



The Legal Basis of Public Health

An Individual or Group Study Course in Ten Modules

Module 5 Inspections

SS0005



CDC
CENTERS FOR DISEASE CONTROL
AND PREVENTION

The Legal Basis of Public Health

SS0005 - Module 5, Inspections

Continuing Nursing Education (CNE)

This activity for **2 contact hours** is provided by The Centers for Disease Control and Prevention (CDC), which is accredited as a provider of continuing education in nursing by the American Nurses Credentialing Center's Commission on Accreditation.

Continuing Education Units (CEU)

The Centers for Disease Control and Prevention (CDC) awards **.15 Continuing Education Unit (CEU)**. The CDC is an Authorized CEU Sponsor of the International Association for Continuing Education and Training.

The Legal Basis of Public Health

Authors

Babette Neuberger, JD, MPH
Associate Dean for Academic Affairs
University of Illinois-Chicago
School of Public Health

Tom Christoffel, JD
Professor of Public Health (retired)
Consultant and Writer
Boulder, Colorado

Course Design

Babette Neuberger, JD, MPH
Associate Dean for Academic Affairs
University of Illinois-Chicago
School of Public Health

Catherine B. Shoemaker, MEd
Senior Instructional Designer
Division of Media and Training, PHPPO
Centers for Disease Control and Prevention
Public Health Training Network

Writing and Design Consultant

Sharon Cramer Bell, Ed.M
Publications Consultant
Decatur, Georgia

Content Reviewer

Verla Neslund, JD
Deputy Legal Advisor to CDC and ATSDR
Centers for Disease Control and Prevention
Agency for Toxic Substances and Disease Registry

Supported by

The Centers for Disease Control and Prevention
The Association of Schools of Public Health

Cooperative Agreement U36-CCU 300430-14

Provided through

Public Health Training Network
<http://www.cdc.gov/phtn>

About the Authors

Babette Neuberger is a faculty member and the Associate Dean for Academic Affairs at the University of Illinois at Chicago School of Public Health. She holds a law degree and masters of public health degree, and specializes in the field of environmental and occupational health law and policy. Professor Neuberger teaches courses on public health law, the political process, negotiations, environmental and public health policy. She was an environmental enforcement attorney with the United States Environmental Protection Agency and has taught numerous training courses for environmental health staff at the state and federal level. Professor Neuberger is a member of the Illinois Bar.

Tom Christoffel is a lawyer by training, with particular interest in the use of law to protect the public from injury. He has been an educator for most of his career, including twenty years on the faculty of the University of Illinois at Chicago School of Public Health. He has developed and taught courses on public health law, injury prevention, government regulation, health care politics, policy analysis, and related subjects. He currently holds adjunct faculty appointments at the UIC School of Public Health, the Johns Hopkins University School of Hygiene and Public Health, and the University of Colorado School of Medicine. Professor Christoffel's books include *Health and the Law: A Handbook for Health Professionals*, *Protecting the Public: Legal Issues in Injury Prevention* (with Stephen P. Teret) and *Injury Prevention and Public Health: Practical Knowledge, Skills, and Strategies* (with Susan Scavo Gallagher). He is also the author of numerous book chapters and journal articles on law, public health, injury prevention, evaluation methodology, medical peer review, and other topics. Professor Christoffel is a Trustee of the Civil Justice Foundation, a member of the Editorial Board of the Journal of Public Health Policy, and a member of the Massachusetts Bar. He is currently a consultant and freelance writer in Boulder, Colorado.

Course Contents

This course consists of the following ten modules and a Coordinator Guide, which includes suggestions for using the course materials.

SS0001	Module 1, Introduction
SS0002	Module 2, Data Collection and Surveillance
SS0003	Module 3, Service Delivery
SS0004	Module 4, Licensing
SS0005	Module 5, Inspections
SS0006	Module 6, Enforcement
SS0007	Module 7, Policy Development
SS0008	Module 8, Negotiation
SS0009	Module 9, Communication
SS0010	Module 10, Responsibility and Liability

Table of contents

About this module	1
Overview	1
Module components	1
Goals	1
Learning objectives	2
Introduction	3
What constitutes an inspection?	3
Constitutionality of administrative inspections	4
Inspection authority	6
The entry phase	8
Whether or not to announce the inspection	8
Consent to inspect	9
Administrative warrant requirements	15
Permissible warrantless searches	16
Conducting the inspection	20
Extent of authority	20
Data collection	22
Suspicion of criminal activity	25
The exit phase	27
Other ways to obtain information	29
Subpoenas	29
The inspector's demeanor	31
In summary	31
Self-check review	33
References	35
Group exercises	36
Appendix A - Complaint for Administrative Search Warrant	38
Appendix B - Memorandum of Law	40
Appendix C - Order of Administrative Search Warrant	43
Evaluation and Test for Module 5	45

About this module

Overview¹

Inspections are major public health activities, which also have privacy implications.

“Inspections are the staple of public health enforcement,” notes Frank Grad in his *Public Health Law Manual*.² According to the National Profile of Local Health Departments, 72 percent of all local health departments report involvement in inspection activities.

Public health inspections involve intrusion into private premises and raise the possibility of running afoul of the Fourth Amendment prohibition on unreasonable governmental search and seizure.

Module components

This module consists of the following components:

- Text and self-study exercises to be completed individually or discussed with your learning community. These exercises are meant to help you absorb what you have just read and immediately apply the concepts.
- A self-check review, found at the end of the text, will help you assess your understanding of the material.
- Group exercises to undertake with your learning community, found at the end of the text.

Goals

The module will help you understand how the law defines a search and under what circumstances a public health inspection constitutes a search. You will also understand what procedures must be followed prior to, during, and after an inspection to assure compliance with Fourth Amendment protections.

¹ Material for this chapter was adapted with permission from the U.S. Environmental Protection Agency’s *Basic Inspector Training Course Manual, Fundamentals of Environmental Compliance Inspections* (July 1997).

² Grad, p. 123.

Learning objectives

At the end of this module, you should be able to:

1. Distinguish how a health and safety inspection is different from a police search.
 2. Identify the necessary circumstances for gaining lawful entry to a facility for purposes of inspection.
 3. Describe the four techniques for data collection and how to use them to the full extent of your legal authority.
 4. Describe how you and the facility official can benefit from an exit interview following an inspection.
-



Before you begin...

Before you begin this module, you may want to gather the following resources to help you understand how the general principles of law discussed herein apply to your specific state program:

- Copies of your state law and relevant regulations
- Policies developed by your agency relating to inspections and the handling of confidential information
- A flow chart of your organization

You may also want to identify experienced inspectors or legal experts within your agency who are willing to act as a resource for you.

Introduction

Inspections must be conducted properly to ensure enforcement.

Health and safety inspections are central to the core assurance function of public health agencies. Through inspections, public health agencies assure their constituents that applicable standards are being met. The importance of conducting inspections properly cannot be over-emphasized. Data gathered during an inspection creates the foundation for a later enforcement action. If the inspection is conducted improperly, or in violation of statutory or constitutional authority, the case may be tossed out of court. Thus, every inspection should be approached with an attitude that the matter may go to court.

What constitutes an inspection?

Definition

Frank Grad defines an inspection as:

“a visitation or survey to determine whether or not conditions deleterious to health exist. [Unlike police searches,] inspections are not conducted with the particular aim of uncovering evidence for purposes of criminal prosecution.”³

But health and safety inspections can nevertheless involve levels of intrusion into the privacy and autonomy of individuals similar to those of a police search.

Public health inspections differ from police searches.

Under what authority do public health officers conduct inspections? And why is it that public health officials do not have to follow the more stringent procedural rules required by the U.S. Constitution of police officers gathering evidence of a crime? The answer lies in the fact that the Supreme Court has defined the legal rights surrounding safety and health inspections somewhat differently than they have defined the legal rights surrounding police searches.

³ Grad, p. 123.

Constitutionality of administrative inspections

The Fourth Amendment protects our expectation of privacy.

The Fourth Amendment to the U.S. Constitution provides that:

“The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

Police cannot search without probable cause.

The Fourth Amendment protects the expectation of privacy, a notion which is central to a free democracy. It is intended to prevent official harassment and arbitrary or improper intrusion by government into the lives of its citizens. Law enforcement officials cannot search a person or dwelling arbitrarily, nor can they do so in a discriminatory or unreasonable manner. This means that the police may not conduct a search until they have first persuaded a "neutral" third party, i.e., a judge or magistrate, that there is a specific reason to suspect that a search of a particular place will disclose a specified violation of the law. This is the "probable cause" warrant requirement. (It should be noted that there are several established exceptions to this rule, such as searches incident to a lawful arrest or to prevent loss of evidence, that allow certain warrantless searches.)

Public health inspections are often random and unannounced.

If building code and nursing home inspections were constitutionally equated with police searches, and if the requirements of the Fourth Amendment were applied to public health and safety as they are in the criminal law context, health and safety inspectors engaged in code enforcement would need to go before a judge prior to each inspection. They would have to describe the premises to be searched, the purpose of the search, and the specific code violations likely to be discovered. Most important, the enforcement officers would have to provide reasonable grounds for suspecting that these specific violations would be uncovered. Such a requirement would be incompatible with the type of routine, random, unannounced inspections that have become basic to public health and safety enforcement.

Need for health and safety inspections must be balanced with Fourth Amendment requirements.

Over the years, the Supreme Court has had great difficulty in balancing the "special needs" of health and safety inspections, ranging from fire codes to drunk driving restrictions, with the requirements of the Fourth Amendment. In many ways this reflects a conflict between pragmatism and principle. On the one hand, the Court has wanted to afford government wide latitude in pursuing important health and safety goals. On the other hand, the Court has not wanted to step onto a slippery slope of exceptions that might vitiate the protections of the Fourth Amendment.

The Supreme Court has dealt with this problem in two ways:

- First, it has dispensed with the requirement of specific probable cause for routine public health inspections. Second, the Court has developed significantly less stringent administrative warrant requirements to be used for such inspections.

Warrants are easier to obtain for public health inspections than for police searches.

Administrative warrant requirements for public health inspections are much easier to satisfy than those established for police searches. In essence, a public health officer need only establish that an inspection is to be conducted pursuant to a pre-existing neutral administrative plan or scheme. For example, a county health department inspects solid waste landfills on a regularly scheduled basis. If a landfill owner refuses to grant an inspector voluntary access to inspect the facility, the inspector must apply for an administrative search warrant. In the application for a warrant, the inspector would describe the inspection schedule for the county's solid waste landfills and attest that this inspection is one of those that has been routinely scheduled as part of the county's general administrative plan for enforcement of the solid waste landfill regulations [*Camara v. Municipal Court*, 387 U.S. 523 (1967); *Marshall v. Barlow's, Inc.*, 346 U.S. 307 (1978)].

It is more difficult to obtain a warrant to search private homes than businesses.

Implicit in the balancing of principle with pragmatism, however, is the courts' recognition that citizens expect greater privacy within their homes than within a business. Thus, the courts will require an agency to prove a more compelling need before authorizing inspection of a private home than will be required to obtain a warrant to search a business.

Health department inspection policies generally recognize this distinction. For example, by law Texas county health officials have an implied right to inspect commercial food establishments and may do so without first obtaining a warrant. However, when investigating home-based food operations, food inspectors must always obtain a warrant, or written consent, prior to the inspection.

The distinction between home and business is recognized by state and federal policies.

The United States Food and Drug Administration reinforces this distinction. Its *Investigation Operations Manual* states that when inspecting business premises, a warrant is not necessary unless a refusal or partial refusal is encountered or anticipated. In contrast, when the premises to be inspected are also used for living quarters, inspectors must first obtain a warrant for the inspection unless:

1. The owner or operator is fully agreeable and offers no resistance or objection whatsoever, or
2. The living quarters are physically separated from the actual business operation being inspected by means of doors or other building construction which provides a distinct division of the premises into two physical areas, one for living quarters and the other for business operations, and the inspector does not enter the living area.

A business operates by privilege; a home has the right to privacy.

A commonly articulated rationale for drawing a distinction between a residence and a business is that the latter has been given the rights and privileges of operating within a state's jurisdiction and therefore must submit to the burden of inspection. In contrast, the right to be left alone in our own homes and private affairs, free from governmental intrusion, is a fundamental right in our society, one that is implicitly recognized by the Bill of Rights.

(Administrative warrant requirements will be discussed more fully below.)

Inspection authority

Every search must be authorized by law.

As Frank Grad explains, "No inspection or search may be conducted unless it has been authorized by a valid statute. This means that the law authorizing the inspection must be constitutional, that the search or investigation must further a public interest advanced by the law, that the person who conducts the search or investigation must have authority to do so, and that the search or inspection is limited to the enforcement of the law that authorized it."⁴

In sum, you must thoroughly acquaint yourself with your state inspection laws and follow the dictates of those laws when conducting inspections.

⁴ Grad, p. 132

The remainder of this module will focus on the three primary stages of an inspection: the entry phase, the conducting of the inspection itself, and the exit interview. Rules and recommendations pertaining to each of these phases will be discussed to ensure that you carry out inspections properly and lawfully.



Bringing it home...

What kinds of inspections does your agency carry out?

What are the specific statutes authorizing your agency to carry out such inspections?

The entry phase

There are a number of issues to resolve prior to carrying out an inspection. Should an inspection be announced or unannounced? Do you need consent or a warrant? What constitutes consensual entry? How is an administrative warrant obtained? When are warrantless searches permitted?

Whether or not to announce the inspection

Advance notice

Agencies and departments may either require or prohibit advance notice as part of their written or informal inspection protocols. Whether or not a facility should be given advance notice of an inspection depends upon several factors:

- The authorizing statute
- Basic practices and procedures of the agency
- The need to conduct a "surprise" inspection as opposed to the desire to have the inspected facility adequately prepared for the inspection

Unannounced inspections are better for catching violations.

Certain statutes, such as the Occupational Safety and Health Act, make it a crime for an agency to give prior warning of a health and safety inspection. Unannounced inspections are frequently preferred in order to assure that evidence of violations will not be destroyed or that a facility is operating as usual when inspected.

Announced inspections assure that personnel and records are on site.

On the other hand, advanced notice is sometimes preferred to ensure, among other things, that the most knowledgeable person is available during the inspection, that records to be inspected are at the facility, or that a given operation will be performed on the inspection date in question. If the inspection site is far away, advanced notice may provide more time to determine that consent has been given to conduct the inspection, thus avoiding a wasted trip.

Consent to inspect

Inspections generally require consent or a search warrant.

Careful attention should be paid to gaining lawful entry to the place that is the subject of the inspection. The United States Supreme Court has determined that administrative inspections must be conducted pursuant to an administrative search warrant unless consent has specifically been given to conduct the search (or in certain other exceptional circumstances which are described below).

Whether you need a warrant to inspect a licensed facility varies according to the jurisdiction and the program you are administering. In the following circumstances “consent” is imposed as a matter of law, with no obligation to obtain a search warrant.

1. Authorized by state law or regulation

Inspections are a condition of many licenses.

In some jurisdictions, state law or regulation provides that the licensee must submit to reasonable inspections carried out during normal business hours as a condition of obtaining a license. For example, Arizona law provides the following:

“Upon a determination by the director that there is reasonable cause to believe a health care institution is not adhering to the licensing requirements established pursuant to this chapter, the director and any duly designated employee or agent thereof, including county health representatives and county or municipal fire inspectors, shall, consistent with standard medical practices, have the right to enter upon and into the premises of any health care institution which is licensed, or required to be licensed, pursuant to this chapter at any reasonable time for the purpose of determining the state of compliance with the provisions of this chapter, the rules of the department adopted pursuant thereto, and local fire ordinances or rules. Any application for licensure under this chapter shall constitute permission for and complete acquiescence in any such entry or inspection of the premises during the pendency of the application and, if licensed, during the term of the license.”

[*Arizona Revised Statute, A.R.S. 36-424.*]

2. Expressed as a condition of the license

Similar language is frequently found in licenses or permits issued by a state or local health authority.

3. *Implied consent by the courts*

Establishments with public health significance imply consent by seeking a license.

Finally, in some jurisdictions the courts have found implied consent by the licensee to submit to an inspection. Implied consent means the court determines as a matter of law that a licensee consents to an inspection, even though such consent was not expressly granted. The courts will find implied consent where circumstances indicate that consent is necessary to carry out the functions of the administrative agency. As Grad notes, this is particularly true for licensed establishments with substantial public health significance. The courts justify warrantless inspections on the theory that “a person who accepts the benefits of a license must also accept its burdens...[for example] the inspection of regulated businesses for which a license is required. Seeking a license implies an acceptance of the conditions attached.”⁵

Warrantless inspections must still be conducted within the limits of the law.

When you conduct warrantless inspections of licensed facilities under one of the situations described above, you are nonetheless obligated to conduct the inspection within the constraints imposed by the authorizing statute. Thus, the manner, scope, extent, and time of the inspection should not exceed the limits contained in the laws or regulations authorizing agency inspections.

In approaching an inspection you must therefore address the following critical questions:

- Has consent been given to conduct the inspection?
- Did the person giving consent have authority to do so?
- Was the consent given voluntarily?

If each of these questions can be answered in the affirmative, the inspection can proceed without an administrative search warrant or other court authorization.

⁵ Grad, pp 136-7



Stop and think...

To understand the potential for confusion surrounding consent, consider the following scenario: Eldridge Smith, an employee of the Mesa County Health Department charged with inspecting food establishments, has selected a 24-hour grocery store to inspect. At 11:00 pm one evening, under the pretext of wanting to make a telephone call, he asks the night cashier for permission to enter the store's private stock room. The clerk responds, "It's down the hall and to the left."

Has consent been given to conduct an inspection?

Does the night cashier have the authority to consent to an inspection?

Was "consent" given voluntarily?

Answers:

Clearly the night clerk has not granted consent to conduct an inspection. In order to grant consent, "consenters" must be fully informed of what they are consenting to. Moreover, it is not clear whether, even if she asked properly, the night clerk would have had authority to consent to an inspection.

Consent usually must come from the owner or tenant.	When entering any premises for inspection purposes, you should request to see the person in charge and ask that person directly if he or she has authority to grant permission to conduct an inspection. Consent generally must come from the person whose interest in the protection of privacy is the greatest. In the case of a commercial or business establishment, this is usually the proprietor. When inspecting a home, consent must be given by the person who resides there—either the homeowner or the tenant if the property is leased. The person giving consent need not do so expressly; a failure to respond negatively to the question—properly asked—may allow the inference that permission has been granted.
To obtain voluntary consent, use polite persuasion and reasoning.	<p>If the person in authority refuses consent to entry, it is usually useful to try to persuade him or her to the contrary. A polite, informative conversation about health agency authority, the purpose, nature, and extent of the proposed inspection, and the reason the facility was selected for inspection, may allay fears and gain consensual entry.</p> <p>If consent is still refused it may be worth suggesting that the person in authority consult with his or her legal counsel, who in turn may wish to speak with legal counsel representing the health department.</p>
When consent is refused, consider options.	If none of these attempts at obtaining voluntary consent is successful, you should leave promptly and contact the appropriate supervisor for further direction. Your supervisor may determine that further telephone contact involving officials higher in the agency would be appropriate and useful. It may be decided that it is not necessary to inspect this particular place or that a search warrant should be obtained in order to gain entry. (See the discussion on warrants below.)
Keep detailed notes of meetings.	Upon leaving any facility, you must promptly create a careful and detailed record, noting whom you spoke with and what was said. This information will be extremely helpful should it be determined that a warrant is necessary.
Never threaten legal action.	<i>Most important of all, however, nothing should be done or said to indicate a threat of legal action or that a warrant will be obtained if entry is denied.</i> The courts have held that threats to "take legal action" or "obtain a search warrant" are coercive in nature and, as a result, any consent following from there will not be considered voluntarily given.

Entry protocols

The following entry protocols are strongly advised:

- Except where the purpose of the inspection would thereby be thwarted, inspections should be conducted during normal business hours.
- You should arrive at the main door or gate of the facility and ask for the person in charge.
- You should present your credentials, badge, or other official papers to the person in charge.
- You should fully describe the purpose and nature of your business.
- Permission should then be asked to conduct the inspection.

Your entry procedures should be thoroughly documented in your notes in case it later becomes necessary to prove that entry was lawfully gained.



Bringing it home...

Does your agency provide pre-inspection notice?

Does it do so routinely or only in certain cases?

What are the benefits and drawbacks of pre-inspection notice?

How does your agency determine which premises are to be inspected?

Are administrative warrants routinely sought or is owner consent relied upon?

What is the procedure for obtaining warrants?



See Group exercise 5.1 at the end of the module.

Administrative warrant requirements

Evidence that an administrative warrant is required

If you have not gained voluntary consent to do a routine inspection of the premises, an administrative search warrant must be obtained except in the very narrowly defined circumstances described later in the section on “Permissible warrantless searches.”

You should be prepared to help your agency attorney demonstrate that:

- The inspection is part of a legitimate public health inspection program.
- The premises to be inspected fall within the category or geographical area covered by that inspection program.
- Entry has been refused.

You may have to testify that a warrant is needed.

You will likely be called upon to testify to these facts, either at an in-court hearing on the search warrant or by sworn written testimony, called an affidavit, (See Appendix A - Complaint for Administrative Search Warrant, Appendix B - the supporting Memorandum of Law, and Appendix C - Order of Administrative Search Warrant.)

Some states have varied these basic requirements. For example, the California Civil Procedures Code mandates that the application for a search warrant must include either a supporting affidavit stating that consent has been sought and refused or a justification by the applicant of the failure to seek consent [California Civil Procedures Code §1822.56, (West Supp 1988)].

In general, seeking a search warrant without first requesting the consent of the owner and notifying him or her that the agency is applying for a search warrant will usually require a greater demonstration of need or emergency conditions than if consent has been sought and refused and the owner has been given notice that a search warrant hearing is about to take place.

Inspections must not be discriminatory, abusive or corrupt.

The main constitutional concern laid down by the U.S. Supreme Court in the area of public health inspections is that inspection authority not be used in a discriminatory, abusive, or corrupt manner. As long as you can demonstrate that a place was selected for inspection for rational, neutral reasons as part of the agency’s routine inspection scheme and not to harass the owners for personal or political reasons, then the inspection should withstand constitutional scrutiny.

Warrants usually have time limitations.

An administrative warrant gives you judicial authority to enter specifically described locations and to perform specifically described inspection functions. The warrant will be valid for a limited and specified period of time, depending on the state. In North Carolina, for example, a warrant must be served within twenty-four hours [N.C. Gen.Stat. §15-27.2(e) (1983)], while in California a warrant is valid for fourteen days [California Civil Procedures Code §1822.55 (West 1980)]. It is important that you execute warrants (i.e., enter premises) and conduct inspections in strict accordance with the terms of the authorizing warrant.



Bringing it home...

Does the statutory authority in your jurisdiction and/or the licenses that are issued by your department require the licensee to "consent" to warrantless inspections?

If so, what are the penalties for violating this provision?

Permissible warrantless searches

Under very limited circumstances, you may conduct a search even without obtaining consent or a search warrant. These exceptions include:

Time constraints in emergencies

- Emergency situations when there is insufficient time to obtain a warrant. These include situations of imminent hazard as well as occasions when a delay may result in destruction or loss of evidence of a suspected violation.

- Pervasively regulated industries

 - Pervasively regulated industries, where health and safety inspections have a long, established history—such as meat packing plants, gun shops, and liquor stores. The U.S. Supreme Court has determined that these specifically designated industries have such an extensive history of government oversight that “no reasonable expectation of privacy” exists. [See *United States v. Biswell*, 406 U.S. 311, 316 (1972), and *Colonnade Catering Corp. v. United States*, 397 U.S. 72, 74, 77 (1970).]
- Businesses with public health significance

 - Certain licensed businesses, such as public health clinics, that have substantial public health significance. The legal rationale for this exception is that businesses that have benefitted from licensure must also accept the burdens or conditions which attach to licensure. (See Module 4, Licensing.) However, the extent of a warrantless inspection is constrained by the statutory authority. Thus you may only search areas of the facility that are subject to inspection and inspect those books and records that the licensee is required by law to maintain.
- “Open fields” and “plain view” situations

 - “Open fields” or “plain view” situations, where observations made by inspectors can be seen by anyone in a lawful position or place to make such observations. It is relatively easy to establish an exception to the warrant requirement under the “open fields” or “plain view” doctrine. An example would be observations made in a commercial establishment from areas that are normally open to the public, or observations of someone’s back yard made from the public alley while peering over a low-rise fence.



Stop and think...

You are responding to a complaint of garbage and debris tossed in a neighbor's back yard. If the back yard is enclosed by a twenty-foot brick wall requiring the use of the fire department's hook and ladder truck to see over the top, must you obtain a warrant to peer over the wall?

What if the twenty-foot wall does not obstruct a neighbor's view of the backyard, can you lawfully observe the back yard from the neighbor's property without a warrant?

Answers:

The answer to both questions is YES. In the first instance a warrant is required because the twenty-foot wall creates an expectation of privacy on the part of the homeowner. If, however the homeowner fails to build the wall to block the neighbor's view, an expectation of privacy would not be reasonable, and the inspector may view the backyard from the neighbor's home without a warrant.



See Group exercise 5.2 at the end of the module.



Bringing it home...

In your agency, who determines whether an emergency situation exists?

What, if any, procedures are established for making this kind of determination?

Which, if any, industries within your jurisdictional authority are considered to be "pervasively regulated industries"?

Even though it may not be required by law, the U.S. Environmental Protection Agency requires its inspectors to obtain a warrant to inspect "pervasively regulated industries." Is this a good policy? Why or why not?

What is the policy in your jurisdiction?

Conducting the inspection

When conducting an inspection, you must be absolutely clear about the extent of your authority. Clarity of authority will help you make a difficult decision when unexpected events transpire. For example, you should know what to do if the owner of the property withdraws previously given consent during the course of an inspection. Similarly, you should know what steps to take in the event evidence of a criminal nature is discovered or if the inspection reveals violations of other types of laws, such as labor laws or tax code violations.

Extent of authority

What limitations apply to inspection activities?

You may wonder:

- Which parts of the facility may be inspected?
- Whom may I interview?
- Which documents may I take or require to be photocopied for me?
- If I am inspecting under one statutory program but notice a violation of a different public health statute, may I collect evidence of this violation?
- In short, what limitations apply to my inspection activities?

Legal rights must be protected.

The risk of conducting an improper inspection is that someone's rights will be abridged and information you have obtained during or as a result of the inspection will not be able to be used as evidence to support an enforcement action. It is, therefore, very important that you follow appropriate legal steps when conducting an inspection.

Inspections must be reasonably conducted.

The Fourth Amendment prohibition against "unreasonable searches and seizures" has been interpreted to mean that administrative searches such as public health inspections must be "reasonably" conducted; i.e., conducted during normal business hours and limited in scope and duration to that which is reasonably necessary to carry out the regulatory program.

Be familiar with statutory authority prior to inspection.

The specific statute that authorizes the inspection also defines the nature and extent of your authority, including which areas may be inspected and which records may be examined. For example, because a greater expectation of privacy generally surrounds employee personnel records than other business documents, you should determine prior to the inspection whether you have legal authority to inspect and/or a need to photocopy such records.⁶ You should become thoroughly acquainted with the provisions of the statute you are enforcing and should carry relevant portions of these statutes, codes, or regulations with you during an inspection.

There may be limits or constraints attached to consent.

Occasionally, permission to inspect will be granted in a limited manner. For example, constraints may be placed on your movement or permission may be withdrawn midway through an inspection. What should you do if faced with a refusal to allow the taking of photographs, inspection of certain areas, or communication with certain employees? What should you do if permission to inspect is made dependent on your waiving liability in the event of injury on the premises?

Some limitations constitute denial of entry.

Virtually any effort to curtail the full extent of statutory inspection authority or to impose additional requirements, such as signing a waiver or leaving a copy of your inspection notes, can be construed as a denial of entry. Should an inspection continue in such a limited fashion or should you seek an administrative search warrant? It is very much a judgment call. The answer will depend on

- The importance of the inspection
- Whether inspection goals can be achieved notwithstanding the conditions imposed
- Concerns regarding setting a bad precedent
- Other departmental concerns

If permission is withdrawn during an inspection, you should follow the procedures described in the previous section for dealing with a straightforward denial of access. Any notes that were made, observations recorded, samples collected, or photographs taken up to the point when permission was withdrawn remain validly collected evidentiary material.

⁶ Two closely related legal issues concern the confidentiality of and limitations on the further disclosure of records obtained during an inspection. For example, in many states it is a crime to disclose personnel records to third parties unless authorized by statute or subpoena. You should familiarize yourself with the rules relating to confidentiality and disclosure of records to third parties discussed in Module 2, Data Collection and Surveillance.

Data collection

Records, interviews, samples, and observation must be documented.

Data collection is the heart of an inspection. Everything that you see, hear, smell, or touch is data that can be used to assess and confirm the compliance status of a facility. There are four basic data collection techniques: records inspection, interviews, physical sampling, and observation. Observation includes illustrations and photographs.

You should use a variety of methods to document a possible violation. For example, if a hazardous cleaning agent is improperly stored in close proximity to a food preparation area, you should carefully note the observation in your field notes and photograph the scene: including one picture providing an overview of the incident and another photograph taken close-up showing the label on the cleaning agent. You might also consider taking a sample of the cleaning agent to further corroborate the violation.

Unless data is carefully documented, its evidentiary value is limited. Your notes or report must contain an accurate and inclusive accounting and documentation of all inspection activities. All records, illustrations, photographs, samples, interviews, and other collected evidence should be documented as to date, location, purpose, and name of inspector. Thorough documentation is important since this information may be used years later in court.

Give a receipt for samples taken and split them if required.

Samples obtained during an inspection must be collected pursuant to statute and agency protocol and a receipt should be provided before exiting the facility. Under some state statutes, you may also be required to split samples with the facility. This gives the owner the opportunity to run a parallel analysis of the material.

When obtaining samples, you must also adhere to chain-of-custody protocols. Chain-of-custody is discussed in detail in Module 6, Enforcement.

Your notes should contain the following entries:

- General information about the inspected premises
- A description of the entry process
- Identification numbers for all samples, photos, records, and other data
- A description of sampling procedures (including any deviation from standard operating procedures)
- Interview notes (including full identification of all persons interviewed and others present during the conversation)
- Observations of general conditions and facility practices
- Unusual conditions or problems

Keep confidential information separate.

Confidential information should not appear in your notes or report. When confidential information is collected, it should be maintained in a separate location according to your agency's confidentiality procedures. Separating confidential information from the rest of your records is important because inspection notes and reports are often "public documents" accessible through Freedom of Information requests.

Make sure photos are useful.

Photographs and physical evidence of a violation are often critical to an enforcement action. Photographs especially often make or break a case. Experienced public health officers recommend the use of a Polaroid camera because you can see instantaneously whether the photograph is useful. If you must wait for film to be developed, you run the risk of being denied re-entry to re-photograph the violation.

Take multiple shots from different perspectives.

Multiple shots of the site should be taken. A sequential series of pictures is often extremely useful in documenting an investigation. For example, you should photograph an overview of the facility by taking one picture as you enter the scene, another as you move closer to the area in question, and a third close-up shot of the offending object. Photos should also be shot from multiple angles.



Bringing it home...

Under the statutes and rules applicable to your inspection program, what locations may be inspected?

What records and books may be inspected?

What samples may be collected?

Which employees may be interviewed?

Does your authorizing statute require inspectors to give receipts and/or split samples?

Suspicion of criminal activity

Public health inspectors should refer criminal violations to the appropriate agency.

If during the course of an inspection you notice a violation of laws or regulations not under public health authority or you obtain evidence of criminal activity, do you have authority to expand the inspection? Generally speaking, inspection authority is limited to carrying out the specific provisions of the statute that authorizes the inspection. Where a statute prescribes the areas which may be subject to inspection (for example, food preparation areas), the statute may not normally be used to inspect other areas of a building. However, if you detect violations that fall under the jurisdiction of another local, state, or federal agency during a properly conducted inspection, you should record your observations and refer the matter to the other agency. Such observations may be used as evidence in later proceedings by the other agency.

Fourth and Fifth Amendments apply to possible criminal violations.

The legal rules controlling the gathering of evidence of suspected criminal activity require further elaboration. As already explained, the Fourth Amendment prohibits police "searches and seizures" unless conducted pursuant to a warrant that has been issued based upon "probable cause" to believe that a crime has occurred or is occurring. In addition, the Fifth Amendment protects persons against coerced self-incrimination.

Constitutional protections take effect once criminal violations are suspected.

If you collect or observe enough information to have probable cause to believe that a crime has occurred or is occurring, then constitutional protections take effect and from that time forward any information you obtain or evidence you collect may not be used in a criminal prosecution unless the suspect's constitutional rights have been properly protected. At exactly what point you have the requisite belief that a crime has occurred or is occurring is clearly a subjective determination. But once that point is reached, any additional information you collect and any statements made may not be used in a criminal proceeding. Nor may such information be turned over to criminal investigators for their use. However, any information obtained and evidence seized up to that point is lawfully gathered and may be turned over to criminal investigators.

Once you suspect criminal activity, information collected for public health inspection may not be shared with a criminal investigation team.

It is strongly recommended that once you suspect criminal activity, the matter should be discussed with a supervisor and a decision should be made about referring it to local, state, or federal criminal investigators. You should not attempt to conduct a criminal investigation without further direction or unless "deputized" by criminal prosecutors. A decision may be made to conduct parallel criminal and civil investigations, in which case you may continue the administrative inspection and use the information in a civil enforcement action, but you may not share information with the criminal investigation team.

Module 6, Enforcement provides additional information about suspicion of criminal activity.

The exit phase

Exit interviews can be useful to officials at the inspected facility.

At the conclusion of a public health inspection, it is often useful and desirable to conduct an exit interview with facility officials. The exit interview can be a useful tool for explaining regulatory requirements, pointing out deficiencies or problems, discussing ways to achieve compliance, outlining corrective action for immediately threatening situations, and answering questions.

Determination of violations may require legal interpretations or additional information.

In some regulatory programs, inspectors are authorized to issue citations or tickets for observed violations. However, it may not always be easy for you to determine at the time of inspection whether a violation has occurred. That may require a legal interpretation of administration requirements and/or information not available at the conclusion of the inspection. In such situations you should use the exit interview to point out potential problems or deficiencies, rather than drawing the legal conclusion that a violation has occurred.



Bringing it home...

Can inspectors from your department issue tickets or citations?

Are inspectors prohibited from telling a company that a "violation" has been disclosed by the inspection?

In your program, are exit interviews conducted at the conclusion of an inspection? How are these structured?

How have inspectors responded when asked to share their inspection report or notes with a facility?

Other ways to obtain information

Inspections are not the only means of obtaining public health information. Requests can be made for voluntary disclosure of information. When such requests do not produce the required information, public health agencies have several compulsory disclosure procedures available to them, including:

- The power to require reports (See Module 4, Licensing)
- The power to inspect books, records, and premises
- The power to subpoena witnesses and documents

Subpoenas

Subpoenas require delivery of records and documents or appearance of witnesses.

Subpoena authority is a powerful but often under-utilized tool which enables an agency to gather information from individuals, businesses, or industry. A “subpoena duces tecum” (literally “take with you”) requires individuals and entities to deliver specified records, such as business records, and other documents to the agency. Subpoenas are also used to compel witnesses to appear before the agency and give testimony under oath.

Subpoena authority is not among an agency’s inherent powers, but exists through the explicit grant of such power by statute. In some jurisdictions an agency may issue a subpoena independent of a pending civil or criminal action. In fact, a subpoena is often used to gather information needed to initiate an enforcement action.

For example, the Arizona statute governing licensing and regulation of midwifery authorizes the Director of the Department of Health Services to issue administrative subpoenas to further *an investigation into possible violations of the midwifery law [ARS, Title 36 Public Health and Safety, Article 7 - Licensing and Regulation of Midwifery, 36-756.01]*. Using this authority the agency may gain access to "patient records, including clinical records, medical reports, laboratory statements and reports, files, films and oral statements relating to patient examinations, findings and treatment, *wherever such evidence is located.*" (emphasis added).

Administrative subpoenas are enforceable.

Administrative subpoenas are usually enforceable by the local superior court.



Stop and think...

Does your program have authority to issue subpoenas to support an investigative effort? How is this authority exercised?

May the agency issue the subpoena itself or must it ask a court to issue the subpoena for records and witnesses for a particular purpose?

How has your agency used this authority?

If you lack such authority, would your public health program benefit from the authority to issue administrative subpoenas?

What kind of information would you want to obtain through this mechanism?

How else might you legally gain access to the desired information?

The inspector's demeanor

Be courteous but purposeful.

Throughout an inspection, you should conduct yourself as a courteous, neutral, and credible representative of the public and its government, intent upon discharging your responsibilities pursuant to public mandate. You should avoid the appearance (and reality) of bias, hostility, arrogance, or contempt. At the same time, you need not be apologetic, weak, indecisive, or timid about carrying out your responsibilities. Bear in mind that you are often the initial or sole contact between the agency and the public. Therefore, you need to conduct yourself professionally and carry a message of purposefulness and helpfulness.

In summary

Proper inspections are crucial to enforcement.

Health and safety inspections are central to the core assurance function of public health agencies.⁷ Inspections are used as a tool to ensure that regulated facilities are meeting established public health goals as embodied in statutes and regulations. Data collected during inspections may be used in later enforcement actions to correct a serious health threat and/or to penalize a violator. This module has outlined the requirements for conducting a lawful and proper inspection, and the procedures that must be followed to ensure that evidence collected during an inspection may be used in a later enforcement proceeding. Module 6, Enforcement discusses the enforcement process and rules of evidence in greater detail.

⁷ The core functions of public health identified in *The Future of Public Health Report*—assessment, policy development, and assurance—are aimed at "fulfilling society's interest in assuring conditions in which people can be healthy."



Review of terminology...

The preceding pages used a number of legal terms that may have been unfamiliar to you. Some of the terms used are listed below. You may find it useful for review to define them now in your own words; doing this will also give you a glossary that is specific to this module. Feel free to add more terms.

administrative search warrant

affidavit

consensual entry

Fourth Amendment

implied consent

inspection

inspection authority

“open fields” situations

pervasively regulated industries

“plain view” situations

probable cause

search

statutory authority

subpoena

Self-check review

Check your knowledge of the preceding material by answering the questions below. Circle the letter of the correct response.

1. The Fourth Amendment provides that:
 - A. Personal privacy takes precedence over health and safety concerns.
 - B. Persons and homes cannot be searched arbitrarily.
 - C. Public health inspections cannot take place without probable cause.
 - D. Businesses may be searched during health inspections, but not private homes.

2. Unannounced inspections tend to assure that:
 - A. The most knowledgeable persons are available.
 - B. All records are at the facility.
 - C. Evidence of a violation is not destroyed.
 - D. Certain operations will be performed during the inspection.

3. Consent is implied or not required in all the following situations except:
 - A. The facility operates under license issued by the state.
 - B. The owner did not expressly deny consent when asked.
 - C. An administrative search warrant has been issued.
 - D. The person giving consent does not have authority.

4. An administrative search warrant is required:
 - A. When entry is denied for routine inspections
 - B. For pervasively regulated industries
 - C. When situations of imminent hazard are suspected
 - D. When observations can be made in “plain view” situations.

5. Denial of entry could be construed by:
- A. Refusal to allow access to confidential information
 - B. Refusal to allow taking of photographs
 - C. Requests to sign waivers of liability
 - D. All of the above
6. If you observe evidence of possible criminal activity during the course of a routine inspection, you should:
- A. Stop the health inspection immediately.
 - B. Report findings to your superiors.
 - C. Carefully document all relevant evidence and turn it over to the criminal investigators.
 - D. None of the above.

Answers:

1. B, 2. C, 3. D, 4. A, 5. D, 6.

References

Committee for the Study of the Future of Public Health, *The Future of Public Health*, Washington, D.C., National Academy Press (1988).

Department of Health and Human Services, Public Health Service, Food and Drug Administration, Office of Regulatory Affairs, Division of Emergency and Investigational Operations, *Investigations Operations Manual*, Chapter 5, Establishment Inspection, (January 1998). See http://www.fda.gov/ora/inspect_ref/iom/97title.html.

Gellhorn, W. & Byse, C. *Administrative Law Cases and Comments*, Foundation Press (1974).

Grad, F. *The Public Health Law Manual*, 2nd ed., American Public Health Association (1990).

National Association of County and City Health Officials (NACCHO), 1992-93, *National Profile of Local Health Departments*, National Surveillance Series. Washington, D.C.: NACCHO (1995).

U.S. Environmental Protection Agency, Basic Inspector Training Course Manual, *Fundamentals of Environmental Compliance Inspections* (July 1997).

Group exercises

Exercise 5.1 You have already thought about these questions for your own particular job. Now discuss them with your learning group. You may find that answers differ considerably, depending on the specific statute or agency.

Does your agency provide pre-inspection notice? Does it do so routinely or only in certain cases? What are the benefits and drawbacks of pre-inspection notice?

How does your agency determine which premises are to be inspected? Are administrative warrants routinely sought or is owner consent relied upon? What is the procedure for obtaining warrants?

Does the statutory authority in your jurisdiction and/or the licenses that are issued by your department require the licensee to "consent" to warrantless inspections? If so, what are the penalties for violating this provision?

Under the statutes and rules applicable to your inspection program, what locations may be inspected? What records and books may be inspected? What samples may be collected? Which employees may be interviewed?

Does your authorizing statute require inspectors to give receipts and/or split samples?

Can inspectors from your department issue tickets or citations? Are inspectors prohibited from telling a company that a "violation" has been disclosed by the inspection?

In your program, are exit interviews conducted at the conclusion of an inspection? How are these structured? How have inspectors responded when asked to share their inspection report or notes with a facility?

Exercise 5.2 Case study:

Part I. Inspector Sally Roe of the Grange County Health Department receives an anonymous telephone complaint about “food poisoning” from a nauseous customer who had eaten a cheeseburger at the Good Foods Eatery, a local snack shop. Inspector Roe proceeds to the restaurant and demands access to the kitchen for purposes of inspection. The restaurant manager is on break and the short-order cook refuses her entry.

What should she do? What legal authorities does she have? What, if any, parts of the restaurant can she inspect without consent or a warrant?

Part II. Assume the manager returns from break and refuses to give Inspector Roe permission to inspect the restaurant. Having been denied entry, Inspector Roe calls her supervisor. The supervisor tells her he will contact the Grange County Attorney for help in obtaining a search warrant.

What, if any, information will the Grange County Attorney want from the agency? From Inspector Roe?

Would your answer differ if Inspector Roe were denied permission to conduct a routine restaurant inspection?

To get a warrant in a routine situation, what would the Grange County Attorney want to know?

Part III. The County Attorney and Inspector Roe get a warrant to search the Good Foods Eatery. Inspector Roe proceeds to the restaurant to execute the warrant. During her inspection, she demands to see all personnel records, including those maintained pursuant to wage and hour laws, although these were not mentioned in the application for the warrant.

While investigating the latter records, Inspector Roe finds evidence that the restaurant is violating minimum wage laws and hiring undocumented workers, a possibly criminal offense.

Should she continue with her inspection or leave the premises and contact the County Attorney again? Why or why not?

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

VILLAGE OF OAK PARK)
)
 v.) No. 01234567
)
 BOBBY FRANKLIN)

**COMPLAINT FOR ADMINISTRATIVE SEARCH WARRANT OF PREMISES
LOCATED AT 1234 NOWHERE AVENUE, OAK PARK, ILLINOIS**

Now comes the Village of Oak Park, plaintiff, by one of its attorneys, Jack Jackson, and complains against Bobby Franklin, defendant, and respectfully request issuance of an administrative search warrant of the premises located at 1234 Nowhere Avenue, Oak Park, Illinois and in support thereof states the following:

1. Defendant is the tenant and in lawful possession of the premises located at 1234 Nowhere Avenue, Oak Park, Illinois, hereinafter referred to as “Subject Property.”
2. The plaintiff has established pursuant to ordinances an annual inspection program for discovery of building and housing code compliance in housing units in buildings containing more than 4 units. Village of Oak Park Code 12-3-6.
3. The plaintiff has a specific need to inspect the Subject Property for the sole purpose of identifying housing and building code violations.
4. The plaintiff has received a complaint concerning the condition of the Subject Property, that the condition of the premises is dirty and filthy.
5. The plaintiff has reasonable belief that the condition of the Subject Property may violate housing code ordinances, including 12-1-4.2 of the Code of the Village of Oak Park.
6. The plaintiff has not entered the premises for more than 8 years.
7. The Subject Property is an apartment in a 12 unit multi-family apartment building

built approximately sixty-six years ago.

8. The Subject Property is managed by Ryan Realty for which defendant provided consent for the annual inspection of the defendant's apartment.

9. There is a probable cause to issue the administrative search warrant of the Subject Property.

WHEREFORE, Village of Oak Park, plaintiff, respectfully requests issuance of an administrative search warrant of the premises at 1234 Nowhere Avenue, Oak Park, Illinois for the sole purpose of examining the premises for housing or building code violations at one inspection only at a reasonable time.

Attorney at Law

Inspector

I, Milton Rays, being duly sworn on oath state I am an inspector for the Village of Oak Park, that I have read the foregoing Complaint and that facts stated therein are true and correct to the best of my knowledge and belief.

inspection, the nature of the building, or the condition of the entire area. The court example of the nature of the building was a multi-family apartment building. The court noted that a finding of probable cause may not necessarily depend upon specific knowledge of the conditions of the particular dwelling. See 87 S. Ct. 1736. The court provided that the warrant procedure is designed to guarantee the decision to search private property is justified by reasonable government interest. The court noted that reasonableness is the ultimate standard. The court stated, "If a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a suitable restricted search warrant." Citing as authority Oklahoma Press Publishing Company v. Walling, 327 U.S. 186, 66 S. Ct. 494.

The United States District Court for the Northern District of Illinois in Hometown Cooperative Apartments v. City of Hometown, 515 F.S. 502 (N.D. Ill. E.D. 1981); prior decision 495 F.S. 55 (N.D. Ill. E.D. 1980), found constitutional an ordinance that permitted the issuance of warrants for residential inspections by the municipal building department. The court held that if consent was not granted by a lessee, the municipality may not seek a criminal fine for failing to give the consent but may seek the issuance of an administrative search warrant for property inspection. The court cited the authority of the Camara case and noted that the court enumerated several factors that might constitute sufficient reason to conduct an inspection, including the passage of time, nature of the building or the condition of the area. The court noted that the court expressly rejected the contention that probable cause demanded specific knowledge of the conditions of the particular dwelling. The court acknowledged that similar code enforcement programs had been found properly constitutional so long as a warrant is required when the occupant of the property refuses to voluntarily consent to the inspection. The court in Hometown cited to Currier v. City of Pasadena, 48 Cal. App.3d 810, 121 Cal. Rptr. 913, Cert. denied, 423 U.S.

Appendix C - Order of Administrative Search Warrant

1000, 96 S. Ct. 432 (1978).

The court in this cause should consider whether the evidence establishes probable cause and such evidence can include the age of the building, which is approximately sixty-six years; the passage of time since a prior inspection of the unit, which has been more than eight years; the nature of the building, which is a twelve unit multi-family apartment building; and the sole purposes of the inspection, which is to seek compliance with housing and building codes. More importantly, existence of a complaint concerning the premises should establish it is reasonable to issue a restricted administrative search warrant.

Respectfully submitted,

Jack Johnson #98765
Attorney for Plaintiff
One Franklin Square
Oak Park, Illinois 60302
(555) 255-6366

approximately sixty-six years ago.

8. The premises manager is Ryan Realty for which its agent, Dean Jones, has provided consent for the annual inspection of the defendant's apartment.

9. There is probable cause to issue the administrative search warrant of the premises.

IT IS HEREBY ORDERED, the plaintiff, Village of Oak Park, is granted an administrative search warrant for one inspection of the interior of 1234 Nowhere Avenue, Oak Park, Illinois at daylight hours, with at least 24 hours written notice to defendant for the sole purpose and reason to ascertain whether the premises is in substantial compliance with the housing and building code ordinances of the Code of the Village of Oak Park.

Entered this 5th
day of May, 1992.

Jack Johnson #98765
Assistant Village Attorney
One Franklin Square
Oak Park, Illinois 60302
(555) 255-6366

Judge

Signed and subscribed
this 15th day of April, 1992

Notary Public

Jack Johnson #98765
Assistant Village Attorney
One Franklin Square
Oak Park, Illinois 60302
(555) 255-6366

"OFFICIAL SEAL"
ANNE RAM
NOTARY PUBLIC STATE OF
ILLINOIS
MY COMMISSION EXPIRES 3/20/95

To register for continuing education credit and to evaluate this module

Registering for Continuing Education Credit

To receive credit for this module you must submit course enrollment forms and the answers to the **Evaluation and Test** (located on the following pages) to CDC. There are several ways to complete this registration process:

Complete the forms online.

- U Go to the PHTN website www.cdc.gov/phtn and complete the registration and evaluation online. Directions will be given at the website.

Complete the forms on paper. There are two ways to obtain the forms from CDC. (If you plan to study additional modules, you may want to request enrollment materials for those modules also at this time.)

- U Request the enrollment materials online by going to the following URL at the PHTN website <http://www.cdc.gov/phtn/legal-basis/req-form.htm> and completing the online request form. After the online form is submitted, an enrollment packet will be mailed to you with instructions.
- U Request the enrollment materials by calling **1-800-41-TRAIN** (1-800-418-7246). At the prompts, press 1, then 3. Please clearly speak your name, mailing address, daytime phone number, and the correct module name and number. The enrollment materials will be mailed to you with instructions.

If you are unable to register online, you will have to wait several weeks until your course enrollment materials arrive in the mail. If this is the case, you might want to complete the Evaluation and Test immediately after you finish the module by marking your answers directly on the following pages (or make a photocopy) and then, when the enrollment materials arrive, transfer your answers to the answer sheet included with the materials.

Evaluating the Module

If you are registering for continuing education credit, you will be asked to complete an evaluation as part of that process.

If you are not interested in receiving continuing education credit, we ask that you please take time to evaluate the module. Follow the procedure specified above for getting continuing education credit, but indicate in the first question on the **Evaluation and Test** that you do not wish to receive continuing education credit. Although this is not required, your opinion of the module is important to us. By letting us know if this module was effective for you, we can improve future editions, as well as other PHTN courses.

Evaluation and Test
The Legal Basis of Public Health
Module 5, Inspections
COURSE #SS0005

Objectives for *Module 5, Inspections*

- g Distinguish how a health and safety inspection is different from a police search.
- g Identify the necessary circumstances for gaining lawful entry to a facility for purposes of inspection.
- g Describe the four techniques for data collection and how to use them to the full extent of your legal authority.
- g Describe how you and the facility official can benefit from an exit interview following an inspection.

NPlease use the red *CDC Answer Sheet* included in the enrollment materials to complete the following questions.

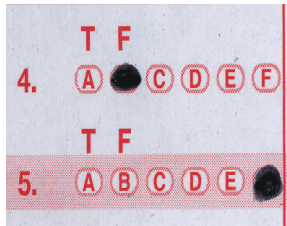
Tell us about yourself...

- 1. What type of continuing education credit do you wish to receive?**
 - A. (CME) *Not Available for this Course*
 - B. Continuing Nursing Education (CNE)
 - C. Continuing Education Units (CEU)
 - D. do not want continuing education credit

- 2. Have you previously completed *Module 1, Introduction*?**
(Completion of Module 1 is required before taking any of the other modules.)
 - A. yes
 - B. no
 - C. I have just completed ***Module 1, Introduction.***

- 3. Are you a**
 - A. Nurse
 - B. Physician
 - C. None of the above

Please note: Question 5 is a continuation of question 4. Please answer each question, but choose only **ONE** occupation. Your answer to one of these questions will be **F. None of the above**. For example, a Health Educator would answer as follows:



- 4. Which of the following best describes your current occupation?**
- A. Epidemiologist
 - B. Health Educator
 - C. Laboratorian
 - D. Pharmacist
 - E. Physician Assistant
 - F. None of the above
- 5. Which of the following best describes your current occupation?**
- A. Field Inspector (nursing homes, restaurants, etc.)
 - B. Manager/Supervisor
 - C. Environmental Health Worker/Sanitarian
 - D. Lawyer/Attorney
 - E. Other public health professional
 - F. None of the above
- 6. Which of the following best describes the organization in which you work?**
- A. Academic
 - B. Private health care setting
 - C. Federal government
 - D. State government
 - E. Local government
 - F. Other organization

Tell us about the module...

- 7. How did you first learn about this module**
- A. State publication (or other state-sponsored communication)
 - B. MMWR
 - C. CDC website (not including PHTN website)
 - D. PHTN source (PHTN website, catalog, e-mail, or fax announcement)
 - E. Colleague
 - F. Other

- 8. How did you obtain this module?**
- A. Purchased from the Public Health Foundation
 - B. Downloaded from the PHTN website
 - C. Borrowed or copied materials from someone else
 - D. Other
- 9. What was the most important factor in your decision to obtain this module?**
- A. Content
 - B. Continuing education credit
 - C. Request from supervisor
 - D. Previous participation in PHTN training(s)
 - E. Ability to take the course at my convenience
 - F. Other
- 10. I completed this module**
- A. As an individual learner
 - B. As part of a learning group that organized itself
 - C. As part of a learning group that was organized by someone outside of the group
- 11. My completion of this module included interaction(s) with an expert(s) (or reasonably experienced person) on the topic?**
- A. Yes
 - B. No
- 12. My interaction(s) with the expert(s) on this topic could be described as follows**
- A. I had no interactions with an expert
 - B. One or more sessions organized by someone outside of the group
 - C. One or more sessions organized by someone within my group
 - D. One or more informal consultations that I initiated on my own
- 13. How long did it take you to complete this module?**
- A. 1 - 2 hours
 - B. 3 - 4 hours
 - C. 5 hours or more
- 14. How many of the ten modules comprising the *Legal Basis of Public Health* have you completed?**
- A. 1 or 2 modules
 - B. 3 to 5 modules
 - C. 6 to 9 modules
 - D. All 10 modules

15. **How many of the ten modules comprising *The Legal Basis of Public Health* do you plan to complete?**
A. 1 or 2 modules
B. 3 to 5 modules
C. 6 to 9 modules
D. All 10 modules
16. **Please rate your level of knowledge prior to completing this module.**
A. Had a great deal of knowledge about the content
B. Had a fair amount of knowledge about the content
C. Had limited knowledge about the content
D. Had no prior knowledge about the content
E. No opinion
17. **Please estimate your knowledge gain due to completing this module.**
A. Gained a great deal of knowledge about the content
B. Gained a fair amount of knowledge about the content
C. Gained a limited amount of knowledge about the content
D. Did not gain any knowledge about the content
E. No opinion
18. **If this module is further evaluated through the use of focus groups or other methods (e.g., follow up questionnaires) would you be willing to participate?**
A. Yes
B. No

Please use the scale below to rate your level of agreement with the following statements about this module.

- A. **Agree**
B. **No opinion**
C. **Disagree**
D. **Not applicable**

19. **The objectives were relevant to the purpose of the course.**
20. **I would recommend this module to my colleagues.**
21. **I believe completing this module will enhance my professional effectiveness.**
22. **The content in this module was appropriate for my training needs.**
23. **Reading the text on my own was an effective way for me to learn this content.**

24. The self-study questions contributed to my understanding of the content.
25. The group exercises contributed to my understanding of the content.
26. The Coordinator Guide contributed to my ability to have a learning experience appropriate to my (or my group's) needs.
27. Downloading the materials from the PHTN website was user-friendly.
28. Ordering the materials through the Public Health Foundation was user-friendly.
29. Ordering the materials through the 1-800-41-TRAIN phone number was user-friendly.
30. I am confident I can distinguish how a health and safety inspection is different from a police search.
31. I am confident I can identify the necessary circumstances for gaining lawful entry to a facility for purposes of inspection.
32. I am confident I can describe the four techniques for data collection and how to use them to the full extent of my legal authority.
33. I am confident that I can describe how the facility official and I can benefit from an exit interview following an inspection.