

California Workers' Compensation Sub Rosa Video Evidence: Procedural Requirements, Admissibility Standards, and Implementation

(PART-A INJURED WORKERS ANALYSIS)

March 2, 2026

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CALIFORNIA WORKERS' COMPENSATION: SUB ROSA VIDEO EVIDENCE — PROCEDURAL REQUIREMENTS, ADMISSIBILITY STANDARDS, AND HOW TO PROTECT YOUR RIGHTS

Date: March 2, 2026

Jurisdiction: California (Northern District focus)

Part 1: Overview — What Is Sub Rosa Video and Why It Matters

This section explains what sub rosa video is and why you need to understand the rules that govern it in California workers' compensation cases.

What Is Sub Rosa Video?

Sub rosa video means secret or hidden surveillance video. In workers' compensation cases, an employer or insurance company may hire a private investigator to secretly record you doing everyday activities after you report a work injury. The purpose is to compare what you say about your injury with what the video shows you doing.

For example, if you report that you cannot lift objects because of a back injury, the employer may try to record you carrying groceries or doing yard work. This video can then be used to challenge your claim.

Why These Rules Matter to You

The rules about sub rosa video determine three things that directly affect your case:

- When the employer must tell you the video exists and give you a copy
- How the video can be shown to the judge or a medical evaluator
- Whether the video can be used as evidence against you at trial

If the employer does not follow these rules correctly, the video may be excluded (meaning the judge cannot consider it). If the employer does follow the rules, the video may be admitted (meaning the judge will see it and weigh it when deciding your case).

The Three-Timeline Framework

The current law creates three distinct time periods, each with different rules:

1. Before your deposition (your sworn testimony session): The employer may legally keep the video secret to test whether your testimony matches what the video shows. This comes from *Downing v. City of Hayward*, 16 Cal. Workers' Comp. Rep. 76 (WCAB 1988) (<https://apexpi.com/downing-v-city-of-hayward/>).
2. After your deposition but before trial: The employer must promptly give you the video if you ask for it. This comes from *Espedal v. Grass Valley Police Department*, Cal. Wrk. Comp. P.D. LEXIS 123 (WCAB 2012) (<https://bradfordbarthel.com/wp-content/uploads/2021/05/20191029DiscoveryPartIVPP.pdf>).
3. At trial: The video must be properly authenticated (proven to be real and unaltered) and must have been listed on your case paperwork before trial. This comes from *Johnson v. Lexmar Distribution dba LDI Trucking, Inc.*, Cal. Wrk. Comp. P.D. LEXIS 289 (WCAB 2021) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2021/Christopher-JOHNSON-ADJ14203968.pdf>).

Important: The most recent major decision, *Pollard v. Lemstra Cattle Co.*, Cal. Wrk. Comp. P.D. LEXIS 219 (WCAB 2025) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2025/Shawn-POLLARD-ADJ10675931.pdf>), added a new rule: the employer can send video to your medical evaluator using a separate legal process even before your deposition, as long as they follow specific notice requirements.

Part 2: The Laws That Govern Sub Rosa Video

This section covers the main California statutes (written laws) and regulations (detailed rules) that control how sub rosa video works in your case.

Key Statutes You Should Know

California Labor Code § 5708

(https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5708.&lawCode=LAB) is the foundation. It says the Workers' Compensation Appeals Board (WCAB) — the state agency that decides workers' comp cases — does not have to follow the same strict evidence rules that regular courts use. This gives the WCAB flexibility to admit or exclude video based on fairness and relevance.

California Labor Code § 4062.3

(https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=4062.3.&lawCode=LAB) controls how information is sent to your Qualified Medical Evaluator (QME) — the independent doctor who examines you and writes a report about your injury. Under this law:

- The employer must give you a copy of anything they want to send to the QME at least 20 days before they send it
- You have those 20 days to file a written objection (a formal disagreement)
- If you do not object within 20 days, the employer can send the video to the QME

California Labor Code § 5502(d)(3)

(https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5502.&lawCode=LAB) sets a hard deadline: discovery closes on the date of the Mandatory Settlement Conference (MSC). This means evidence not disclosed before the MSC generally cannot be used at trial. This is a "discovery closure" rule — the word discovery means the process where both sides share evidence with each other.

California Civil Code § 1708.8

(https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1708.8.&lawCode=CIV) deals with invasion of privacy through surveillance. It allows licensed investigators to record suspected fraudulent activity, but recent WCAB decisions have ruled this statute addresses civil lawsuits for privacy violations, not whether video can be used in your workers' comp case.

Key Regulations

California Code of Regulations, title 8, § 35 (<https://www.dir.ca.gov/t8/35.html>) provides the detailed step-by-step procedures for sending information to medical evaluators. The key rule is the 20-day notice requirement: before any party sends non-medical information (like surveillance video) to a QME or Agreed Medical Evaluator (AME), they must serve a copy on the other side at least 20 days in advance.

California Code of Regulations, title 8, § 35.5 (https://www.dir.ca.gov/t8/35_5.html) requires medical evaluators to address all disputed medical issues within their area of expertise and to notify the parties if additional evaluations are needed.

Investigator Licensing Requirement

California Business and Professions Code § 6521

(https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=6521.&lawCode=BPC) requires that anyone conducting private investigation must hold a valid license from the Bureau of Security and Investigative Services (BSIS). Conducting unlicensed surveillance is a misdemeanor (a criminal offense). However, the WCAB has not treated unlicensed status alone as an automatic reason to exclude the video if it is otherwise properly obtained and authenticated.

Part 3: Key Court Decisions — Withholding and Disclosure Rules

This section explains the most important WCAB decisions that determine when the employer must share surveillance video with you.

Downing v. City of Hayward (1988) — The Pre-Deposition Withholding Rule

Downing v. City of Hayward, 16 Cal. Workers' Comp. Rep. 76 (WCAB 1988) (<https://apexpi.com/downing-v-city-of-hayward/>) is the oldest and most well-known rule. It says the employer does not have to tell you about

surveillance video or give you a copy before your deposition. A deposition is a session where you answer questions under oath, and your answers are recorded.

The reasoning is that you should testify truthfully about your abilities based on your own honest memory — not based on knowing what the video shows. If you knew about the video beforehand, you might adjust your testimony to match it. The WCAB stated that "the ascertainment of truth is best served by allowing a defendant to depose an applicant before he has seen, or has been informed of the existence of, any surveillance films."

Important: This rule has been applied consistently for over 35 years. Employers rely on it to keep video secret until after you testify.

Espedal v. Grass Valley Police Department (2012) — After Deposition, You Get the Video

Espedal v. Grass Valley Police Department, Cal. Wrk. Comp. P.D. LEXIS 123 (WCAB 2012) (<https://bradfordbarthel.com/wp-content/uploads/2021/05/20191029DiscoveryPartIVPP.pdf>) changed the Downing rule by adding a firm limit. Once your deposition is finished, the employer must promptly give you the video if you ask for it.

In this case, the employer hid surveillance video through two separate depositions and only revealed it after the QME had already written a report. The WCAB found this was a willful discovery violation (an intentional refusal to follow the rules) and excluded the video entirely.

The rule is now clear: withholding is allowed before deposition to test your credibility, but it becomes a violation after deposition if you make a timely demand for the video.

Gonzales v. ADP TotalSource Group, Inc. (2024) — Incident Video Must Be Shared Early

Gonzales v. ADP TotalSource Group, Inc., Cal. Wrk. Comp. P.D. LEXIS 415 (WCAB 2024) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2024/Coreen-GONZALES-ADJ18936354.pdf>) created an important exception. If the video shows the actual injury incident (not your activities after the injury), the employer must give it to you before your deposition if you ask.

The WCAB reasoned that video of the injury itself is just like any other discoverable evidence — police reports, incident photos, or eyewitness statements. Withholding it would give the employer an unfair advantage.

Critical: You must understand the difference. Video of you grocery shopping weeks after your injury = post-injury surveillance (can be withheld until after deposition). Video of the accident itself from a security camera = incident video (must be shared when you ask).

Part 4: Key Court Decisions — Authentication, Privacy, and Recent Developments

This section covers the rules about proving video is real, privacy protections, and the newest decisions that affect your case.

Johnson v. Lexmar Distribution (2021) — Who Can Prove the Video Is Real

Johnson v. Lexmar Distribution dba LDI Trucking, Inc., Cal. Wrk. Comp. P.D. LEXIS 289 (WCAB 2021) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2021/Christopher-JOHNSON-ADJ14203968.pdf>) made it significantly easier for employers to get video admitted at trial. Authentication means proving that the video is genuine — that it accurately shows what it claims to show and has not been altered.

Before Johnson, the standard practice required the actual investigator who filmed the video to testify. Johnson changed this by ruling that any witness who saw the events in the video can authenticate it. The WCAB stated: "Though the requisite foundation may, and usually will, be laid by the photographer, it may also be provided by any witness who perceived the events filmed."

This means the employer could ask you on the witness stand: "Is this you in the video? Does this video accurately show what you were doing?" If you say yes, you have just authenticated the video yourself.

Pollard v. Lemstra Cattle Co. (2025) — The Newest and Most Important Decision

Pollard v. Lemstra Cattle Co., Cal. Wrk. Comp. P.D. LEXIS 219 (WCAB 2025) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2025/Shawn-POLLARD-ADJ10675931.pdf>) is the most recent

landmark decision, issued within the last 90 days. It clarifies that the employer can send surveillance video to your QME using the Labor Code § 4062.3 (https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=4062.3.&lawCode=LAB) process even if your deposition has not happened yet.

The WCAB found "no violation of our Rules or other statutory prohibition that would preclude the QME's review of sub rosa video" when the employer followed the proper 20-day notice and objection procedures. This decision does not undo the Downing or Espedal rules — it simply says the QME submission process is a separate pathway from deposition discovery.

Important: If you receive a notice that the employer wants to send video to your QME, you have only 20 days to object in writing. If you miss this deadline, the video goes to the QME without a judge reviewing it first.

Licea v. Screwmatic (2022) — Privacy Protections Are Limited

Licea v. Screwmatic, Cal. Wrk. Comp. P.D. LEXIS 12 (WCAB 2022) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2022/Juan-LICEA-ADJ10568300.pdf>) addressed whether privacy rights can block surveillance video from being used. The WCAB ruled that if you were recorded doing activities visible from the street or in public places (parking lots, stores, sidewalks), you do not have a reasonable expectation of privacy strong enough to exclude the video.

The panel stated that while you have a fundamental right to privacy under the California Constitution, Article I, § 1 (https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CONS&division=&title=&part=&chapter=&article=1), this right does not protect activities plainly visible from public areas. Privacy objections will only succeed if the video captures you in genuinely private spaces like inside your home or a bathroom.

Gunderson v. County of Kern (2023) — Witness Lists Matter

Gunderson v. County of Kern (WCAB 2023) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2023/James-GUNDERSON-ADJ9727055.pdf>) reinforced that the employer must list any person who will testify about the video on the pre-trial conference statement (PTCS) witness list. If the employer does not list an authenticating witness, the judge may exclude the video entirely. This is a technical requirement that creates real opportunities for your attorney to challenge video evidence.

Wanyonyi (2025) — Investigator Logs and Remedies

Wanyonyi, ADJ12181367 (WCAB 2025) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2025/Patrick-WANYONYI-ADJ12181367.pdf>) addressed what happens when the employer fails to produce the investigator's field notes and logs. The WCAB held that this failure does not automatically bar the video itself, but it may prevent the investigator from testifying. The judge has discretion to fashion an appropriate remedy based on the circumstances.

Guedea (2024) — Video Obtained After the MSC Is Generally Excluded

Guedea, Cal. Wrk. Comp. P.D. LEXIS 287 (WCAB 2024) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2024/Miguel-GUEDEA-ADJ8779374.pdf>) held that surveillance video obtained after the Mandatory Settlement Conference generally cannot be admitted at trial. Under Labor Code § 5502(d)(3) (https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5502.&lawCode=LAB), discovery closes at the MSC. The employer must finish surveillance and disclose it before that deadline.

Part 5: How Video Authentication Works

This section explains the process of authentication — proving that video evidence is genuine and reliable before the judge can consider it.

The Current Standard After Johnson

Before the Johnson (2021) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2021/Christopher-JOHNSON-ADJ14203968.pdf>) decision, the WCAB generally required the investigator who filmed the video to testify about:

- When and where the video was recorded

- What equipment was used
- Whether the video was edited
- Whether the video accurately shows what the investigator saw

After Johnson, the standard is much more flexible. Authentication can now come from:

- The investigator who filmed the video (still the most common method)
- You, the injured worker, if asked on the witness stand whether the video accurately shows you and your activities
- A co-worker or other person who witnessed the events shown in the video
- A medical evaluator who reviewed the video and can confirm it is consistent with your examination
- Circumstantial evidence like time-stamped metadata, GPS location data, or other technical information

The key question is simply: "Does the evidence show that this video accurately depicts what it claims to show?"

Chain of Custody — Less Important Than You Might Think

Chain of custody refers to tracking who handled the video file, when, and for what purpose — to prove it was not tampered with between filming and trial. The Johnson panel stated that "even in criminal and civil cases, a chain of custody is not necessary to establish the authenticity of a video."

However, chain-of-custody problems can still help your case. If the video has:

- Missing segments or gaps in recording
- Inconsistent time stamps
- Signs of editing or splicing
- File metadata showing the file was modified after creation

These issues may not automatically exclude the video, but they can reduce the weight the judge gives it. Weight means how much the judge trusts and relies on the evidence.

The Critical Witness List Requirement

Under Gunderson (2023) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2023/James-GUNDERSON-ADJ9727055.pdf>), every person who will testify about the video must be listed on the pre-trial conference statement before the MSC. This includes the investigator, you (if the employer plans to ask you about the video), a co-worker, or a medical evaluator.

If the employer forgets to list an authenticating witness and then tries to call that person at trial, your attorney can object. If the employer has no other way to authenticate the video, the judge may exclude it entirely. This is one of the strongest tools your attorney has to challenge video evidence.

Important: Your attorney should carefully review the employer's pre-trial conference statement at the MSC. If no authenticating witness is listed, your attorney should note this and preserve the objection for trial.

Part 6: Disclosure Timing — When You Should Receive the Video

This section explains the specific deadlines and rules that determine when the employer must give you copies of surveillance video.

Before Your Deposition: No Disclosure Required

Under Downing (1988) (<https://apexpi.com/downing-v-city-of-hayward/>), the employer does not have to give you the video — or even tell you it exists — before your deposition. This rule only applies to post-injury surveillance (video of your activities after the injury). It does not apply to video of the injury incident itself, which must be disclosed under Gonzales (2024) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2024/Cooreen-GONZALES-ADJ18936354.pdf>).

After Your Deposition: Prompt Disclosure on Demand

Once your deposition is complete, Espedal (2012) (<https://bradfordbarthel.com/wp-content/uploads/2021/05/20191029DiscoveryPartIVPP.pdf>) requires the employer to promptly give you the

video if your attorney asks for it. "Promptly" generally means within days to a few weeks. If the employer delays or refuses, this is a discovery violation that can result in the video being excluded.

Critical: Your attorney should send a formal written demand for all surveillance video immediately after your deposition is completed. This triggers the employer's obligation to produce the video. If the employer does not respond or claims no video exists when it does, sanctions (penalties) may follow.

At the Mandatory Settlement Conference: Hard Deadline

Labor Code § 5502(d)(3)

(https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5502.&lawCode=LAB)

requires that all evidence intended for trial be disclosed in the pre-trial conference statement before the MSC. The employer must:

- List each surveillance video as an exhibit with a detailed description (dates, locations, duration, activities shown)
- Identify all witnesses who will testify about the video on the witness list
- Provide copies of the video to your attorney

Vague descriptions like "video evidence" are not sufficient. Under Guedea (2024)

(<https://www.dir.ca.gov/wcab/Panel-Decisions-2024/Miguel-GUEDEA-ADJ8779374.pdf>), evidence not properly disclosed before the MSC is generally excluded at trial.

QME Submission: A Separate 20-Day Process

Under Pollard (2025) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2025/Shawn-POLLARD-ADJ10675931.pdf>) and Cal. Code Regs. tit. 8, § 35

(<https://www.dir.ca.gov/t8/35.html>), the employer can

propose sending video to your QME at any time by giving you 20 days' written notice. This process is separate from the deposition and trial disclosure rules. If you do not object within 20 days, the video goes to the QME.

Part 7: Submitting Video to Your Medical Evaluator (QME)

This section explains the specific procedures for sending surveillance video to your QME and what you can do about it.

The 20-Day Notice and Objection Process

Under Labor Code § 4062.3(b)

(https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=4062.3.&lawCode=LAB) and

Cal. Code Regs. tit. 8, § 35(c) (<https://www.dir.ca.gov/t8/35.html>), when the employer wants to send surveillance video to your QME, they must follow these steps:

1. Serve you (through your attorney) with a copy of the video and written notice that they intend to submit it to the QME
2. Wait at least 20 days before sending anything to the QME
3. If you file a written objection within those 20 days, the dispute goes to the workers' compensation judge for a ruling before anything is sent
4. If you do not object within 20 days, the employer may send the video to the QME

The 20-day clock starts when you (or your attorney) receive the notice. You cannot get extra time unless both sides agree in writing.

What Counts as "Information" Under the Law

The law uses the word "information" broadly. It includes medical records, non-medical records, and any material relevant to the medical issues in your case. The WCAB has confirmed that surveillance video falls within this definition because it provides evidence about your functional capacity — what your body can and cannot do.

If the video contains audio, the entire recording must be submitted. If the video has been edited to show only certain parts, the employer should disclose that editing has occurred and make the full unedited video available if requested.

Why the Pollard Decision Matters Here

Before Pollard (2025) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2025/Shawn-POLLARD-ADJ10675931.pdf>), many practitioners believed the employer could not send video to a QME until after your deposition, because the Downing withholding rule seemed to apply. Pollard rejected this view. The WCAB found that the Labor Code § 4062.3 (https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=4062.3.&lawCode=LAB) submission process is a completely separate pathway from deposition-based discovery.

This means the employer can now get video in front of your medical evaluator early in the case — potentially before you even testify. The QME may then factor the video into opinions about your disability, treatment needs, and work restrictions.

Grounds for Objecting to QME Submission

If you receive notice that the employer wants to send video to your QME, your attorney can object based on:

- Lack of relevance — the video does not relate to the medical issue being evaluated
- Authentication disputes — there is genuine doubt about whether the video is real or accurately represents your activities
- Discovery violations — the employer obtained the video improperly
- Procedural defects — the employer did not follow the 20-day notice requirement correctly

Important: Privacy objections are generally weak after Licea (2022) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2022/Juan-LICEA-ADJ10568300.pdf>), unless the video was recorded inside your home or another genuinely private space. Your attorney should focus on procedural and authentication-based objections, which are stronger.

Note: Even if you do not think you can block the video entirely, filing a timely objection forces the judge to review the situation before the video reaches the QME. If you do not object, the video goes to the QME automatically.

Part 8: Arguments For and Against Video Admission at Trial

This section outlines the main arguments each side can make about whether surveillance video should be allowed as evidence at trial.

Arguments the Employer Will Use to Get Video Admitted

The employer's legal team will rely on several strong arguments:

- Relaxed authentication under Johnson: The Johnson (2021) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2021/Christopher-JOHNSON-ADJ14203968.pdf>) decision allows authentication by any witness with knowledge that the video is accurate — not just the investigator. This is a low bar to meet.
- WCAB flexibility under Labor Code § 5708: The WCAB is not bound by strict evidence rules (https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5708.&lawCode=LAB), so technical objections are harder to win.
- Compliance with Downing and Espedal: If the employer followed the withholding and disclosure rules correctly, the video should be admitted.
- The Pollard QME pathway: Under Pollard (2025) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2025/Shawn-POLLARD-ADJ10675931.pdf>), video properly submitted to a QME creates medical-legal opinions that independently support the employer's case.
- Limited privacy protections: Under Licea (2022) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2022/Juan-LICEA-ADJ10568300.pdf>), activities in public places are not protected by privacy rights.
- High probative value: Judges generally find video evidence persuasive because it shows real activities rather than relying on descriptions alone.

Arguments Your Attorney Can Use to Challenge the Video

Your attorney's strongest arguments focus on procedural violations rather than trying to argue the video is unreliable:

- Untimely disclosure: If the video was not listed on the pre-trial conference statement before the MSC, Labor Code § 5502(d)(3)

(https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5502.&lawCode=LAB) and Guedea (2024) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2024/Miguel-GUEDEA-ADJ8779374.pdf>) support exclusion.

- Missing witnesses on the list: Under Gunderson (2023) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2023/James-GUNDERSON-ADJ9727055.pdf>), if authenticating witnesses were not listed on the pre-trial conference statement, the video may be excluded.
- Post-deposition withholding: If your attorney demanded the video after your deposition and the employer delayed, Espedal (2012) (<https://bradfordbarthel.com/wp-content/uploads/2021/05/20191029DiscoveryPartIVPP.pdf>) supports exclusion as a sanction.
- Editing and chain-of-custody problems: If segments are missing, time stamps are wrong, or the file shows signs of modification, your attorney can argue the video is unreliable.
- Relevance challenges: If the activities in the video are not inconsistent with your injury (for example, walking short distances when your claim is about heavy lifting), your attorney can argue the video is irrelevant.
- Incident video not disclosed early: If the video shows the injury itself, Gonzales (2024) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2024/Coreen-GONZALES-ADJ18936354.pdf>) required pre-deposition disclosure.

Note: Arguments based solely on privacy are unlikely to succeed unless the video was recorded inside your home or another truly private location.

Part 9: Step-by-Step Roadmap — What to Expect and What to Do

This section provides a practical guide for injured workers and their attorneys at each stage of a case involving sub rosa video.

If You Suspect You Are Being Surveilled

There is no law preventing an employer from hiring a licensed investigator to observe your activities in public places. You should:

- Continue your normal activities and follow your doctor's instructions
- Do not exaggerate your limitations to your doctor or in legal settings
- Do not try to evade or confront investigators
- Tell your attorney if you notice anything unusual (unfamiliar vehicles, people filming you)

When You Receive Notice of Proposed QME Submission

If your attorney receives a letter saying the employer wants to send surveillance video to your QME:

1. Read the notice immediately — you have only 20 days to respond
2. Review the video with your attorney to understand what it shows
3. Decide whether to object — your attorney should file a written objection if any colorable legal ground exists (authentication concerns, procedural defects, relevance issues)
4. Meet the 20-day deadline — if no objection is filed, the video goes to the QME automatically under Cal. Code Regs. tit. 8, § 35(c) (<https://www.dir.ca.gov/t8/35.html>)

At the Mandatory Settlement Conference

Your attorney should carefully review the employer's pre-trial conference statement and check:

- Is the video listed as an exhibit with a detailed description?
- Are authenticating witnesses listed on the witness page?
- Was the video disclosed in time, or was it obtained after the MSC?

If any of these elements are missing, your attorney should note the deficiency and preserve objections for trial.

At Trial

If the employer tries to introduce video at trial, your attorney should object on every available ground. Even if the video is admitted, your attorney can argue that:

- The video was selectively recorded and does not show the full picture
- The activities shown are not inconsistent with your injury
- The video was taken on a "good day" and does not represent your typical condition
- Context is missing (for example, the video does not show the pain you experienced afterward)

If the Video Is Excluded

If the judge excludes the video, the employer may appeal. Your attorney should ensure the record clearly reflects the reason for exclusion and all objections made. If the video was submitted to a QME before exclusion, the QME's report may still reference the video, which may require additional legal action.

If the Video Is Admitted

If the judge admits the video, your attorney can still limit its impact through cross-examination and presentation of medical evidence that accounts for the activities shown. You may also appeal the admission if procedural violations occurred.

Part 10: Ethical Rules and Professional Conduct

This section covers the ethical obligations that apply to all attorneys involved in surveillance video disputes.

Employer's Attorney Obligations

Under the California Rules of Professional Conduct (<https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/Current-Rules>), the employer's attorney must:

- Not present evidence known to be false — if the attorney knows the video has been edited or does not accurately show what happened, the attorney cannot offer it as authentic (Rule 3.3)
- Not obstruct evidence-gathering — the attorney cannot deliberately delay producing the video to gain an unfair advantage beyond what Downing permits (Rule 3.4)
- Be truthful about the video's limitations — if the video only shows 30 seconds of activity without context, the attorney should not misrepresent it as showing your full day
- Ensure the investigator is properly licensed under Cal. Bus. & Prof. Code § 6521 (https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=6521.&lawCode=BPC)

Your Attorney's Obligations

Your attorney must also follow ethical rules:

- Honestly assess the video's contents — if the video clearly shows you doing something inconsistent with your claimed limitations, your attorney should prepare to address this rather than ignoring it
- Not file frivolous objections — objections should be based on legitimate legal grounds, not simply to delay or frustrate the process
- Act promptly on deadlines — the 20-day QME objection period and MSC disclosure deadlines require timely action

Investigator Conduct

The private investigator must:

- Hold a current, valid license from the Bureau of Security and Investigative Services (<https://www.bsis.ca.gov/formspubs/piapp.pdf>)
- Record only in locations where you do not have a reasonable expectation of privacy
- Maintain accurate records and not manipulate or edit video to misrepresent your activities
- Not receive payment contingent on "finding" evidence of exaggeration

Part 11: Risk Assessment — What Is Likely to Happen

This section provides a realistic assessment of likely outcomes based on current law.

If the Employer Follows All the Rules

When the employer properly discloses video, lists authenticating witnesses, and meets all deadlines, the likelihood of the video being admitted at trial is high. Under Johnson (2021) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2021/Christopher-JOHNSON-ADJ14203968.pdf>) and Labor Code § 5708 (https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5708.&lawCode=LAB), the WCAB favors admitting relevant evidence.

In this situation, your attorney's focus should shift from trying to exclude the video to reducing its impact through:

- Cross-examination about selective recording and missing context
- Medical evidence explaining why the activities shown are consistent with your injury
- Testimony about your condition on other days not captured on video

If the Employer Makes Procedural Mistakes

When the employer fails to follow proper procedures — missing deadlines, not listing witnesses, or withholding video after your deposition — the likelihood of successful exclusion is moderate to high. Key procedural errors include:

- Not listing the video on the pre-trial conference statement before the MSC
- Not listing authenticating witnesses on the witness page
- Failing to promptly produce video after deposition when demanded
- Obtaining and introducing video after the MSC without showing it was unavailable earlier

Important: Discovery violations under Labor Code § 5502(d)(3) (https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5502.&lawCode=LAB) are not subject to harmless error analysis. This means even if the procedural mistake seems minor, the judge may still exclude the video.

Most Likely Outcome

In most cases, the video will be admitted but with significant opportunity for your attorney to challenge its weight and context. The judge will likely consider the video as one piece of evidence among many — including your testimony, your doctor's reports, and the QME's evaluation. A well-prepared case with strong medical evidence can reduce the video's impact even when it is admitted.

Five Questions Your Attorney Should Evaluate

1. Has your deposition been completed? This determines whether Downing withholding or Espedal disclosure applies.
2. Is the video being sent to a QME or used at trial? Different procedures apply to each.
3. Was the video listed on the pre-trial conference statement? If not, it may be excludable.
4. Can the employer produce an authenticating witness? If not, exclusion may be possible.
5. Are there editing, chain-of-custody, or timing problems? These create leverage for your case.

Part 12: Alternative Strategies and Important Caveats

This section covers backup strategies and essential warnings about the limits of this guidance.

If the Video Cannot Be Used at Trial

Even if procedural problems prevent the video from being admitted at trial, the employer may still benefit from the video in other ways:

- Deposition impeachment: The employer can use the video during your deposition under the Downing framework to challenge your testimony, even if the video itself never becomes a trial exhibit
- QME influence: If the video was properly submitted to the QME under Pollard (2025) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2025/Shawn-POLLARD-ADJ10675931.pdf>), the QME's opinions may already reflect the video's contents, even if the video itself is excluded from trial

- Settlement leverage: The existence of surveillance video, even if inadmissible, may influence settlement negotiations

If the Investigator Is Unavailable

If the investigator cannot attend trial, the employer can use alternative authentication methods under Johnson (2021) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2021/Christopher-JOHNSON-ADJ14203968.pdf>). Your attorney should check whether the investigator was listed on the witness page. If not, your attorney has a strong basis to object.

Evolving Law — Monitor for Changes

Pollard (2025) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2025/Shawn-POLLARD-ADJ10675931.pdf>) is very recent and its full implications are still developing. Future WCAB decisions may:

- Narrow or expand Pollard's reach regarding pre-deposition QME submissions
- Clarify the remedies available for procedural violations under the Wanyonyi (2025) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2025/Patrick-WANYONYI-ADJ12181367.pdf>) framework
- Address interactions between the Gonzales incident-video rule and Pollard's QME-submission pathway

This Report Does Not Guarantee Any Outcome

The admissibility of surveillance video depends heavily on the specific facts of your case, the procedural history, the judge assigned, and many other factors. This report provides general legal analysis as of March 2, 2026, and may be affected by future decisions, statutory changes, or regulatory updates. You should consult with a qualified California workers' compensation attorney before taking action based on this report.

Critical: Certain procedural errors — especially failing to object to QME submission within 20 days or failing to demand video production after deposition — may be irreversible. Act promptly on all deadlines.

References

1. Downing v. City of Hayward, 16 Cal. Workers' Comp. Rep. 76 (WCAB 1988) — <https://apexpi.com/downing-v-city-of-hayward/> (<https://apexpi.com/downing-v-city-of-hayward/>)
2. Espedal v. Grass Valley Police Department, Cal. Wrk. Comp. P.D. LEXIS 123 (WCAB 2012) — <https://bradfordbarthel.com/wp-content/uploads/2021/05/20191029DiscoveryPartIVPP.pdf> (<https://bradfordbarthel.com/wp-content/uploads/2021/05/20191029DiscoveryPartIVPP.pdf>)
3. Johnson v. Lexmar Distribution dba LDI Trucking, Inc., Cal. Wrk. Comp. P.D. LEXIS 289 (WCAB 2021) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2021/Christopher-JOHNSON-ADJ14203968.pdf>)
4. Gonzales v. ADP TotalSource Group, Inc., Cal. Wrk. Comp. P.D. LEXIS 415 (WCAB 2024) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2024/Coreen-GONZALES-ADJ18936354.pdf>)
5. Pollard v. Lemstra Cattle Co., Cal. Wrk. Comp. P.D. LEXIS 219 (WCAB 2025) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2025/Shawn-POLLARD-ADJ10675931.pdf>)
6. Gunderson v. County of Kern (WCAB 2023) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2023/James-GUNDERSON-ADJ9727055.pdf>)
7. Licea v. Screwmatic, Cal. Wrk. Comp. P.D. LEXIS 12 (WCAB 2022) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2022/Juan-LICEA-ADJ10568300.pdf>)
8. Wanyonyi, ADJ12181367 (WCAB 2025) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2025/Patrick-WANYONYI-ADJ12181367.pdf>)
9. Guedea, Cal. Wrk. Comp. P.D. LEXIS 287 (WCAB 2024) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2024/Miguel-GUEDEA-ADJ8779374.pdf>)
10. Cal. Lab. Code § 5708 (https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5708.&lawCode=LAB)
11. Cal. Lab. Code § 4062.3 (https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=4062.3.&lawCode=LAB)
12. Cal. Lab. Code § 5502(d)(3) (https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5502.&lawCode=LAB)
13. Cal. Code Regs. tit. 8, § 35 (<https://www.dir.ca.gov/t8/35.html>)
14. Cal. Code Regs. tit. 8, § 35.5 (https://www.dir.ca.gov/t8/35_5.html)

15. Cal. Civ. Code § 1708.8
(https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1708.8.&lawCode=CIV)
16. Cal. Bus. & Prof. Code § 6521
(https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=6521.&lawCode=BPC)
17. Cal. Const. art. I, § 1
(https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CONS&division=&title=&part=&chapter=&article=1)
18. California Rules of Professional Conduct (<https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/Current-Rules>)
19. Sullivan on Comp — "WCAB Clarifies Procedure for Submitting Sub Rosa Video to QMEs" —
<https://www.sullivanoncomp.com/blog/wcab-clarifies-procedure-for-submitting-sub-rosa-video-to-qmes>
(<https://www.sullivanoncomp.com/blog/wcab-clarifies-procedure-for-submitting-sub-rosa-video-to-qmes>)
20. Sullivan on Comp — "Producing Video Evidence Prior to Applicant's Deposition" —
<https://www.sullivanoncomp.com/blog/producing-video-evidence-prior-to-applicants-deposition>
(<https://www.sullivanoncomp.com/blog/producing-video-evidence-prior-to-applicants-deposition>)
21. Sullivan on Comp — "Authentication of Video Evidence at Trial" —
<https://www.sullivanoncomp.com/blog/authentication-of-video-evidence-at-trial>
(<https://www.sullivanoncomp.com/blog/authentication-of-video-evidence-at-trial>)
22. Bradford & Barthel LLP — "Discovery Part IV" — <https://bradfordbarthel.com/wp-content/uploads/2021/05/20191029DiscoveryPartIVPP.pdf> (<https://bradfordbarthel.com/wp-content/uploads/2021/05/20191029DiscoveryPartIVPP.pdf>)
23. Bureau of Security and Investigative Services — Private Investigator Application —
<https://www.bsis.ca.gov/formspubs/piapp.pdf> (<https://www.bsis.ca.gov/formspubs/piapp.pdf>)

California Workers' Compensation Sub Rosa Video Evidence: Procedural Requirements, Admissibility Standards, and Implementation

(PART-B LEGAL ANALYSIS)

Generated by: Legal AI Assistant

Facilitated by: The Law Offices of Fernando Hidalgo, Inc.

March 2, 2026

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California Workers' Compensation Sub Rosa Video Evidence: Procedural Requirements, Admissibility Standards, and Strategic Implementation

Generated by: Legal AI Assistant | Facilitated by: The Law Offices of Fernando Hidalgo, Inc. Date: March 2, 2026 Jurisdiction: California (Northern District focus)

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I. Executive Summary

Sub rosa surveillance video evidence occupies a complex and evolving position within California workers' compensation law, governed by a framework that distinguishes sharply between the timing of disclosure obligations, the procedures for medical-legal submission, and the authentication requirements for trial admission. The controlling precedent has shifted materially over the past three years, with three landmark decisions—[Espedal v. Grass Valley Police Department (2012)][1], [Johnson v. Lexmar Distribution dba LDI Trucking, Inc. (2021)][2], and most critically [Pollard v. Lemstra Cattle Co. (2025)][3]—establishing distinct rules based on procedural posture and intended use. Understanding this framework is essential for practitioners because the same surveillance video may be subject to completely different disclosure, procedural, and authentication requirements depending on whether it is being submitted to a qualified medical evaluator (QME) under [Labor Code Section 4062.3(b)][4], withheld pending an applicant's deposition under the [Downing v. City of Hayward][5] rule, or introduced at trial for impeachment or credibility purposes. Failure to navigate these distinctions correctly results in evidence exclusion, discovery sanctions, or reversal on appeal.

The key finding from current authority is that the procedural rules governing QME submission under [Labor Code Section 4062.3][4] and [California Code of Regulations Title 8 Section 35][6] operate independently of the tactical considerations surrounding applicant deposition withholding. A defendant may obtain surveillance video and propose its submission to a QME with proper 20-day notice (absent applicant deposition) without violating the [Downing][5] framework that historically allowed withholding pending deposition. However, once an applicant's deposition has been completed, prompt and continuing service is required if the video is demanded; failure to comply constitutes a willful discovery violation under [Espedal][1] that may trigger evidence exclusion or other sanctions. At trial, authentication requirements have been substantially relaxed following [Johnson][2], which permits authentication by any percipient witness rather than requiring the investigator who captured the video. These distinctions create both opportunities and pitfalls for applicant and defense counsel, requiring careful procedural attention to disclosure deadlines, witness list preparation, and chain-of-custody documentation.

Key Takeaways for Practitioners

The sub rosa video framework operates on three distinct timelines: (1) the pre-deposition period, during which defendants may withhold video to test credibility; (2) the post-deposition to MSC period, during which prompt disclosure is mandatory upon demand; and (3) the post-MSD/trial period, during which strict authentication and witness-list requirements govern admissibility. The [Pollard][3] decision does not reverse [Downing][5] or [Espedal][1]; rather, it clarifies that when an applicant's deposition has not yet occurred, a defendant may use the Labor Code Section 4062.3 pathway to submit video to a QME without triggering the deposition-related withholding restrictions, provided formal notice and objection procedures are followed. Authentication defects—particularly failure to list authenticating witnesses on the pre-trial conference statement—create a technical ground for exclusion that is not subject to harmless error analysis. Privacy-based objections under [California Civil Code Section 1708.8(g)][7] have been substantially narrowed by recent WCAB decisions; conduct visible from the street or in publicly accessible parking areas generally lacks

reasonable privacy expectations and does not bar admissibility. Investigator licensing under [California Business and Professions Code Section 6521][8] is a threshold requirement for legal surveillance but does not independently bar admissibility if the video itself is otherwise properly obtained and authenticated.

Risk Assessment Summary

For Defendants Seeking to Introduce Surveillance at Trial: Moderate to high risk if disclosure deadlines are missed or authenticating witnesses are not properly identified and listed in advance of trial. Procedurally sound disclosure and authentication create low-risk pathway to admissibility. For Applicant's Counsel Opposing Video: Moderate to high risk of video admission under current relaxed authentication standards, but significant opportunities exist to exclude video on technical grounds (failure to list witnesses, editing/chain-of-custody defects, untimely disclosure post-MSA). Privacy objections under Civil Code Section 1708.8 are low-probability grounds absent extraordinary circumstances.

Strategic Decision Framework

Counsel confronted with sub rosa surveillance should evaluate five key variables: (1) Has the applicant's deposition been completed? If yes, [Espedal][1] demands prompt disclosure upon demand; if no, [Downing][5] permits withholding. (2) Is video being submitted to a QME or used at trial? QME submission follows [Labor Code Section 4062.3][4] procedures and may be used to generate medical opinions; trial use requires authentication under [Labor Code Section 5708][9] and relaxed [Johnson][2] standards. (3) Was the video listed on the pre-trial conference statement exhibits page? Failure to list is a technical exclusion ground not subject to harmless error. (4) Can the investigator or other authenticating witness be produced or is testimony available? If not, counsel should identify alternative authenticators or prepare to concede authentication issues. (5) Are there chain-of-custody defects, editing concerns, or timing irregularities that could support a motion to exclude? Technical defects create leverage in settlement discussions or suppression motions.

The qualitative likelihood of successful admission of properly disclosed, authenticated, and timely-noticed surveillance video at trial is high to moderate-high given the current relaxed authentication standards. The qualitative likelihood of successful exclusion based on technical procedural defects is moderate to moderate-high if counsel actively pursues chain-of-custody challenges, witness-list objections, or timing-based discovery violations. The key variable is procedural compliance by the party seeking to introduce the video.

II. Legal Framework: Statutes, Regulations, and Binding Authority

Statutory Authority

The admissibility and procedural handling of sub rosa surveillance video in California workers' compensation is governed primarily by four statutory provisions. [Labor Code Section 5708][9] establishes that the Workers' Compensation Appeals Board (WCAB) is not bound by common law or statutory rules of evidence and procedure, permitting the Board to fashion its own evidentiary framework tailored to the informal, expeditious nature of workers' compensation adjudication. This foundational statute does not automatically admit all evidence; rather, it grants the WCAB discretion to adopt relaxed procedures while still maintaining basic requirements of relevance and authentication. [Labor Code Section 4062.3(a)][10] and the detailed implementation in [Title 8 California Code of Regulations Section 35][6] establish that parties may submit "information" to qualified medical evaluators, defined to include "medical and nonmedical records relevant to determination of the medical issue." The statute and regulation explicitly require that substantive information be served on the opposing party at least 20 days in advance of submission to the QME, with [California Code of Regulations Section 35(c)][6] providing a 20-day objection period. Parties may object to non-medical records being submitted to a QME, but the objection period is limited to 20 days; failure to timely object constitutes waiver of the objection, though the workers' compensation judge retains discretion to fashion a remedy if procedural violations are found.

[California Civil Code Section 1708.8(g)][7] addresses invasion of privacy through surveillance and creates an exception for private investigators attempting to capture surveillance video of suspected fraudulent conduct. The statute requires a showing supported by "articulable suspicion of suspected illegal activity, violation of an administrative rule, fraudulent insurance claim, or other suspected fraudulent conduct or activity." However, recent WCAB interpretation has held that Civil Code Section 1708.8 addresses civil tort liability, not evidentiary admissibility in workers' compensation proceedings, and therefore does not serve as

an automatic bar to surveillance-video admission in those proceedings. [California Business and Professions Code Section 6521][8] requires that any person engaging in the business of private investigation must obtain a license from the Bureau of Security and Investigative Services. Violations constitute misdemeanor conduct subject to fines and potential imprisonment. While this requirement establishes a threshold condition for lawful surveillance, it does not independently determine admissibility; courts assess whether the investigator was properly licensed at the time of surveillance but do not condition video admissibility solely on licensing status if the video itself is otherwise relevant and properly authenticated.

Regulatory Framework

[Title 8 California Code of Regulations Section 35][6] provides the detailed procedural requirements for all communications with and submission of information to qualified medical evaluators and agreed medical evaluators (AMEs). The regulation requires that any party wishing to provide information to a medical evaluator must serve the information on the opposing party at least 20 days before the information is provided to the evaluator. [Subdivision (c)][6] specifically addresses the timing requirement: "At least twenty (20) days before the information is to be provided to the evaluator, the party providing such medical and non-medical reports and information shall serve it on the opposing party." Upon receipt of notice, the opposing party has until the 20th day to file an objection; if no timely objection is filed, the party may submit the information to the evaluator. [Subdivision (d)][6] provides that if an objection is timely filed and not resolved, the parties must submit the dispute to the workers' compensation judge for resolution before the information may be provided to the evaluator. [Subdivision (e)][6] establishes that no party shall forward to the evaluator medical-legal reports previously rejected as untimely, any evaluation by non-treating physicians addressing permanent impairment or disability unless already ruled admissible, or any report stricken or found inadmissible by a workers' compensation judge. Critically, [subdivision (e)][6] does not explicitly prohibit submission of sub rosa video; rather, courts have interpreted sub rosa video to fall within the category of "information" subject to the 20-day notice requirement.

[Title 8 California Code of Regulations Section 35.5][11] establishes compliance requirements for AMEs and QMEs with Administrative Director evaluation guidelines. The regulation requires that each evaluator address all contested medical issues within the evaluator's scope of practice and clinical competence, and that each evaluator advise the parties in writing of any disputed issues outside that scope so that additional evaluations may be obtained. These provisions establish baseline requirements for medical-legal evaluation but do not independently address sub rosa video admissibility or procedural requirements.

Key Case Law: Binding and Highly Persuasive Authority

Downing v. City of Hayward (1988) 16 CWR 76 - Pre-Deposition Withholding Rule

[Downing v. City of Hayward (1988)][5] is the foundational panel decision establishing that a defendant is not required to disclose surveillance video prior to an applicant's deposition and is not even obligated to disclose whether such video exists. The WCAB panel reasoned that the entire purpose of post-injury surveillance is to test the applicant's credibility by comparing observed activities against deposition testimony or statements to medical evaluators. The panel held: "At his deposition, the least that an applicant should be required to do is to state the truth as to his physical abilities, and his duty to state the truth should not depend on whether the defendant has nor has not observed and made a record of his daily activities. Moreover, the ascertainment of the truth is also best served by allowing a defendant to depose an applicant before he has seen, or has been informed of the existence of, any surveillance films." [5] This framework preserves the defendant's tactical advantage in using surveillance for impeachment and reflects a policy judgment that applicants should testify based on their own unrefreshed recollection rather than with knowledge of surveillance content. The [Downing][5] rule has been applied consistently for over 35 years, and defendants have relied on it to argue that pre-deposition withholding of surveillance is not merely permitted but strategically sound and consistent with Board procedure.

Espedal v. Grass Valley Police Department (2012) Cal. Wrk. Comp. P.D. LEXIS 123 - Post-Deposition Disclosure Obligation

[Espedal v. Grass Valley Police Department (2012)][1] modified and limited the [Downing][5] rule by establishing that once an applicant's deposition has been completed, a defendant must promptly disclose any surveillance video if timely demand is made. In [Espedal][1], the defendant withheld surveillance video through two separate applicant depositions despite timely demands for production after each deposition, and

only disclosed the video after the QME had issued a report. The WCAB upheld the workers' compensation judge's decision to exclude the surveillance films as inadmissible, finding that the defendant's conduct constituted a willful violation of discovery rules and an improper attempt to stretch the [Downing][5] rule beyond its intended scope. The panel stated that "not producing sub rosa until after the applicant's deposition serves the purpose of testing the witness's credibility. After that deposition, the sub rosa must be identified and produced if requested." [1] [Espedal][1] thus created a bright-line rule: withholding is permissible pre-deposition to test credibility, but becomes a discovery violation post-deposition if timely demand is made. This framework operates independently of whether the video will ultimately be used at trial or submitted to a medical evaluator; the temporal rule turns on the applicant's deposition date, not the intended use.

Johnson v. Lexmar Distribution dba LDI Trucking, Inc. (2021) Cal. Wrk. Comp. P.D. LEXIS 289 - Relaxed Authentication Standard

[Johnson v. Lexmar Distribution dba LDI Trucking, Inc. (2021)][2] substantially relaxed the authentication standard for video evidence by holding that video need not be authenticated by the investigator who captured it or even by a photographer. In [Johnson][2], the defendant sought to introduce dashcam video consisting of four separate clips, but the workers' compensation judge sustained an applicant's objection on the ground that the defendant had not listed a witness capable of testifying to the videos' chain of custody, how the films were prepared, editing, and technical specifications. The defendant petitioned for removal, arguing that the videos should have been admitted based on applicant's testimony, circumstantial evidence, content and location, or any means provided by law. The WCAB agreed, citing [Labor Code Section 5708][9] for the proposition that the Board is not bound by common law or statutory evidence rules. The panel held: "[T]hough the requisite foundation may, and usually will, be laid by the photographer, it may also be provided by any witness who perceived the events filmed." [2] The WCAB further stated: "A video recording is authenticated by testimony or other evidence that it accurately depicts what it purports to show." [2] This holding marked a significant departure from earlier WCAB practice requiring investigator testimony, and the panel explicitly acknowledged that even in criminal and civil cases, a chain of custody is not necessary to establish the authenticity of a video. [Johnson][2] thus permits authentication by the injured worker themselves, by a co-worker who witnessed the event, by the medical evaluator who viewed the video, or by any other witness with personal knowledge that the video fairly and accurately represents what it purports to show. This relaxation has been described by practitioners as a "trend" toward more liberal admission standards, though [Johnson][2] remains a panel decision and is not binding on other panels or workers' compensation judges.

Gonzales v. ADP TotalSource Group, Inc. (2024) Cal. Wrk. Comp. P.D. LEXIS 415 - Distinction Between Incident Video and Post-Injury Surveillance

[Gonzales v. ADP TotalSource Group, Inc. (2024)][12] refined the [Downing][5] rule by distinguishing between post-injury surveillance (to which [Downing][5] withholding applies) and video of the injury incident itself (which must be disclosed prior to the applicant's deposition if timely requested). In [Gonzales][12], the applicant alleged injury during an altercation with a co-worker and requested production of video footage of the incident. The defendant refused, relying on [Downing][5] to argue that the video was not required to be disclosed prior to the deposition. The WCAB reversed, holding that the "surveillance" video was not of post-injury activities but of the incident leading to the alleged injury itself. The panel reasoned: "Although defendant would no doubt prefer not to disclose the video to applicant until after conducting her deposition in the hopes that she testifies to something inconsistent with what is pictured, such an argument can be equally mustered with regard to virtually any discoverable evidence. Were we to broaden the holding of Downing to include the instant video footage, we see no real limiting principle that would prevent a defendant from withholding virtually any evidence prior to conducting an applicant's deposition." [12] The WCAB also noted that the defendant had previously shown the video to the applicant after the incident, making continued withholding unfair to both the applicant and her counsel. [Gonzales][12] thus narrows [Downing][5] to its core purpose-preserving credibility testing through post-injury surveillance-and requires disclosure of incident video upon timely request. This distinction has important practical implications for surveillance obtained of the work site or injury occurrence itself versus surveillance of the injured worker's post-injury activities.

Pollard v. Lemstra Cattle Co. (2025) Cal. Wrk. Comp. P.D. LEXIS 219 - QME Submission Independent of Deposition Discovery

[Pollard v. Lemstra Cattle Co. (2025)][3] is the most recent and arguably most significant decision, clarifying that Labor Code Section 4062.3 procedures for QME submission operate independently of the tactical

considerations surrounding applicant deposition withholding. In [Pollard][3], the defendant obtained surveillance video of the applicant on multiple dates and, after the parties had completed the deposition of the QME, sent a copy to the applicant's attorney and proposed submission to the QME with a 20-day objection period under Labor Code Section 4062.3(b). The applicant timely objected, and at trial, the workers' compensation judge found it improper for the defendant to withhold the video until after the QME's deposition and then attempt to submit it, issuing an order prohibiting QME submission and excluding the treating physician's report that was based on the video. The defendant petitioned for removal, contending that it had complied with the statutory procedures for QME submission. The WCAB granted the petition and rescinded the workers' compensation judge's order, substituting a new finding that the defendant was entitled to submit the surveillance video to the QME. Critically, the panel stated: "While our case law has historically allowed a defendant to withhold surveillance video when the deposition of the applicant is pending, prompt and continuing service of surveillance video is required following the completion of the deposition." [3] However, the panel noted: "Here, however, it does not appear that applicant's deposition has been accomplished, nor has the defendant sought to introduce the sub rosa video into evidence at mandatory settlement conference on the case in chief. Rather, defendant has provided applicant with a copy of the sub rosa video and proposed to submit the video to the QME for review unless applicant objected within twenty days pursuant to section 4062.3(b)." [3] The WCAB found "no violation of our Rules or other statutory prohibition that would preclude the QME's review of sub rosa video" and ordered the submission permitted. [3] [Pollard][3] does not reverse [Downing][5] or [Espedal][1]; rather, it clarifies that the Labor Code Section 4062.3 pathway exists as a distinct procedural mechanism. When an applicant's deposition has not yet occurred, a defendant may use Section 4062.3 to submit video to a QME without running afoul of deposition-withholding restrictions, provided formal statutory procedures (20-day notice, objection opportunity) are followed.

Gunderson v. County of Kern (2023) - Authentication as Exclusion Ground

[Gunderson v. County of Kern (2023)][13] reinforced the authentication requirement by holding that surveillance video cannot be admitted at trial unless properly authenticated and that failure to list authenticating witnesses on the pre-trial conference statement can result in complete exclusion. In [Gunderson][13], the defendant submitted surveillance video as Exhibit F but did not list the investigator or any authenticating witness in the pretrial conference statement. At trial, the workers' compensation judge excluded the video for lack of authentication, finding insufficient foundation. On petition for removal, the defendant argued that the video should have been admitted based on the injured worker's testimony or other circumstantial evidence. The WCAB remanded for further proceedings, ultimately upholding the exclusion but clarifying the standard: video must be "properly authenticated" but authentication does not necessarily require the investigator's testimony. The practical impact of [Gunderson][13] is that defense counsel must identify and list potential authenticating witnesses in advance of trial; failure to do so creates a technical basis for exclusion that counsel opposing the video can exploit. This procedural requirement has been characterized as a critical tactical issue in workers' compensation surveillance disputes.

Licea v. Screwmatic (2022) Cal. Wrk. Comp. P.D. LEXIS 12 - Privacy and Reasonable Expectation of Privacy

[Licea v. Screwmatic (2022)][14] addressed privacy objections to sub rosa video, holding that conduct recorded in a front yard or parking lot visible from the street does not benefit from a reasonable expectation of privacy sufficient to bar admissibility. In [Licea][14], the applicant contended that California Civil Code Section 1708.8 applied and that the surveillance was impermissibly obtained. The WCAB held that Civil Code Section 1708.8 addresses civil tort liability for invasion of privacy, not evidentiary preclusion in workers' compensation proceedings, and therefore does not serve as an evidentiary bar. Regarding the constitutional right to privacy under California Constitution Article I, Section 1, the panel held: "although applicant retains a fundamental right to privacy under the California Constitution, applicant has not established a reasonable expectation of privacy for conduct in the front yard of a home that is plainly visible from the street and sidewalk or in the publically accessible parking lots where he was surveilled." [14] The [Licea][14] decision substantially narrowed privacy-based objections to surveillance by establishing that public visibility is determinative; conduct visible from the street, in parking areas accessible to the public, or in grocery stores does not enjoy privacy protection sufficient to exclude video evidence. This holding eliminates privacy as a viable exclusion ground in most surveillance scenarios unless the video captures conduct in genuinely private spaces (home interior, bathroom, etc.).

Wanyonyi v. [Defendant] (2025) ADJ12181367 - Discovery Violations and Procedural Compliance

[Wanyonyi (2025)][15] addressed the remedies for failure to produce investigator logs and chain-of-custody documentation, holding that while sub rosa video itself may be admissible, failure to produce investigator materials constitutes a discovery violation that may preclude investigator testimony but does not automatically bar video admission. In [Wanyonyi][15], the defendant served sub rosa video and notified the applicant of intent to submit to AMEs, but the applicant objected based on defendant's failure to serve investigator and witness logs. The workers' compensation judge excluded both the video and the investigators from testifying. On removal, the WCAB held that nothing in governing statutes or regulations per se requires provision of investigator logs as a condition of video submission to medical-legal evaluators. However, the panel noted that if the applicant contests authenticity or relevance, discovery of such logs might be required. The practical impact is that while procedural defects may preclude investigator testimony or trigger other remedies, they do not automatically bar video admission itself unless the defect creates genuine dispute about the video's authenticity or relevance. [Wanyonyi][15] thus requires applicant counsel to identify and articulate specific authenticity or relevance concerns if seeking to leverage procedural violations into video exclusion.

Guedea v. [Defendant] (2024) - Post-MSC Surveillance and Discovery Closure

[Guedea v. [Defendant] (2024)][16] held that surveillance video obtained after the mandatory settlement conference (MSC) generally cannot be admitted at trial unless the proponent demonstrates that the video was not available or could not have been discovered through exercise of due diligence prior to the MSC. [Labor Code Section 5502(d)(3)][17] establishes that discovery closes on the date of the MSC and that evidence not disclosed in pretrial conference statements is inadmissible unless unavailable or not discoverable through due diligence. In [Guedea][16], the defendant obtained surveillance video after the MSC and sought to admit it at trial, arguing that by its nature the post-MSC footage depicted activities occurring after the MSC and therefore could not have been obtained prior. The WCAB rejected this argument, holding that allowing blanket exemption for post-MSC surveillance would vitiate the statutory discovery-closure requirement and permit ongoing surveillance throughout litigation. The practical effect is that surveillance must generally be obtained and disclosed before the MSC, and post-MSC surveillance is admissible only in narrow circumstances where counsel demonstrates that the surveillance could not reasonably have been obtained earlier through exercise of due diligence. This creates temporal pressure on defense counsel to conclude surveillance activities before the MSC if they intend to use the evidence at trial.

III. Current Legal Landscape and Recent Developments (90 Days to 12 Months)

Binding and Interim WCAB Decisions (Last 12 Months)

The most significant recent development is [Pollard v. Lemstra Cattle Co. (2025) Cal. Wrk. Comp. P.D. LEXIS 219][3], decided within the last 90 days. [Pollard][3] does not reverse or fundamentally alter [Downing][5], [Espedal][1], or [Johnson][2], but it clarifies the interaction between deposition-related withholding and Labor Code Section 4062.3 submission procedures in a manner that creates new opportunities and pitfalls for practitioners. The key holding is that when an applicant's deposition has not yet occurred, a defendant is not prohibited by [Downing][5] deposition-withholding principles from using Labor Code Section 4062.3 procedures to submit surveillance video to a QME. This is significant because it means that in cases where applicant depositions are delayed, rescheduled, or not yet noticed, a defendant may use the statutory QME pathway to get surveillance into the medical-legal record and potentially influence medical opinions regarding causation, disability, and need for future care without waiting for deposition discovery to close or without triggering the post-deposition prompt-service obligations of [Espedal][1]. Applicant counsel must now be alert to the possibility that even in the absence of deposition discovery, a defendant may notice proposed QME submission and, if not timely objected to, proceed with submission under the 20-day statutory framework.

Within the past 12 months, [Wanyonyi (2025) ADJ12181367][15] refined the remedies available for procedural violations in surveillance disclosure. While [Wanyonyi][15] held that failure to produce investigator logs does not automatically bar video admission, it acknowledged that discovery violations may warrant appropriate remedies fashioned by the workers' compensation judge, which might include exclusion of investigator testimony, replacement of the medical evaluator, or other sanctions. This creates a middle ground between complete video exclusion and full admission with investigator testimony, and it suggests that the WCAB is taking a more nuanced approach to procedural violations than wholesale evidence suppression.

For applicant counsel, this means that procedural defects can be used as leverage even if they do not result in complete video exclusion; for defense counsel, it suggests that procedural compliance is necessary to ensure investigator testimony and to avoid judge-crafted remedies.

[Guedea v. [Defendant] (2024) Cal. Wrk. Comp. P.D. LEXIS 287][16], decided within the 12-month window, reinforced strict enforcement of discovery closure under [Labor Code Section 5502(d)(3)][17]. The decision explicitly rejected defendant's argument that post-MSA surveillance depicting activities occurring after the MSA should be automatically admissible because the activities themselves could not have occurred before the MSA. Instead, the WCAB held that the focus is on when surveillance evidence becomes available and whether the defense exercised due diligence to obtain surveillance before the MSA. This decision creates significant practical pressure: if counsel believes surveillance will be necessary, it must be obtained and completed before the MSA, or strong justification for post-MSA surveillance must be prepared in advance.

Federal Register Notices and EOIR/USCIS Policy Changes (Not Applicable)

This section addresses immigration/asylum proceedings, which are not applicable to the workers' compensation surveillance-video context. No relevant EOIR memos or USCIS policy manual updates affect California workers' compensation sub rosa video procedures as of March 2026.

Ninth Circuit and Federal Court Precedent

Federal courts are not directly involved in California workers' compensation proceedings, which are administered by the WCAB. However, federal civil discovery rules and federal evidence standards have influenced WCAB thinking regarding authentication, chain of custody, and disclosure timing. [Federal Rule of Evidence 901][18] requires authentication of evidence before admission, but it does not mandate chain-of-custody testimony and permits authentication "by any means provided by the rules presented by this article or by other rules prescribed by Congress or by these rules." This federal standard influenced the [Johnson][2] decision's relaxation of the investigator-only authentication requirement. Additionally, federal civil discovery rules permit parties to condition deposition participation on production of surveillance evidence, and some state civil discovery regimes (as discussed in the comparative surveillance research) permit similar conditioning. However, the WCAB, as an administrative body not bound by common law evidence rules, is free to craft its own standards, and [Labor Code Section 5708][9] explicitly permits this deviation.

Pending or Potentially Imminent Litigation

No publicly reported cases currently pending before the WCAB or California courts of appeal appear poised to alter the current framework in the next 6-12 months. However, practitioners should monitor for:

- (1) Challenges to the [Pollard][3] framework arguing that it creates an impermissible end-run around [Espedal][1] protections by allowing QME submission without deposition discovery closure. If an applicant successfully argues that [Pollard][3] permits circumvention of [Espedal][1], a clarifying decision may be forthcoming.
- (2) Appellate review of [Wanyonyi][15] remedies framework, particularly regarding when procedural violations warrant video exclusion versus other sanctions. The nuanced remedies approach in [Wanyonyi][15] may generate appellate litigation regarding appropriate sanctions.
- (3) Litigation regarding the interaction between [Gonzales][12] incident-video disclosure requirements and [Pollard][3] QME submission procedures. If a defendant attempts to use [Pollard][3] to submit incident video to a QME without prior deposition-stage disclosure, applicant's counsel may argue that [Gonzales][12] requires pre-deposition disclosure of incident video regardless of [Pollard][3] procedures.

California State Law and Rule Changes Affecting Surveillance

As of March 2026, no amendments to [California Labor Code Section 5708][9], [Section 4062.3][10], or related statutes have been enacted. The California Code of Regulations Title 8 Section 35 remains current as last updated. California Assembly and Senate have not proposed comprehensive legislation regarding workers' compensation surveillance procedures. However, practitioners should be aware of two adjacent state-law developments that may indirectly affect surveillance litigation:

(1) California Private Investigator Act updates: The Bureau of Security and Investigative Services periodically updates licensing requirements and disciplinary standards under [California Business and Professions Code Section 6521-6573][8]. Any investigator conducting surveillance in a workers' compensation case should be independently verified to be currently licensed; unlicensed surveillance may be challenged as violating the Private Investigator Act, though this is more likely to result in disciplinary action against the investigator than automatic video exclusion in the workers' compensation proceeding.

(2) California Consumer Privacy Act (CCPA) expansion: The CCPA, as amended, expands employee privacy rights regarding personal information collection and use. While CCPA is primarily a privacy statute and does not directly regulate workers' compensation discovery, future amendments could establish privacy frameworks that workers' compensation surveillance must respect. As of March 2026, no CCPA amendments have directly affected workers' compensation surveillance, but evolving privacy norms may influence judicial interpretation of reasonable expectations of privacy under [California Constitution Article I, Section 1][19].

IV. Authentication Standards and Evidentiary Requirements for Sub Rosa Video

The Relaxed Authentication Standard Under *Johnson v. Lexmar Distribution*

Prior to [*Johnson v. Lexmar Distribution* (2021)][2], the standard WCAB practice required that surveillance video be authenticated by the investigator who captured it, with testimony addressing the circumstances of filming, the technical equipment used, the dates and times, any editing or splicing, and the investigator's statement that the video accurately depicts what he or she observed. This strict authentication requirement reflected practices imported from civil and criminal litigation and rested on the assumption that chain-of-custody and technical foundation were necessary to establish reliability. However, [*Johnson*][2] fundamentally altered this landscape by holding that [Labor Code Section 5708][9] permits the WCAB to craft its own evidentiary standards, and that strict investigator-only authentication is not mandated by law. The panel stated: "[T]hough the requisite foundation may, and usually will, be laid by the photographer, it may also be provided by any witness who perceived the events filmed. A video recording is authenticated by testimony or other evidence that it accurately depicts what it purports to show." [2]

This framework creates a substantially lower bar for authentication. Instead of requiring investigator testimony, counsel may now authenticate video through: (1) the injured worker's own testimony that the video accurately depicts the activities shown; (2) testimony from a co-worker or other witness who perceived the events and can confirm their accuracy; (3) testimony from a medical evaluator who reviewed the video and found it consistent with or contradicted by the clinical examination; (4) circumstantial evidence such as time-stamped metadata, location information, or other objective factors; or (5) any combination of these sources. The practical effect is that defendants are no longer dependent on investigator availability or cooperativeness to authenticate video; applicant counsel may be forced to authenticate their own client's video through cross-examination ("Is this you in the video?" "Does this video accurately show what you were doing on that day?"). This creates strategic opportunities for defense counsel while simultaneously reducing logistical barriers to video admission.

Chain of Custody and Technical Foundation Requirements

While [*Johnson*][2] relaxed the investigator-testimony requirement, it did not eliminate the need for foundation entirely. The panel noted that "even in criminal and civil cases, a chain of custody is not necessary to establish the authenticity of a video." [2] This suggests that technical chain-of-custody documents (log sheets tracking who handled the video file, when, and for what purpose) are not essential; instead, foundation can be established through testimonial authentication. However, chain-of-custody defects may still be exploited by counsel seeking to challenge reliability or authenticity. For example, if the video has been edited, if segments are missing, if the time stamps are inconsistent, or if the file metadata indicates modification after creation, these defects can be presented to the workers' compensation judge as going to weight and credibility even if the video is technically admissible under [*Johnson*][2].

The distinction between chain of custody (evidence that the video has not been tampered with between capture and trial) and authentication (evidence that the video depicts what it purports to show) is subtle but important. Under [*Johnson*][2], chain-of-custody testimony is not mandatory, but a defense counsel seeking to introduce video should still be prepared to address chain-of-custody questions. If the investigator is unavailable, counsel should be prepared to establish through other witnesses or documentation that the video file has remained in the same format, has not been edited, and accurately reflects the original capture.

Metadata examination (file creation date, codec, frame rate, bit rate) can assist in establishing authenticity without requiring investigator testimony. Additionally, defense counsel should be alert to the possibility that applicant's counsel will attempt to introduce digital-forensics experts or challenge video authenticity based on technical defects; while such challenges are less likely to result in outright exclusion post-[Johnson][2], they may affect the weight assigned to the video and the credibility of defense counsel's factual presentations.

Witness List Requirements and Technical Exclusion Grounds

[Gunderson v. County of Kern (2023)][13] reinforced a critical procedural requirement: any witness who will testify regarding video (whether investigator, applicant, co-worker, or medical evaluator) must be listed on the pre-trial conference statement (PTCS) witness list. Under [California Labor Code Section 5502(d)(3)][17], discovery closes on the date of the MSC, and evidence not disclosed prior to that date is inadmissible unless the proponent demonstrates it was unavailable or not discoverable through due diligence. The PTCS serves as the formal record of intended witnesses, and failure to list a witness constitutes a discovery violation. While [Johnson][2] permits authentication by multiple sources, each of those sources (if testifying) must be identified and listed in advance. If an investigator is listed on the witness list and then fails to appear at trial, applicant counsel can object to the investigator being called. If the investigator was not listed and a defendant attempts to call the investigator at trial to authenticate the video, applicant counsel can object based on the witness not being listed.

Critically, [Gunderson][13] suggests that where the defendant has failed to list an authenticating witness and the defendant's primary theory of authentication depends on that witness's testimony, the workers' compensation judge may exclude the video in its entirety based on lack of foundation. While [Johnson][2] permits alternative authentication methods, if the defendant's pretrial strategy rested on investigator testimony and the investigator was not listed, the judge may find that the defendant has failed to establish a proper foundation through any available means. This creates a powerful procedural check on video admission: applicant counsel should carefully review the PTCS witness list at the MSC and identify any persons who might authenticate surveillance video; if such persons are not listed, counsel should note the absence and preserve the objection for trial. At trial, counsel should be prepared to argue that if the investigator is not present and not listed, the video lacks proper authentication and should be excluded.

Admissibility Versus Weight: The Distinction

It is important to distinguish between admissibility (whether video is received into evidence at all) and weight (how much credibility or persuasive effect the video receives after admission). Under [Johnson][2], properly authenticated video is admissible; however, the workers' compensation judge retains discretion to assess the weight of the video based on factors such as reliability of the authentication method, potential editing or manipulation, contextual limitations of the footage, and consistency with other evidence. A workers' compensation judge might admit a video even if the only authentication testimony comes from the injured worker's grudging acknowledgment that the video depicts them, while simultaneously finding that the video deserves minimal weight given the injured worker's obvious bias and the possibility of selective recording. Conversely, video authenticated by multiple independent witnesses (investigator, medical evaluator, co-worker) receives greater weight even if technically each witness independently could have authenticated it. Defense counsel should therefore view authentication not as an all-or-nothing proposition but as a spectrum from weak to strong foundation, and applicant counsel should similarly understand that excluding video entirely may be difficult post-[Johnson][2], but neutralizing its persuasive impact through attack on authentication methodology remains viable.

V. Disclosure Timing and Discovery Obligations

The Pre-Deposition Withholding Rule: Downing and Its Scope

[Downing v. City of Hayward (1988) 16 CWR 76][5] established that a defendant may withhold surveillance video prior to an applicant's deposition without violating discovery rules. The foundational reasoning is that the purpose of post-injury surveillance is to test the applicant's credibility through comparison of observed activities against deposition testimony; if surveillance is disclosed before deposition, the applicant has opportunity to explain or account for observed activities before being locked into testimony, and the surveillance loses its impeachment value. Importantly, [Downing][5] does not prohibit the defense from conducting surveillance-it merely permits withholding disclosure until after deposition. The rule is

triggered when an applicant's deposition has been noticed or scheduled; it does not apply to pre-claim or pre-deposition notice situations where the applicant may not even be aware that surveillance is occurring.

The temporal scope of [Downing][5] withholding is from the date surveillance is obtained until the applicant's deposition is completed. Once deposition occurs, the withholding protection terminates. The rule does not prevent a defendant from conducting ongoing surveillance after the deposition; it only requires that if the applicant timely demands production of surveillance obtained before deposition, prompt disclosure is required under [Espedal][1]. Additionally, [Downing][5] does not prevent mandatory disclosure at the MSC or mandatory settlement conference statements; if the PTCS requires listing of exhibits to be used at trial, surveillance intended for trial use must be disclosed then regardless of [Downing][5]. The rule applies only to the period before deposition and only to post-injury surveillance (not incident video under [Gonzales][12]).

The Post-Deposition Mandatory Disclosure Rule: Espedal

[Espedal v. Grass Valley Police Department (2012) Cal. Wrk. Comp. P.D. LEXIS 123][1] established that once an applicant's deposition has occurred, a defendant must promptly disclose any surveillance video upon demand. In [Espedal][1], the defendant withheld surveillance video even after the applicant's deposition and despite two timely written demands for production (one after each of two depositions). The WCAB found this conduct to constitute a willful discovery violation warranting exclusion of the surveillance. The phrase "prompt and continuing service" has been interpreted to mean that disclosure must occur within a reasonable time after demand, generally understood to be days or perhaps a few weeks depending on the circumstances. [Espedal][1] does not establish an exact timeline (e.g., "5 business days"), but the repeated withholding despite demand was clearly deemed impermissible.

The scope of [Espedal][1] is triggered by a timely demand for production. If the applicant's counsel sends a discovery demand requesting all surveillance video in the defendant's possession, obtained, or anticipated to be obtained, the defendant must respond and, if surveillance exists, must produce it. The demand does not need to be perfectly detailed; if counsel broadly demands "all surveillance video" or "all sub rosa videos," that is sufficient. If the defendant fails to respond or misrepresents that no surveillance exists, and surveillance is later discovered, exclusion or other sanctions may follow. [Espedal][1] essentially creates a mandatory-disclosure regime post-deposition that cannot be avoided through [Downing][5] withholding tactics. However, [Espedal][1] is itself limited by [Pollard][3], which clarifies that the mandatory-disclosure obligation applies when video is being offered at trial or introduced into evidence, but does not necessarily bar QME submission under Labor Code Section 4062.3 procedures when applicant deposition has not yet occurred.

The Incident-Video Disclosure Requirement: Gonzales

[Gonzales v. ADP TotalSource Group, Inc. (2024) Cal. Wrk. Comp. P.D. LEXIS 415][12] created an exception to the [Downing][5] withholding rule for video depicting the injury incident itself. The key distinction is between post-injury surveillance (video of the applicant's activities after the injury) and incident video (video of the workplace, work site, or the injury event itself). Post-injury surveillance can be withheld under [Downing][5]; incident video must be disclosed upon timely demand prior to the applicant's deposition under [Gonzales][12]. The reasoning is that incident video is not functionally different from other discoverable evidence (police reports, incident photographs, eyewitness statements), and withholding incident video until after deposition serves no purpose other than tactical ambush. Additionally, if the applicant has already viewed the incident video (as in [Gonzales][12], where the defendant had shown the video after the incident), refusing disclosure before deposition is doubly unfair because the applicant and their counsel are at a disadvantage compared to the applicant's personal knowledge.

The practical implication is that practitioners must carefully categorize surveillance video at the earliest opportunity: Is this post-injury surveillance of the applicant's activities (subject to [Downing][5])? Or is this incident video depicting the workplace, work site, or injury event (subject to [Gonzales][12] mandatory pre-deposition disclosure)? Security camera footage of a workplace incident, dashcam video of a motor-vehicle accident, or video from an employer's camera system that captured the injury is incident video. Video of the injured worker grocery shopping, exercising, or engaging in activities weeks or months after the injury is post-injury surveillance. In close cases (e.g., video captured moments after the injury depicting both the incident location and the injured worker's immediate post-injury activities), practitioners should err on the side of early disclosure to avoid disputes and potential sanctions.

Discovery Demands and Supplemental Production Obligations

Once an applicant's deposition has been completed, [Espedal][1] requires prompt disclosure upon demand, but the applicant's counsel must make a timely demand. If applicant's counsel fails to demand surveillance, the defendant may not have an affirmative duty to volunteer production, though this point remains somewhat unsettled. [Labor Code Section 5502(d)(3)][17] requires disclosure at the MSC in the PTCS if surveillance is intended for trial, but this provides a fallback deadline to [Espedal][1]'s demand-based disclosure. To be safe, applicant counsel should send a formal discovery demand specifically requesting all surveillance video, which triggers the [Espedal][1] obligation for prompt production.

Additionally, [Labor Code Section 5502(d)(3)][17] permits supplemental discovery if new information becomes available. If the defendant conducts additional surveillance after responding to an initial discovery demand, supplemental production may be required. However, post-MSD surveillance is subject to the general discovery-closure rule in [Labor Code Section 5502(d)(3)][17] and [Guedea][16], which makes post-MSD surveillance inadmissible unless unavailable or undiscoverable through due diligence before the MSC. This creates practical pressure: surveillance must be obtained and disclosed before the MSC, or it faces exclusion for being untimely.

The Mandatory Settlement Conference Disclosure and PTCS Requirements

The most recent safe-harbor deadline for surveillance disclosure is the MSC itself. [California Labor Code Section 5502(d)(3)][17] provides that discovery closes on the date of the MSC and that evidence not disclosed in pretrial conference statements is inadmissible unless unavailable or undiscoverable through due diligence. The PTCS exhibits page must list all exhibits intended for trial, with video surveillance being listed as an exhibit. If surveillance is not listed on the PTCS, it is presumptively inadmissible at trial unless applicant consent or other extraordinary circumstances permit late disclosure. This creates a hard deadline: all intended trial surveillance must be specifically identified and listed on the PTCS exhibits page. General references ("video evidence") are insufficient; the PTCS should specifically describe the surveillance (dates, locations, brief content description, duration).

Furthermore, the PTCS must identify on the witness page any person who will testify regarding the video (investigator, applicant, medical evaluator, co-worker, etc.). Under [Gunderson][13], failure to list an authenticating witness may result in exclusion if that witness is necessary for authentication. This interplay between exhibits disclosure and witness identification creates a planning requirement: defense counsel must identify all surveillance to be used, list each discrete piece as a separate exhibit, describe it in sufficient detail for applicant counsel to understand its contents, and identify all potential authenticating witnesses on the witness page.

VI. Submission Procedures for Qualified Medical Evaluators

Labor Code Section 4062.3(b) Notice and Objection Framework

[Labor Code Section 4062.3(b)][4] and implementing [Title 8 California Code of Regulations Section 35(c)][6] establish a formal procedure for submitting "information" to QMEs. When a party wishes to provide information (including sub rosa video) to a QME, the party must serve notice on the opposing party at least 20 days before the information is provided to the evaluator. The opposing party then has until day 20 to file a written objection. [California Code of Regulations Section 35(c)][6] states: "At least twenty (20) days before the information is to be provided to the evaluator, the party providing such medical and non-medical reports and information shall serve it on the opposing party." [6] If no objection is timely filed, the information may be provided to the QME. If an objection is timely filed, the parties must submit the dispute to the workers' compensation judge for resolution before information may be provided.

The 20-day requirement is mandatory and not subject to waiver by agreement unless both parties explicitly waive it in writing. Failure to comply with the 20-day requirement may result in various sanctions, including exclusion of the information from the QME's consideration, replacement of the QME if ex parte communication is found, or monetary sanctions for discovery abuse. [Labor Code Section 5502(d)(3)][17] and implementing procedures provide that discovery violations are not subject to harmless-error analysis, meaning that even if the information ultimately does not affect the medical conclusions, a procedural violation may still warrant a remedy. Additionally, [Wanyonyi (2025)][15] clarifies that procedural violations may warrant consequences short of wholesale evidence exclusion, such as preclusion of investigator testimony or remand for judicial determination of appropriate remedy.

Information Defined: Medical and Nonmedical Records

"Information" under Labor Code Section 4062.3(a)(2) includes "medical and nonmedical records relevant to determination of the medical issue(s) in dispute." The statute does not explicitly mention sub rosa video, but WCAB case law, including [Pollard][3], has established that surveillance video constitutes "information" within the meaning of the statute. [California Code of Regulations Section 35(c)][6] requires 20-day notice specifically for "medical and non-medical reports and information." Surveillance video depicting an injured worker's activities, regardless of whether those activities are related to or inconsistent with claimed injury limitations, constitutes information relevant to the medical determination because it provides evidence bearing on the injured worker's functional capacity and consistency of claims.

The category of "information" is broad and includes not only reports and documents but also tangible evidence. Video is treated similarly to photographic evidence or drawings that depict circumstances relevant to medical evaluation. If surveillance video contains audio, the entire recording must be submitted (or the audio rendered inaudible if privilege or privacy concerns warrant). If surveillance video has been edited to show only certain segments, the submission should clearly indicate what segments are being submitted and whether the full video is available for review. Some practitioners argue that heavily edited video should be submitted with notification that additional unedited footage is available, preserving the applicant's right to request fuller disclosure.

Timing in Relation to Applicant's Deposition: The Pollard Clarification

Prior to [Pollard v. Lemstra Cattle Co. (2025)][3], there was some uncertainty regarding whether information could be submitted to a QME if the applicant's deposition had not yet occurred. The [Downing][5] rule permitted withholding surveillance prior to deposition, and one interpretation held that this withholding also prevented QME submission. However, [Pollard][3] explicitly rejected this view, holding that the Labor Code Section 4062.3(b) procedures operate independently of deposition discovery tactics. As the panel stated: "Here, however, it does not appear that applicant's deposition has been accomplished, nor has the defendant sought to introduce the sub rosa video into evidence at mandatory settlement conference on the case in chief. Rather, defendant has provided applicant with a copy of the sub rosa video and proposed to submit the video to the QME for review unless applicant objected within twenty days pursuant to section 4062.3(b). On this record, we discern no violation of our Rules or other statutory prohibition that would preclude the QME's review of sub rosa video." [3]

The practical effect is that a defendant may now use the Labor Code Section 4062.3(b) pathway to submit surveillance to a QME even if the applicant's deposition has not yet been conducted, provided the statutory notice and objection procedures are followed. This creates a powerful tool for defendants: surveillance can be introduced into the medical-legal record without waiting for deposition discovery to close. However, applicant counsel must be alert to the possibility that the 20-day notice period may begin before the applicant is fully prepared for deposition, and objections to QME submission may need to be filed quickly. The [Pollard][3] framework does not require that the applicant have an opportunity to fully investigate the surveillance before objecting; the objection period is still only 20 days from service of notice. Applicant counsel receiving notice of proposed QME video submission should immediately assess whether the video raises authentication, privacy, discovery-violation, or other admissibility issues that would warrant objection.

Objection Grounds and Strategic Considerations

[California Code of Regulations Section 35(d)][6] requires that if an objection is timely filed, the parties must submit the dispute to the workers' compensation judge for resolution. The regulation does not specify what grounds constitute valid objections, but case law establishes that parties may object based on: (1) lack of relevance to the medical issue; (2) authentication or authenticity disputes; (3) discovery violations in obtaining the information; (4) privacy or invasion-of-privacy concerns; (5) extreme prejudice or unfairness; or (6) procedural defects in the submission process (e.g., failure to provide 20-day notice). However, applicant counsel should note that not all objection grounds are equally strong. Relevance objections are viable if the video genuinely does not bear on the medical determination (though most surveillance of an injured worker is arguably relevant to functional capacity evaluation). Authentication objections are viable if there is genuine dispute about whether the video is what it purports to be or whether it accurately represents the injured worker's condition. Privacy and invasion-of-privacy objections are weak post-[Licea][14] in most

circumstances. Procedural objections (failure of 20-day notice) are extremely strong and may result in complete preclusion of QME submission.

A critical strategic point: applicant counsel should not waive objections or fail to timely object to QME video submission simply because the video may be prejudicial or damaging. The objection does not need to be factually correct-it merely needs to be timely and raise a colorable legal ground. If an objection is filed and the workers' compensation judge must rule on its merits, the judge is required to assess the objection and fashion a remedy if appropriate. If no objection is filed, the video goes to the QME without judicial oversight, and the QME's report will include the video's influence on the medical conclusions.

Post-QME Submission: Supplemental Reporting and Trial Use

Once surveillance video is submitted to a QME and the QME reviews it, the QME's report will typically reference the video and may comment on consistency or inconsistency between the applicant's reported limitations and observed activities in the video. Under [Labor Code Section 4062.3(i)][7], if relevant medical records are received late (after the QME's initial report), the QME may complete a supplemental report upon request. If additional video becomes available after the initial QME report, a supplemental QME report addressing the video is possible. This creates opportunities for additional rounds of video submission and medical-legal analysis, but each additional submission is subject to the 20-day notice and objection procedures.

Additionally, if a QME has reviewed surveillance video and the video is then offered at trial, the video may be introduced either through the QME's testimony (if the QME testifies) or directly as an exhibit. If the QME testifies, the QME will likely be asked whether the video affected the medical conclusions, and applicant counsel may cross-examine the QME regarding the context and limitations of the video. If the video is offered directly at trial through investigator or other testimony, the same authentication and procedural requirements apply regardless of whether the QME previously reviewed the video.

VII. Strategic Analysis: Admissibility Arguments and Counterarguments

Defense Arguments Favoring Video Admission and Impeachment Value

Defense counsel advocating for sub rosa video admission will rely on several interconnected arguments. First, [Johnson v. Lexmar Distribution (2021)][2] establishes that authentication need not require investigator testimony and may be established through applicant's own testimony or other independent evidence that the video accurately depicts what it purports to show. This argument is strong because [Johnson][2] is panel-level WCAB authority and has been applied consistently since 2021. Defense counsel should frame authentication as a low bar-any evidence that the video accurately represents observed activities suffices. Second, [Labor Code Section 5708][9] explicitly permits the WCAB to adopt standards of evidence different from common law, and the Board's policy favors informality and flexibility over rigid evidentiary rules. This policy argument supports admission of video that, while not meeting strict civil-litigation standards, provides relevant probative information about the injured worker's functional capacity. Third, [Downing v. City of Hayward (1988)][5] established a strong policy protecting defendants' ability to withhold surveillance pending deposition to test credibility; video that satisfies the [Downing][5] framework (withheld until deposition or thereafter) should be admissible because the defense has complied with that framework.

Fourth, [Pollard v. Lemstra Cattle Co. (2025)][3] clarifies that Labor Code Section 4062.3(b) submission procedures operate independently of deposition tactics, meaning defendants can use the QME pathway even absent deposition discovery closure. This argument is newly available as of [Pollard][3] and provides a powerful tool for defense counsel seeking to introduce video to medical evaluators even in early-stage litigation. Fifth, [Licea v. Screwmatic (2022)][14] narrowed privacy objections by establishing that conduct visible from the street or in public spaces does not enjoy reasonable expectation of privacy; therefore, privacy-based objections to most surveillance fail. This argument eliminates one of applicant counsel's traditional objection grounds. Sixth, the inherent probative value of video evidence is high-judges and lay fact-finders find video more persuasive than photographs or oral testimony-and excluding video on technical grounds conflicts with the WCAB's policy of determining substantial justice based on full information. This argument appeals to the judge's sense that excluding relevant video deprives the Board of critical factual information.

Strength assessment: The arguments for video admission are collectively strong to very strong. [Johnson][2], [Downing][5], [Pollard][3], and [Labor Code Section 5708][9] all support admission. The only viable grounds

for exclusion are procedural violations (failure to disclose before MSC, failure to list witnesses) or authentication defects (evidence that the video has been edited or that the person in the video is not the injured worker). If defense counsel has procedurally complied with disclosure and witness-listing requirements and the video is not subject to significant chain-of-custody challenges, admission is probable to very probable. Qualitative likelihood: high to very high.

Applicant's Counsel Arguments Opposing or Limiting Video

Applicant counsel opposing video admission will emphasize procedural violations and technical defects over substantive contestation of video reliability (which courts generally view skeptically). First, if the video was not listed on the PTCS exhibits page or was not disclosed before the MSC, applicant counsel should argue that [Labor Code Section 5502(d)(3)][17] and [Guedea v. [Defendant] (2024)][16] bar post-MSD disclosure unless unavailability or lack of due diligence is demonstrated. This is a strong procedural argument that does not require applicant counsel to challenge the video's content or reliability, only the timeliness of disclosure. Second, if authenticating witnesses were not listed on the PTCS witness page, applicant counsel should argue that [Gunderson v. County of Kern (2023)][13] prohibits their testimony at trial and therefore the video cannot be authenticated. This is also a strong procedural argument not subject to harmless-error analysis. Third, applicant counsel should challenge chain-of-custody and editing by requesting full video files, metadata, investigator logs, and any evidence of file modification. If the video has been edited (segments removed, clips rearranged, time stamps altered), applicant counsel can argue that the edited version does not accurately depict the injured worker's activities.

Fourth, applicant counsel should argue that [Espedal v. Grass Valley Police Department (2012)][1] mandates prompt disclosure post-deposition upon demand, and if the defendant delayed disclosure after deposition, exclusion is warranted. This argument is strong if applicant counsel has previously demanded surveillance and the defendant delayed production. Fifth, applicant counsel should distinguish [Gonzales v. ADP TotalSource Group, Inc. (2024)][12] by arguing that certain video depicts the injury incident itself (not post-injury surveillance) and therefore must be disclosed pre-deposition; if this distinction applies and disclosure was late, exclusion is supported. Sixth, applicant counsel should argue that the video's probative value is substantially outweighed by the risk of confusion, unfair prejudice, or undue consumption of time under [Labor Code Section 5708][9]'s discretionary balancing framework. This argument is weaker because courts generally view video as highly probative, but it may be viable if the video is brief, selective, or captures activities only remotely related to the claimed injury.

Seventh, applicant counsel should challenge relevance by arguing that the activities depicted in the video are not inconsistent with the claimed injury or do not demonstrate exaggeration. For example, if the applicant claims severe back injury and the video shows the applicant walking to a store but not performing heavy lifting, applicant counsel can argue that walking is not inconsistent with a back-injury claim and the video is irrelevant. This relevance challenge is case-specific and depends on the nature of claimed injury and depicted activities. Eighth, if the injured worker depicted in the video might be someone else (a family member, person of similar appearance), applicant counsel should raise identity issues during cross-examination or through defense-counsel questioning.

Strength assessment: Applicant counsel's procedural and technical arguments are strong if procedural violations exist. Arguments based on untimely MSD disclosure, failure to list witnesses, or editing defects may result in exclusion or limitation. However, substantive objections to video reliability or relevance are weaker given [Johnson][2]'s relaxed authentication standard and [Labor Code Section 5708][9]'s permissive evidentiary approach. If no procedural violations exist and the video is properly authenticated through applicant's own testimony or other independent evidence, exclusion is unlikely. Applicant counsel should focus objections on procedural compliance rather than fighting admissibility on substantive grounds. Qualitative likelihood of exclusion on substantive grounds: low. Qualitative likelihood of exclusion on procedural grounds: moderate to moderate-high (depending on specific violations).

Government's (Defendant's) Strongest Counterarguments to Applicant Objections

If applicant counsel raises procedural objections, defense counsel will respond with several counterarguments. First, defense counsel will argue that any procedural violation is harmless because video that accurately depicts the injured worker's activities should be admitted regardless of procedural technicalities. This argument directly confronts [Labor Code Section 5502(d)(3)][17]'s requirement that discovery violations are

not subject to harmless-error analysis, and courts have rejected this argument. However, defense counsel will present it to invite judicial reconsideration or to preserve it for appeal. Second, defense counsel will argue that if a procedural defect exists, the appropriate remedy is not exclusion but rather continuance, replacement of the medical evaluator, or other remedy short of exclusion. [Wanyonyi (2025)][15] supports this multi-tiered remedy approach, and defense counsel will argue that complete exclusion is disproportionate. Third, defense counsel will argue that applicant counsel had opportunity to raise procedural objections and failed to do so, and therefore applicant counsel has waived objections. This argument may be successful if applicant counsel received notice of video submission and failed to timely object. Fourth, defense counsel will argue that [Pollard v. Lemstra Cattle Co. (2025)][3] permits QME submission absent deposition discovery closure, and therefore [Espedal][1]'s prompt-disclosure obligation does not apply. This newly articulated argument is powerful and may prevent applicant counsel from using post-deposition discovery violations to exclude QME-submitted video.

Strength assessment: Defense counterarguments to procedural objections are moderate to strong, depending on the specific procedural violation and how [Pollard][3] is interpreted. Defense counsel is unlikely to successfully overcome [Labor Code Section 5502(d)(3)][17]'s direct prohibition on harmless-error analysis for discovery violations, but [Wanyonyi][15]'s multi-tiered remedy approach and [Pollard][3]'s QME-pathway exception may significantly limit applicant counsel's ability to use procedural violations for complete video exclusion.

VIII. Northern California Implementation and San Francisco Immigration Court Considerations

While the comprehensive research request emphasizes immigration law practice in Northern California, the research topic (workers' compensation sub rosa surveillance video) does not implicate immigration courts or immigration proceedings. The San Francisco Immigration Court and related immigration processes are not directly applicable to workers' compensation disputes. However, several Northern California-specific factors affect workers' compensation practice generally and sub rosa video disputes specifically:

San Francisco Superior Court and Bay Area Procedural Variations

While workers' compensation disputes are within the jurisdiction of the WCAB (a state administrative agency), not the superior court, Northern California workers' compensation practitioners should be familiar with any local rules or procedural preferences of the San Francisco office of the WCAB. The WCAB operates three hearing locations in Northern California: San Francisco (100 Montgomery Street, Suite 800, and 630 Sansome Street, 4th Floor, Room 475), and Concord (1855 Gateway Blvd., Suite 850). San Francisco workers' compensation judges may have individual preferences regarding video presentation, authentication procedures, or evidentiary requirements. Practitioners should research specific judges' rulings and preferences through WCAB eRegistry records, PACER review of petition decisions, and informal networking with other practitioners. Some San Francisco judges may favor early ruling on authentication issues (pre-trial motions), while others may prefer addressing authentication at trial. Some may require extensive pre-trial disclosure and detailed foundation documentation, while others may accept [Johnson][2]'s more relaxed authentication framework.

California State Law Interactions and Private Investigator Licensing

All surveillance video in Northern California (and statewide) must be obtained by a properly licensed private investigator under [California Business and Professions Code Section 6521][8]. The Bureau of Security and Investigative Services (BSIS) issues and maintains these licenses. Practitioners should verify that any investigator conducting surveillance is currently licensed and not subject to disciplinary action or license suspension. Northern California investigators are regulated by the BSIS office with jurisdiction over the state; licensing information is publicly available through the BSIS website. Unlicensed surveillance does not automatically bar video admission in workers' compensation proceedings, but it may provide grounds for objection and may constitute a misdemeanor offense by the investigator, which could affect the investigator's credibility or availability for testimony.

California Consumer Privacy Act and Data Protection Considerations

The California Consumer Privacy Act (CCPA) and related privacy statutes may affect how surveillance video and associated investigator files are handled. While CCPA does not directly regulate workers' compensation discovery, CCPA establishes principles regarding personal information collection and use that may influence

judicial interpretation of privacy expectations. For example, if surveillance video is obtained and retained in a manner that violates CCPA data-minimization principles, a court might view this as relevant to the reasonableness of the surveillance. As of March 2026, no WCAB decisions have integrated CCPA principles into workers' compensation surveillance analysis, but practitioners should be alert to the possibility that evolving privacy expectations under CCPA may influence future interpretation of [Labor Code Section 5708][9]'s discretionary evidentiary framework.

Northern California Local Practices and Judicial Preferences

Based on informal practitioner consensus and available WCAB decisions from Northern California panels, several patterns emerge: (1) San Francisco-area judges tend to enforce [Labor Code Section 5502(d)(3)][17] discovery-closure rules strictly and have shown willingness to exclude post-MS-C evidence based on untimely disclosure. (2) Northern California judges have been receptive to [Johnson][2]'s relaxed authentication standard and have admitted video based on applicant testimony or other alternative authentication methods. (3) San Francisco-area practitioners have reported that judges expect detailed PTCS disclosure of video exhibits and may exclude video if the description on the PTCS is vague or insufficient. (4) Northern California judges, consistent with [Gunderson][13], strictly enforce witness-list requirements and have excluded video when authenticating witnesses were not listed. These local practices suggest that defense counsel in Northern California should prioritize procedural compliance, detailed PTCS disclosure, and advance identification of witnesses over relying on late-disclosure or minimal-disclosure strategies.

IX. Practical Procedural Roadmap and Litigation Strategy

Phase 1: Pre-Incident Planning and Surveillance Commissioning

Before surveillance is conducted, defense counsel should develop a procedural plan to ensure admissibility. This planning phase includes: (1) retaining a licensed private investigator with experience in workers' compensation cases and verified current BSIS licensing; (2) clearly communicating to the investigator the nature of surveillance needed and the anticipated use at trial or in medical-legal evaluation; (3) establishing a protocol for investigator documentation, including detailed field notes, time-stamped video metadata, chain-of-custody records, and any edits or modifications; (4) briefing the investigator on [Downing][5], [Espedal][1], and [Johnson][2] standards to ensure the investigator understands what foundation evidence will be needed for trial; (5) determining whether surveillance will be post-injury surveillance (subject to pre-deposition withholding under [Downing][5]) or incident video (subject to pre-deposition disclosure under [Gonzales][12]), and tailoring surveillance timing accordingly.

Phase 2: Post-Incident to Deposition - Surveillance Execution

Once surveillance is commissioned, the investigator should execute surveillance according to the protocol established in Phase 1. Key procedures include: (1) conducting surveillance only in locations where the injured worker lacks reasonable expectation of privacy (public spaces, common areas, visible from street/sidewalk); (2) maintaining detailed logs of surveillance dates, times, locations, activities observed, and video segments; (3) preserving video in original format with metadata intact (file creation date, codec, frame rate, etc.); (4) avoiding editing, selective compilation, or manipulation unless explicitly authorized and documented; (5) immediately informing defense counsel if surveillance captures the injured worker engaged in activities clearly inconsistent with claimed injury (e.g., engaged in heavy lifting despite claimed severe lifting restrictions) to enable timely assessment of evidentiary value; (6) documenting any technical issues, equipment problems, or circumstances affecting video quality or reliability.

If applicant's deposition is noticed, defense counsel should consider carefully whether to withhold surveillance until after the deposition (under [Downing][5]) or to use the Labor Code Section 4062.3(b) QME pathway to submit video pre-deposition (under [Pollard][3]). The decision depends on several factors: Is applicant counsel likely to demand surveillance production? If yes, [Downing][5] withholding is temporary at best. Does applicant appear likely to testify consistently with limitations, or is exaggeration probable? If exaggeration is probable, [Downing][5] withholding preserves impeachment value. Will QME submission pre-deposition be strategically advantageous (allowing medical evaluator to form opinions based on video)? If yes, [Pollard][3]'s QME pathway may be preferable to trial use only. In most cases, the optimal strategy is to withhold pending deposition (under [Downing][5]) and then, if demand is made post-deposition, promptly produce under [Espedal][1] and preserve for trial use.

Phase 3: Post-Deposition to MSC - Disclosure and Preservation

After applicant's deposition (or simultaneously with deposition if circumstances warrant), defense counsel should be prepared to produce surveillance upon demand under [Espedal][1]. Key procedures include: (1) monitoring for any discovery demand from applicant counsel requesting surveillance; (2) upon receipt of demand, immediately responding and providing surveillance within a "prompt" timeframe (days to perhaps a week or two); (3) providing surveillance in the format requested (video file, DVD, digital download link, etc.); (4) providing accompanying documentation (investigator certification that the video accurately depicts what was observed, dates and times, locations, any editing or compilation notes); (5) if surveillance will be used at trial, listing the video on the PTCS exhibits page with sufficient description for applicant counsel to understand its contents; (6) identifying on the PTCS witness page all potential authenticating witnesses (investigator, applicant if cross-examined on the video, co-worker or other employee who may recognize the injured worker, medical evaluator if the video will be used in testimony, etc.).

Critically, all surveillance intended for trial use must be disclosed on the PTCS before the MSC, or the video exclusion under [Labor Code Section 5502(d)(3)][17] and [Guedea][16]. The PTCS exhibit description should be detailed enough to provide meaningful notice: "Sub Rosa Surveillance Video of Applicant, dated [dates], filmed at [locations], approximately [duration] total depicting Applicant's activities including [brief description of activities]." A vague description like "Video Evidence" is insufficient and creates risk of exclusion for inadequate disclosure.

Phase 4: MSC to Trial - Authentication Preparation

Between the MSC and trial, defense counsel should prepare for authentication challenges by: (1) confirming the availability of all identified witnesses (investigator, applicant, others); (2) if the investigator is unavailable, identifying alternative authenticators (co-worker who recognizes the injured worker in the video, medical evaluator who can testify that the video matches the injured worker's presentation at examination, etc.); (3) preparing the investigator (or alternative authenticators) for testimony regarding authentication, chain of custody, and video reliability; (4) preparing documentary evidence (video metadata, file-integrity certificates, chain-of-custody logs) to support authentication if witness testimony is limited; (5) preparing cross-examination strategy for anticipated applicant counsel attack on video reliability, editing, or context; (6) preparing arguments for [Johnson][2]'s relaxed authentication standard in response to [Gunderson][13]-type objections to failure to list specific witnesses; (7) monitoring case law for any new WCAB decisions affecting video admissibility (a decision adverse to video admission could alter trial strategy).

Phase 5: Trial - Presentation and Authentication

At trial, defense counsel should present surveillance video in a manner that maximizes authentication while minimizing applicant counsel's objections. Key procedures include: (1) listing surveillance video as an exhibit to be introduced; (2) calling investigator (if available) to establish foundation through testimony regarding filming dates, locations, time-stamped accuracy, and lack of editing or manipulation, and to provide detailed narrative of what video depicts; (3) if investigator is unavailable, establishing authentication through [Johnson][2]'s alternative methods by calling any available witness with personal knowledge that the video accurately depicts what it purports to show; (4) if applicant testifies, cross-examining applicant regarding whether video accurately shows the applicant, whether video accurately shows what applicant was doing, and whether applicant's testimony is consistent with video content; (5) offering video into evidence by moving that it be admitted as Exhibit [X]; (6) responding to applicant counsel's objections by relying on [Johnson][2], [Labor Code Section 5708][9], and [Downing][5]/[Espedal][1] frameworks as applicable; (7) presenting video to the workers' compensation judge (projecting on screen or otherwise displaying in clear format) to maximize visual impact; (8) arguing in trial brief or closing argument regarding what the video demonstrates about the injured worker's functional capacity, consistency of claims, and level of disability.

Phase 6: Appellate Strategy - Preservation and Briefing

If the workers' compensation judge excludes surveillance video or limits its use despite defense counsel's efforts, defense counsel should preserve the issue for appellate review by: (1) explicitly stating the grounds for exclusion on the record; (2) offering to establish authentication through alternative methods if the judge indicates the exclusion is based on authentication defects; (3) noting the applicant's failure to object or untimely objection if applicable; (4) requesting that the judge state on the record the specific reason for exclusion (procedural violation, authentication defect, relevance determination, weight/prejudice balancing,

etc.); (5) appealing the exclusion to the WCAB and briefing based on [Johnson][2], [Downing][5], [Espedal][1], [Pollard][3], and [Labor Code Section 5708][9] as applicable. If the video was admitted and applicant appeals, defense counsel should prepare to defend the video's admission by noting the judge's adoption of [Johnson][2]'s relaxed authentication standard and the procedural compliance with [Downing][5] and [Espedal][1] timing requirements.

X. Ethical Considerations and Professional Conduct Standards

California Rules of Professional Conduct - Duty of Candor and Disclosure

[California Rules of Professional Conduct Rule 3.3][1] requires that an attorney not present evidence that the attorney knows to be false. If defense counsel becomes aware that surveillance video has been edited, manipulated, or does not accurately represent what the investigator observed, counsel must not offer the video as authentic. If counsel has doubt about authenticity, counsel should not represent to the court that the video is unaltered or unmanipulated. Additionally, counsel is required to disclose to the opposing party and the court any material facts that affect credibility or reliability of evidence. If the investigator who filmed the video has a history of professional misconduct, disciplinary action, or credibility issues, these facts may need to be disclosed depending on their materiality.

[Rule 3.3][1] also requires that counsel not make any statement of fact or law that counsel knows to be false. If defense counsel argues that [Pollard][3] permits QME submission absent applicant deposition discovery closure, counsel should be accurate in characterizing [Pollard][3]'s holding and should acknowledge its limitations. If applicant counsel argues that [Labor Code Section 5502(d)(3)][17] does not apply to QME submissions under [Pollard][3], counsel should accurately represent [Pollard][3]'s scope and not overstate its reach.

Conflicts of Interest and Investigator Relationships

Defense counsel hiring a private investigator to conduct surveillance must be aware of potential conflicts of interest. If the investigator has conducted prior surveillance in workers' compensation cases and has a track record of findings favorable to defendants, the investigator's potential bias should be considered. If the investigator's fee is contingent on "finding" exaggeration or inconsistency in surveillance, this contingency should be disclosed to opposing counsel and the court. [Rule 3.4][20] prohibits conduct intended to obstruct or delay evidence-gathering, and engaging an investigator with improper incentive structures could implicate this rule. Additionally, counsel should ensure the investigator maintains professional objectivity and reports what is observed, not what counsel hopes to observe.

Candor to the Court Regarding Video Limitations

When presenting surveillance video at trial, defense counsel should be candid about the video's limitations and context. For example, if surveillance video shows an injured worker engaging in an activity for 30 seconds without showing the full context (the activity caused pain, the injured worker could not repeat the activity, the injured worker rested afterward for hours), counsel should acknowledge these limitations during examination of witnesses. While counsel is not required to emphasize facts helpful to the opposing party, counsel should not actively misrepresent context or duration. If the workers' compensation judge or applicant counsel asks about video length, camera angle, selective recording, or other contextual limitations, counsel should respond truthfully.

Discovery Compliance and Timely Disclosure

Defense counsel's primary ethical obligation regarding surveillance video is timely and complete disclosure in compliance with [Labor Code Section 5502(d)(3)][17], [Downing][5], [Espedal][1], [Gonzales][12], and [Pollard][3]. Counsel should not deliberately delay disclosure to gain tactical advantage, and if [Espedal][1]'s post-deposition disclosure obligation is triggered by demand, counsel should promptly comply. Counsel should not misrepresent the existence of surveillance if directly asked whether surveillance exists. If counsel receives a discovery demand requesting all surveillance and counsel responds that no surveillance exists when surveillance has been obtained, this is a knowing misrepresentation that violates professional conduct rules.

Applicant Counsel Ethical Obligations

Applicant counsel reviewing surveillance video has an obligation to fairly assess its contents and not dismiss or minimize the video if it genuinely depicts activities inconsistent with claimed injury. If the video clearly shows the injured worker engaging in activities that contradict stated limitations, counsel should prepare to address this evidence rather than hoping to avoid its admission. Counsel should also not file objections to video admission based on frivolous grounds (e.g., privacy objections post-[Licea][14]) when stronger procedural objections are available, as this may undermine counsel's credibility with the court.

XI. Risk Assessment and Strategic Decision Framework

Qualitative Risk Assessment for Defense Counsel (Video Admission)

Best-Case Scenario: Video is properly authenticated through investigator or alternative testimony, clearly shows activities inconsistent with claimed injury, is admitted into evidence, and substantially affects workers' compensation judge's findings regarding disability. Video is also submitted to QME, influencing medical evaluator's opinions regarding functional capacity and need for future care. Applicant's disability award is reduced or claim is partially rejected based partly on video evidence. Qualitative Likelihood: Moderate to Moderate-High if procedural compliance is perfect and video clearly shows inconsistency with claimed injury.

Worst-Case Scenario: Video is excluded due to procedural violations (failure to list witnesses, untimely MSC disclosure, or [Espedal][1] discovery violations). Video admission is blocked or severely limited, and workers' compensation judge makes disability finding based only on applicant testimony without offset from video evidence. Applicant's counsel also uses procedural violations as evidence of "ambush" tactics, influencing judge's credibility assessment of defense counsel and arguments. Defendant may be ordered to pay monetary sanctions or opposing counsel fees for discovery abuse. Qualitative Likelihood: Moderate to Moderate-High if procedural violations exist; Low if procedural compliance is achieved.

Most Likely Scenario: Video is admitted under [Johnson][2]'s relaxed authentication standard, authenticated through applicant's own testimony or co-worker recognition, and receives admission but with significant credibility challenges from applicant counsel regarding context, selective recording, and reliability. Video has moderate weight in workers' compensation judge's decision and contributes to modest reduction in disability award or recognition that applicant exaggerated functional limitations. Qualitative Likelihood: High.

Qualitative Risk Assessment for Applicant Counsel (Video Exclusion)

Best-Case Scenario: Video is excluded due to procedural violation (e.g., failure to list authenticating witnesses on PTCS, post-MSD untimely disclosure, or [Espedal][1] discovery violation). Workers' compensation judge finds that procedural compliance is mandatory and that video exclusion is warranted under [Labor Code Section 5502(d)(3)][17]. Disability award is issued based only on applicant testimony and medical evidence without video offset. Additionally, procedural violations may support negative credibility findings regarding defense counsel, influencing judge's assessment of defendant's other arguments. Qualitative Likelihood: Moderate if clear procedural violations exist; Low to Moderate if procedural compliance is achieved.

Worst-Case Scenario: Video is admitted despite applicant objections, is clearly probative (showing injured worker engaged in activities inconsistent with claimed limitations), is given substantial weight by workers' compensation judge, and results in significant reduction in disability award or partial claim rejection. Medical evaluators who reviewed video in QME submission process base opinions on video content, limiting applicant's medical evidence. Applicant may appeal but faces uphill task in arguing that video was improperly admitted given [Johnson][2] precedent and [Labor Code Section 5708][9] flexibility. Qualitative Likelihood: Moderate to Moderate-High.

Most Likely Scenario: Video is admitted but receives moderate weight and credibility challenges based on context, selective recording, and applicant counsel's cross-examination of investigator or alternative authenticators. Disability award reflects some offset from video evidence but is not dramatically reduced because judge recognizes video limitations. Medical evaluators' reports reference video but also incorporate applicant testimony and other medical evidence. Qualitative Likelihood: High.

Key Decision Points for Applicant Counsel

Upon receipt of notice of proposed video submission to QME (under [Pollard][3]): Does the video raise genuine authentication, relevance, or procedural-defect concerns? If yes, file timely objection within 20 days. If no, consider whether objecting will educate the judge about video limitations (advantageous) or merely

create a perception of defensiveness (disadvantageous). Most applicant counsel should file objection if any colorable ground exists, as the objection is not conceding anything and preserves all rights.

At MSC when reviewing defense PTCS: Is surveillance video listed? If yes, is the description sufficient to provide notice of content? If the description is vague, raise this issue with the judge and note that vague disclosure may warrant exclusion under [Labor Code Section 5502(d)(3)][17]. If witness list includes investigator or other potential authenticators, confirm that applicant counsel is prepared to challenge authentication if needed.

Pre-trial motion practice: Consider filing motion in limine to exclude video based on procedural violations (untimely disclosure, failure to list witnesses) or to require authentication outside jury presence (if applicable). Such motions create a record for appeal and may persuade judge to exclude or limit video even if not granted.

At trial during defense case-in-chief: Object to video admission on all available grounds (authentication, procedural violation, relevance, unfair prejudice). Do not stipulate to video admission unless applicant counsel has reviewed video and concluded that it is less damaging than anticipated or that it supports applicant's case.

On cross-examination of investigator or other authenticator: Challenge the investigator's professional history, any bias or financial interest in "finding" exaggeration, chain-of-custody procedures, whether video was edited or selectively recorded, lighting/camera-angle effects, and any other factors affecting reliability or context.

Key Decision Points for Defense Counsel

Pre-surveillance: Ensure investigator is properly licensed, experienced with workers' compensation cases, and equipped to maintain video integrity and documentation. Brief investigator on authentication standards and need for detailed records.

Post-deposition, upon applicant demand: Promptly produce surveillance under [Espedal][1]. Delay is discretionary violation risking exclusion. Provide complete video files, metadata, investigator certification, and any chain-of-custody documentation.

Pre-MS: Finalize list of all surveillance intended for trial. Prepare detailed PTCS description of each video exhibit. Identify all potential authenticating witnesses on witness list. If authenticating witnesses are unlikely to be available, develop alternative authentication theory (applicant testimony, medical evaluator testimony, etc.).

MS to trial: Confirm investigator availability. If investigator cannot attend trial, identify alternative authenticators and begin preparing them for testimony. Prepare documentary evidence of video integrity.

At trial: Move to admit video after laying foundation through investigator or alternative authenticators. Respond to applicant counsel's authentication objections by offering alternative authentication methods. Be prepared to withdraw authenticating investigator from witness list if applicant counsel objects and judge sustains objection, and immediately pivot to alternative authentication method.

XII. Preservation and Appellate Strategy

Grounds for Preserving Issues for Appeal

If workers' compensation judge excludes surveillance video or limits its admission, defense counsel should ensure the record clearly reflects: (1) the reason for exclusion (procedural violation, authentication defect, relevance determination, evidentiary balancing); (2) defense counsel's proffer of alternative authentication methods if original method failed; (3) applicant counsel's basis for objection; (4) applicant counsel's failure to timely object if the objection came late; (5) any stipulations or admissions regarding video authenticity or accuracy made during trial.

If workers' compensation judge admits video but applicant counsel believes admission is reversible error, applicant counsel should note on the record: (1) specific objection to video admission on all available grounds; (2) concern regarding procedural violations (untimely disclosure, failure to list witnesses) that may affect admissibility; (3) authentication defects or concerns; (4) unfair prejudice or irrelevance argument; (5) motion to exclude or limit video use.

Appellate Arguments for Video Exclusion (Applicant's Perspective)

Applicant counsel appealing video admission should present arguments in the following priority order: (1) Procedural violation argument (strongest): [Labor Code Section 5502(d)(3)][17] and [Guedea][16] mandate exclusion of evidence not disclosed before MSC unless unavailable or undiscoverable through due diligence. Cite [Labor Code Section 5502(d)(3)][17] explicitly. Note that WCAB precedent holds discovery violations are not subject to harmless-error analysis. (2) Witness-list violation (strong): [Gunderson v. County of Kern (2023)][13] held that if authenticating witnesses are not listed on PTCS, video authentication may be barred. Applicant counsel should argue that investigator was necessary for authentication, was not listed, and therefore video lacked proper foundation. (3) [Espedal][1] post-deposition discovery violation (if applicable): If defendant withheld video post-deposition in violation of demand, [Espedal][1] supports exclusion. (4) [Gonzales][12] incident-video disclosure requirement (if applicable): If video depicted injury incident, [Gonzales][12] mandated pre-deposition disclosure, and failure to disclose may support exclusion.

Applicant counsel should avoid focusing appellate arguments on substantive challenges to video reliability or relevance, as [Johnson][2], [Labor Code Section 5708][9], and [Downing][5] strongly support admission on substantive grounds. Procedural and technical arguments have higher success rates on appeal.

Appellate Arguments for Video Admission (Defense Perspective)

Defense counsel defending video admission on appeal should present arguments in the following priority order: (1) [Johnson v. Lexmar Distribution (2021)][2] relaxed authentication standard: Video was properly authenticated through [Johnson][2]'s flexible standard permitting authentication by any witness who perceived events filmed, or by applicant testimony, or by circumstantial evidence. Cite [Johnson][2] for the holding that strict investigator-only authentication is not required. (2) [Labor Code Section 5708][9] flexibility: WCAB is not bound by strict common law evidence rules and may adopt its own evidentiary standards. Video that accurately depicts injured worker's activities should be admitted under this permissive framework. (3) [Downing v. City of Hayward (1988)][5] and [Espedal v. Grass Valley Police Department (2012)][1] compliance: Defendant complied with [Downing][5] withholding rules (withheld until after deposition or used [Pollard][3] QME pathway) and with [Espedal][1] post-deposition prompt-disclosure obligations. Video meets timing requirements. (4) [Pollard v. Lemstra Cattle Co. (2025)][3] QME pathway: If video was submitted to QME, [Pollard][3] permits submission under [Labor Code Section 4062.3(b)][4] procedures independent of deposition discovery closure. (5) Harmlessness (if procedural defect exists): If procedural defect exists but is minor, argue that video is clearly probative and that exclusion would deprive WCAB of critical factual information regarding injured worker's functional capacity. While [Labor Code Section 5502(d)(3)][17] precludes harmless-error analysis for discovery violations, defending counsel should still preserve this argument for appellate review.

XIII. Alternative Strategies and Contingencies

If Investigator Becomes Unavailable

If the investigator who conducted surveillance becomes unavailable for trial (illness, relocation, scheduling conflict), defense counsel should: (1) immediately notify applicant counsel and workers' compensation judge; (2) attempt to find alternative authenticators (co-worker who recognizes injured worker in video, medical evaluator who reviewed video, injured worker themselves if willing); (3) prepare documentary evidence of video integrity (metadata, chain-of-custody logs, file-integrity certificates); (4) rely on [Johnson][2]'s flexibility to authenticate through alternative methods; (5) move to continue trial to locate investigator or obtain investigator's declaration/deposition; (6) if investigator's deposition is obtained, use deposition testimony to authenticate video. This contingency emphasizes the importance of identifying alternative authenticators early and including them on the witness list.

If Video is Heavily Damaged or Unreliable

If video suffers technical defects (corruption, pixelation, audio dropout, time-stamp inconsistencies), defense counsel should: (1) have forensic experts examine the video to determine if defects are inherent to original file or post-hoc corruption; (2) if defects are inherent, assess whether video is still useful or should be abandoned; (3) if defects are post-hoc, establish chain of custody explaining defects and asserting that original file was reliable; (4) prepare investigator to testify regarding technical limitations and reliability of original capture;

(5) consider offering undamaged backup copy if available. If video is truly unreliable, defense counsel should weigh cost-benefit of continuing to rely on video versus abandoning it and focusing on other evidence.

If Procedural Violations are Discovered Pre-Trial

If defense counsel discovers a procedural violation (e.g., realizes investigator was not listed on witness list, or realizes video was not on PTCS, or realizes 20-day notice for QME submission was not provided), counsel should: (1) immediately notify applicant counsel and seek stipulation to cure the defect; (2) request written agreement that procedural violation will not be waived and applicant counsel retains right to object; (3) amend PTCS or file supplemental notice if appropriate; (4) present defect to workers' compensation judge and request opportunity to cure; (5) if judge permits cure, take immediate steps to remedy (list investigator on amended witness list, provide detailed PTCS description, etc.). Proactive disclosure of procedural violations and good-faith attempt to cure may reduce judge's perception of "ambush" tactics and may result in remedy short of wholesale evidence exclusion.

Plan B: Using Surveillance for Deposition Impeachment Only

If trial use of surveillance becomes jeopardized due to procedural or authentication concerns, defense counsel should consider using surveillance solely for deposition impeachment. Under [Downing][5], surveillance need not be disclosed before deposition, so using surveillance during deposition is always permissible. If video cannot be used at trial (due to procedural violations), defense counsel can still use the video in applicant's deposition to lock applicant into testimony about activities shown in video, and then use the locked-in testimony (by deposition transcript) at trial even if video itself is excluded. This alternative strategy trades off the persuasive impact of video for the substantive advantage of deposition impeachment.

Plan C: Relying on Medical Evaluator's Opinion Instead of Video

If surveillance is excluded from trial, defense counsel can still benefit if the surveillance was submitted to a QME under [Labor Code Section 4062.3(b)][4] procedures. The QME's report and testimony may reference the surveillance (even if video itself is excluded from trial) and may opine regarding consistency or inconsistency between applicant's claimed limitations and observed activities. While the QME cannot detail video contents if video is excluded, the QME's general statement that "applicant appeared more functional than reported" or "applicant's activities were inconsistent with limitations" may accomplish similar purpose. This approach relies on medical-legal evidence rather than demonstrative video evidence and may be more persuasive to the workers' compensation judge regardless.

XIV. Risk Warnings, Disclaimers, and Caveats

This Report Does Not Constitute Legal Advice

This research report provides general legal analysis and educational information regarding California workers' compensation sub rosa surveillance video procedures, case law, and strategies. The report is not a substitute for individualized legal advice tailored to your specific facts, circumstances, and claims. Any practitioner using this report should consult with a qualified California workers' compensation attorney licensed to practice in California before taking action based on information in this report. The analysis reflects state of law as of March 2, 2026, and may be superseded by subsequent WCAB decisions, statutory amendments, or regulatory changes.

Scope Limitations and Factual Dependence

The admissibility of surveillance video is highly fact-dependent. Outcomes vary based on specific procedural posture (pre- or post-deposition, before or after MSC), nature of surveillance (post-injury vs. incident video), technical quality of video, authentication methods available, and specific workers' compensation judge assigned. This report does not purport to predict outcome in any specific case; rather, it analyzes the legal framework and provides strategic options for practitioners. Practitioners must apply the legal standards discussed to their specific facts.

Irreversible Consequences of Procedural Errors

Certain procedural errors-particularly failure to disclose video before the MSC or failure to list authenticating witnesses-may be irreversible and may result in complete video exclusion without opportunity to cure. [Labor

Code Section 5502(d)(3)[17] does not permit harmless-error analysis for discovery violations. Practitioners should therefore be extremely cautious about procedural compliance and should seek guidance from experienced workers' compensation counsel if procedural questions arise.

Evolving Case Law and Future Developments

[Pollard v. Lemstra Cattle Co. (2025)][3] is recent (within 90 days as of March 2026) and its full implications remain to be developed through subsequent case law. [Pollard][3]'s effect on [Espedal][1] and [Downing][5] frameworks is not fully settled. Future WCAB decisions may narrow or expand [Pollard][3]'s reach. Practitioners should monitor WCAB decisions for any new guidance regarding interaction of QME-submission procedures and deposition-discovery timelines.

California Rules of Professional Conduct Compliance

Practitioners must ensure all surveillance procedures comply with [California Rules of Professional Conduct][1], including obligations of candor to the court ([Rule 3.3][1]), prohibition on obstruction of justice ([Rule 3.4][20]), and competence and diligence ([Rule 1.1][21] and [Rule 1.3][22]). Counsel must not present evidence known to be false or engage in deceptive practices.

Investigator Licensing and BSIS Verification

All surveillance must be conducted by persons licensed under [California Business and Professions Code Section 6521][8]. Practitioners should independently verify investigator licensing through the Bureau of Security and Investigative Services website before retaining an investigator. Unlicensed surveillance may constitute a misdemeanor and may affect evidentiary admissibility and professional-conduct implications.

No Guarantee of Admissibility or Successful Outcome

Despite perfect procedural compliance and strong authentication, workers' compensation judges retain discretion to weigh evidence and may assign minimal weight to video evidence. This report does not guarantee that any surveillance video will be admitted or that admission will result in any particular outcome. Practitioners should prepare alternative theories and evidence in all cases involving surveillance video disputes.

XV. Appendices and Complete Source Citations

APPENDIX A: Relevant California Statutory Provisions (Full Text)

California Labor Code Section 5708 - Evidence Standards

[Labor Code Section 5708][9]: The appeals board shall not be bound by the common law or statutory rules of evidence or by any rule or requirement of procedure not specifically provided in this division or in the rules of practice and procedure of the appeals board adopted under this division, but it may make inquiry in the manner, through oral testimony and records, which is best calculated to ascertain the substantial rights of the parties and to effectuate the provisions of this division.

California Labor Code Section 4062.3 - Communications with Medical Evaluators

[Labor Code Section 4062.3(a)-(b)][4]: The claims administrator, or if none the employer, shall provide, and the injured worker may provide, the following information to the evaluator, whether an AME or QME: (1) All records prepared or maintained by the employee's treating physician or physicians

References

sullivanattorneys.com (<https://www.sullivanattorneys.com/blog/wcab-clarifies-procedure-submitting-subrosa-video-qmes>)

bradfordbarthel.com (https://bradfordbarthel.com/wp-content/uploads/2021/05/20191029_Discovery_Part_IV_PP.pdf)

sullivanoncomp.com (<https://www.sullivanoncomp.com/blog/producing-video-evidence-prior-to-applicants-deposition>)

dir.ca.gov (<https://www.dir.ca.gov/wcab/Panel-Decisions-2025/Shawn-POLLARD-ADJ10675931.pdf>)

ww3.workcompcentral.com
(<https://ww3.workcompcentral.com/columns/show/id/c04b9e62b176458f25d3781c8f01161cj>)

dir.ca.gov (<https://www.dir.ca.gov/wcab/Panel-Decisions-2024/Coreen-GONZALES-ADJ18936354.pdf>)

sullivanoncomp.com (<https://www.sullivanoncomp.com/blog/authentication-of-video-evidence-at-trial>)

irstore.blob.core.windows.net (<https://irstore.blob.core.windows.net/materials/214fa4c2-19f5-4896-8c02-cedc26148f83.pdf>)

dir.ca.gov (<https://www.dir.ca.gov/wcab/Panel-Decisions-2023/James-GUNDERSON-ADJ9727055.pdf>)

dir.ca.gov (<https://www.dir.ca.gov/wcab/Panel-Decisions-2021/Christopher-JOHNSON-ADJ14203968.pdf>)

rjylaw.com (<https://www.rjylaw.com/labor-code-section-4062-3-information-vs-communication/>)

youtube.com (https://www.youtube.com/watch?v=Rk-9_APWK4U)

allegiancelaw.com (<https://allegiancelaw.com/practice-areas/workers-compensation/workers-comp-surveillance/>)

bsis.ca.gov (https://www.bsis.ca.gov/forms_pubs/pi_app.pdf)

sdcba.org (<https://www.sdcba.org/?pg=Ethics-in-Brief-10-14-2014>)

dir.ca.gov (<https://www.dir.ca.gov/wcab/Panel-Decisions-2022/Juan-LICEA-ADJ10568300.pdf>)

sfbar.org (<https://www.sfbar.org/blog/legal-ethics-corner-attorneys-serving-as-investigators-beware/>)

bradfordbarthel.com (https://bradfordbarthel.com/wp-content/uploads/2021/05/20180418_Trial_Time_IV_PP.pdf)

sullivanoncomp.com (<https://www.sullivanoncomp.com/blog/wcab-clarifies-procedure-for-submitting-sub-rosa-video-to-qmes>)

dir.ca.gov (<https://www.dir.ca.gov/wcab/Panel-Decisions-2024/Miguel-GUEDEA-ADJ8779374.pdf>)

youtube.com (<https://www.youtube.com/watch?v=xQT3AGTVrFQ>)

sullivanattorneys.com (<https://www.sullivanattorneys.com/blog/producing-video-evidence-prior-applicant-deposition>)

sullivanoncomp.com (<https://www.sullivanoncomp.com/blog/topic/lc-5502d>)

marvelandemche.com (<https://marvelandemche.com/blog/how-do-surveillance-videos-impact-workers-comp-claims/>)

montarbolaw.com (https://www.montarbolaw.com/wp-content/uploads/2022/02/current_issues_2022_materials.pdf)

dclbv.com (<https://dclbv.com/newsletters/2017/q3/qa-sub-rosa-video-footage/>)

visionarylawgroup.com (<https://visionarylawgroup.com/workers-comp-caught-on-video/>)

dir.ca.gov (<https://www.dir.ca.gov/t8/35.html>)

dir.ca.gov (<https://www.dir.ca.gov/wcab/Panel-Decisions-2025/Patrick-WANYONYI-ADJ12181367.pdf>)

dir.ca.gov (https://www.dir.ca.gov/t8/35_5.html)

ieatraining.org (<https://ieatraining.org/sub-rosa-surveillance-wcab-qme-rules>)

lexisnexis.com (https://www.lexisnexis.com/LegalNewsRoom/cfs-file/_key/communityserver-components-sitefiles/Documents-WCLC+Documents/JONATHAN-DUONG-v-Automobile-Club-WCAB-CA.pdf)

montarbolaw.com (https://www.montarbolaw.com/wp-content/uploads/2023/03/2023_materials_030223.pdf)

sullivanattorneys.com (<https://www.sullivanattorneys.com/blog/3rd-dca-clarifies-credibility-standards-discovery-rules>)

btlj.org (<https://btlj.org/2023/10/not-just-bodies-and-homes-autonomy-privacy-under-article-i-section-1/>)

digitalevidence.ai (<https://digitalevidence.ai/blog/broken-chain-of-custody>)

calawyers.org (<https://calawyers.org/section/privacy-law/privacy-law-guide/>)

courts.ca.gov (https://courts.ca.gov/cms/rules/index/three/rule3_1380)

sefcom.asu.edu (<https://sefcom.asu.edu/publications/CoC-SoK-tps2024.pdf>)

apexpi.com (<https://apexpi.com/downing-v-city-of-hayward/>)

sullivanoncomp.com (<https://www.sullivanoncomp.com/blog/case-law-update-august-2017-1>)

burgislaw.com (<https://burgislaw.com/how-a-sub-rosa-investigation-affects-your-workers-comp-claim/>)

law.justia.com (<https://law.justia.com/cases/federal/district-courts/FSupp2/336/967/2526180/>)

sullivanattorneys.com (<https://www.sullivanattorneys.com/blog/initial-physical-aggressor-defense>)

seej-africa.org (<https://www.seej-africa.org/wp-content/uploads/2025/02/Sheikhs-Post-Mortem-copy-rd.pdf>)

new.kenyalaw.org (<https://new.kenyalaw.org/akn/ke/judgment/kehc/2025/8777/eng@2025-06-20>)

visionarylawgroup.com (<https://visionarylawgroup.com/workers-comp-surveillance-laws-california/>)

advocatemagazine.com (<https://www.advocatemagazine.com/article/2025-april/make-sub-rosa-take-a-back-seat-to-your-client-s-damages>)

bradfordbarthel.com (https://bradfordbarthel.com/wp-content/uploads/2021/05/20190801_Discovery_Part_III_PP.pdf)

californialaborsolutions.com (<https://www.californialaborsolutions.com/sub-rosa-surveillance-explained-a-legal-tool-for-california-employers-and-investigators/>)

sullivanoncomp.com
(<https://www.sullivanoncomp.com/hubfs/docs/Webinar%20Slides/Part%202012%20COVID-19%20Update%20Slides.pdf>)

ww3.workcompcentral.com
(<https://ww3.workcompcentral.com/columns/show/id/6b654f1942beb8f4535f000eb2cc2a8cj>)

nij.ojp.gov (<https://nij.ojp.gov/nij-hosted-online-training-courses/law-101-legal-guide-forensic-expert/pretrial/pretrial-motions/chain-custody>)

law.justia.com (<https://law.justia.com/cases/california/court-of-appeal/2019/b293080.html>)

harmonie.org (<https://www.harmonie.org/file/Litigation%20Tools/Surveillance%20Compendium.pdf>)

ww2.nycourts.gov (<https://ww2.nycourts.gov/rules/trialcourts/202.shtml>)