



Hearing Board and Faculty Advocate Training

Part IV: Questioning,
Preponderance of Evidence
and Deliberation

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Learning Objectives

1. Articulate how to use active listening and effectively question during hearings
2. Articulate the differences in the various standards of proof and explain how the preponderance of the evidence standard is used in the hearing process
3. Identify how deliberations can influence the final decision made after the hearing
4. Learn the difference between empathy and sympathy during the hearing process



Active Listening and Questioning

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Active Listening

Verbal and Non-verbal

- 'What I heard you say was...'
- 'What I am hearing you say is...'
- 'Could you clarify what you mean by?..'
- 'What I understand from your statement is....'



Questioning

- Closed-ended questions versus open-ended questions

- Did he tell you that X,Y,Z?
- Did she talk to him at the lunch?
- Can you share what happened during your encounter?
- How did you feel when you broke the window?

- Specific clarifying questions

- Questions that may inform sanctioning

- What have you learned from this experience?
- What corrective actions have you taken since the incident?
- How will this experience form your future?
- If you had this to do over, what would change and what would stay the same?



Effective Questioning

- Avoid close-ended questions*
- Don't give multiple choice answers
 - Were you angry or just letting off steam?
- Silence is golden
- Questioning should be neutral

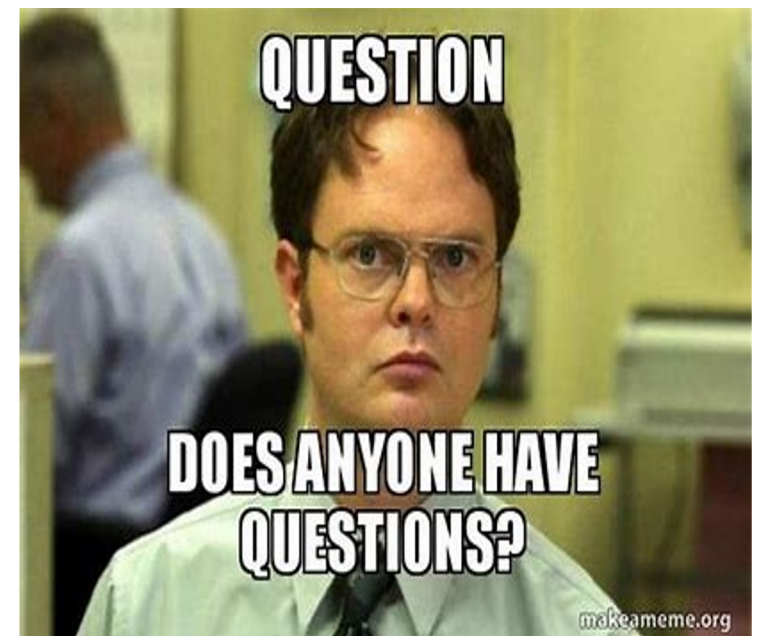
Effective Questioning (cont'd)

- Effective questioning should elicit the truth
- The idea behind cross examination



What Should You Hope To Get Out Of Questioning ?

- Questions should help you to gather information
- Questions should be used to corroborate or disprove information provided



Relevance of Questions

- All questions must be relevant to the incident
 - Good faith basis for asking the question
- Presiding person may ask the board member or the participant to explain the relevance of the question
- Irrelevant questions will not be asked or considered



Preponderance of the Evidence Standard

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Standard of Proof versus Burden of Proof

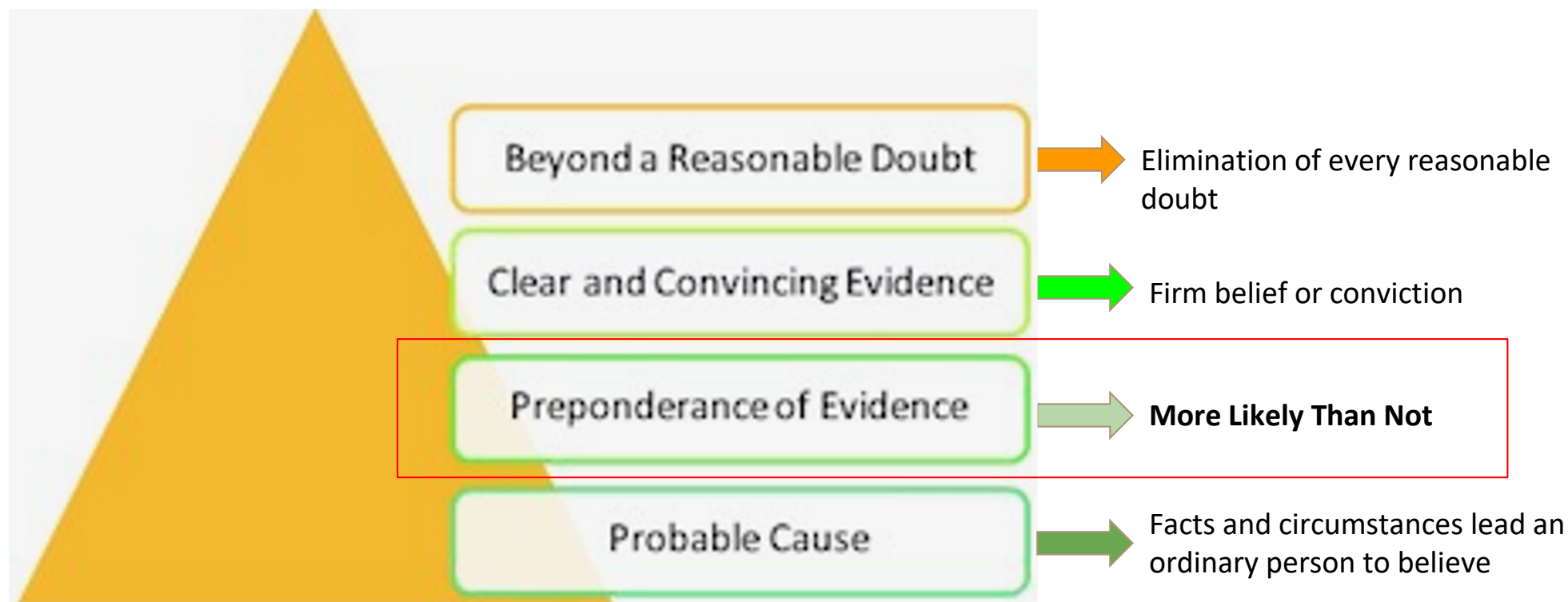
Standard of Proof

- How much information is necessary for a deliberative body to make a decision about responsibility

Burden of Proof

- Which party has the responsibility to provide enough information to meet the standard of proof to the deliberative body

Preponderance of the Evidence



Preponderance of the Evidence

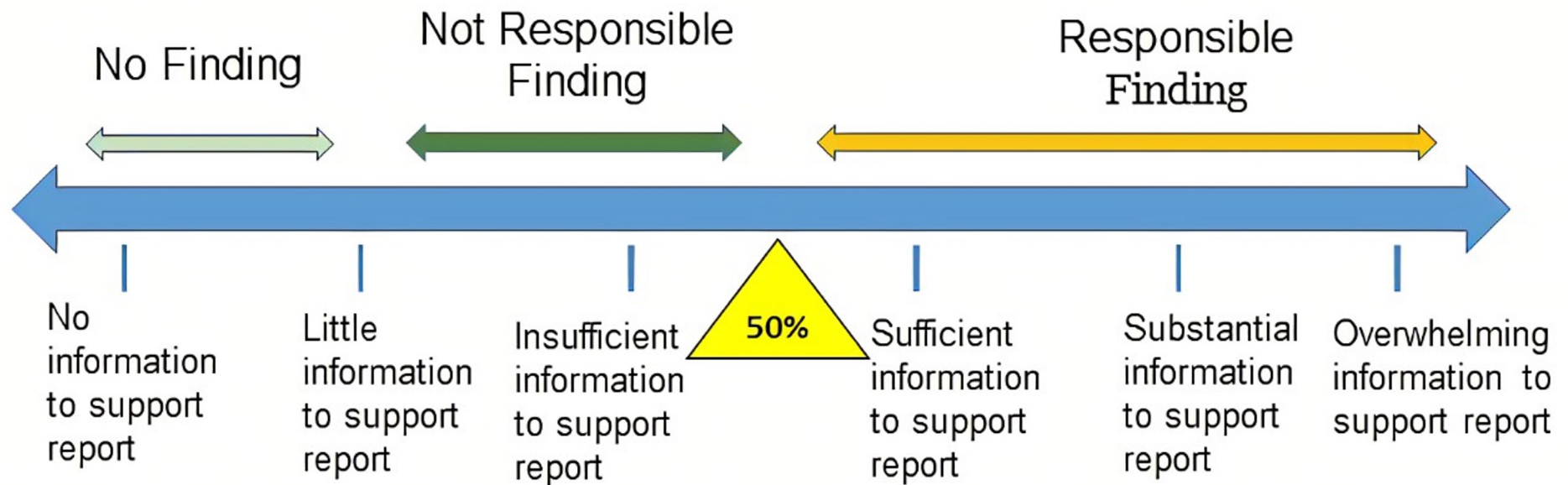
Evidence that when compared to that opposed to it, the reasonable conclusion is more convincing, creating the belief that the information is more likely true than not

- Anything more than 50%
- 50% and a feather
- 50% and a grain of sand



Preponderance of Evidence Standard

*A Requirement that **More than 50%** of the Evidence Points to Something*



True or False

What one board member believes constitutes a preponderance of the evidence is applicable across the board?

False





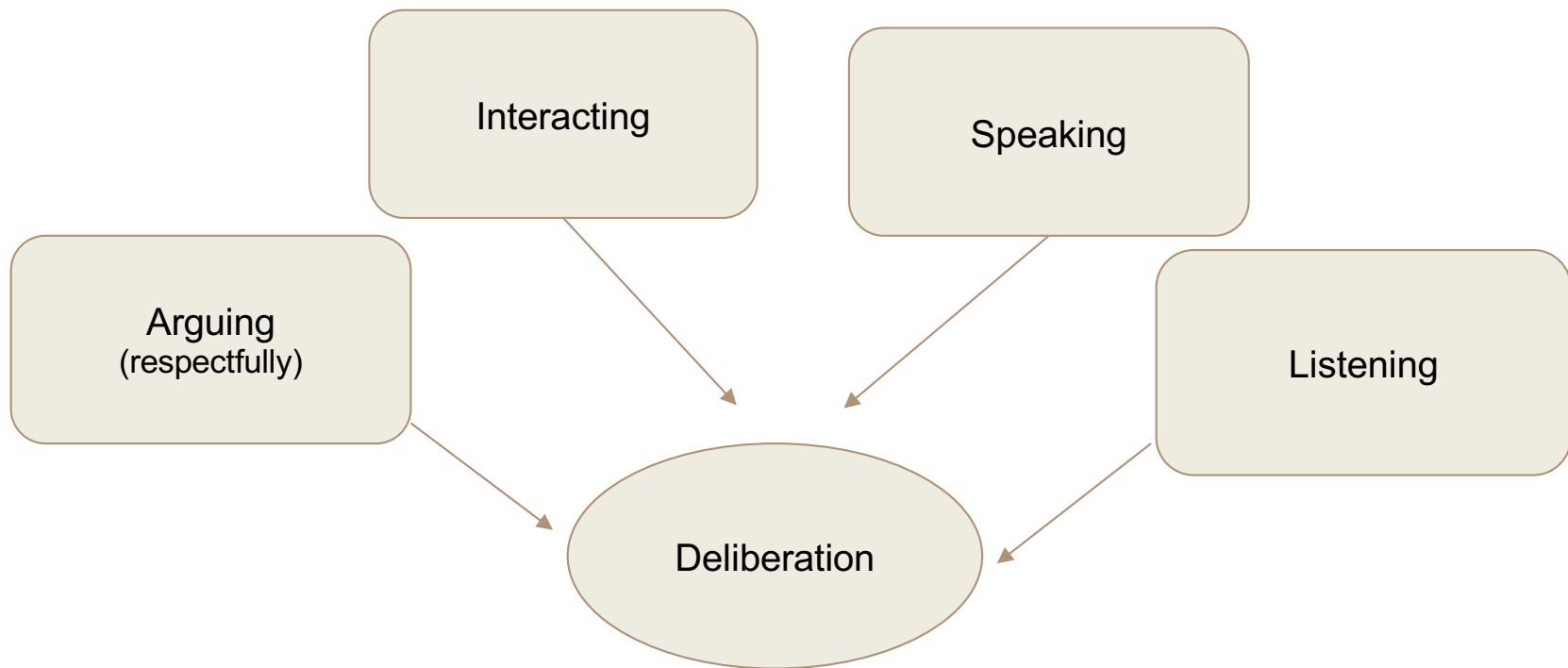
Deliberation and Decision making

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Deliberation

- Critical examination of an issue involving the weighing of information and reasons for or against a course of action
- Process required by the Code of Conduct that allows the board members to receive and exchange information, to critically examine an issue and to come to a majority agreement that renders a finding (and sanctions, if appropriate).

Deliberation



Rules of Deliberation

- One (1) decision is always made during each deliberation
 - Responsible or not responsible
- A decision regarding responsibility must be made for each charge
- Each decision is independent of the other decision

Rules of Deliberation (cont'd)

- Everyone's vote counts the same (only the board members vote)
- Consider all of the information carefully for each charge
- Decisions are majority vote, not necessarily unanimous
- Board members will need to provide a rationale for each decision



Empathy during Hearings

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Empathy vs Sympathy

Sympathy = Feeling for someone

Empathy = Feeling with someone



Empathetic or Sympathetic

**That must be
really hard**

Sympathy

**I felt what you are
feeling and you
are not alone**

Empathy

**I can feel the
frustration as
you are
describing it**

Empathy

Empathetic Listening

A way of listening not just to understand, but to *connect*

Active listening process is present in empathetic listening, while also bringing empathy into your approach

Involves sitting in uncomfortable feelings for a bit, not rushing to problem solve

Empathetic listening process: listening, internalizing, validating



Empathy and Sympathy in a Hearing

- Empathy is an important part of our hearings
- Take care not to let sympathy cloud judgement
- Empathy is not a reason to find someone “not responsible” for a violation

What happens next?

We will discuss the rationale and sanctioning in a hearing