamination that evening, the nurse found a maturing, deep bruise on Karen's arm at the location where Betty said Karen hit the sink. There were no other injuries.
9. Karen had been under constant observation that day because of her anger at what she said was an attack by Betty. The persons observing her reported no additional incident that might have caused the bruise.
10. No person who saw Karen immediately after the incident noticed any liquid or other soiling of Karen's clothing.

Betty and Karen's stories conflict, so we can look to circumstantial evidence to help **resolve the conflict in testimony.**

- Circumstantial evidence that supports Betty's story is the patch of water on the floor that was discovered by the supervisor and later documented by the investigator.
- However, the scene was not properly secured before the investigator arrived and it's always possible that Betty put that spot of water there herself.
- Circumstantial evidence in support of Karen's story is the bruise, and the lack of other injuries sustained. Betty said that Karen ended up face down on the floor. In such a situation it might be expected that there would be other injuries sustained, however, it's not a certainty that they would be either. Betty's story also accounts for the bruise on Karen's arm. The lack of water or soiling on Karen's clothes is another point of evidence in favor of her story but it's still possible that she just slipped in the water and did not get any on her clothing.
- Karen's history of allegations of abuse and attention seeking suggest a possible ulterior motive (assuming that all her other allegations were false and unsubstantiated).
- Betty's past history does not clear her of wrongdoing but is another factor in favor of her innocence.
- **Exclusive opportunity** cannot be established for another suspect in this incident given that Karen was under observation both before and after the incident and in addition the supervisor said it was not possible for anyone else to have been in the bathroom around the time of the incident.

Once again, using the standard of preponderance of the evidence, we have to decide whether it's more likely than not for Betty to have punched Karen.

The lack of circumstantial evidence in terms of bruising to Karen's face and no water or soiling on her clothes is more consistent with Karen's version of the story.

However, it's not totally improbable that Karen might have avoided both of these in Betty's version of events either and the patch of water on the floor also adds credence to her story. When you couple this with Betty and Karen's past histories, we can come to this conclusion:

**The allegation that Betty punched Karen in the right bicep at approximately 7:30 a.m. on January 15 in the bathroom at 17 Spring Street, does not meet the standard of preponderance of the evidence.**



**Concluding Remarks**

**This concludes Module 3 – Please proceed to completing the comprehensive test**



### Module 1

Abuse and Neglect  
overview which will  
include:

Human Rights  
Regulations

Investigatory Process



### Module 2

Interviewing

Skills and Application



### Module 3

Weighing Evidence  
and Drawing  
Conclusions

Reaching Investigation  
Determinations



**Complete Test**

