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Issues

Information and ideas for those
serving seniors.

on Aging

UNDUE INFLUENCE AND FINANCIAL EXPLOITATION

Undue influence is a form of psychological abuse, related to the phenomena of mind-control. Defined as the substitution of one person's will for the true desires of another, undue influence generally occurs when the victim is incapacitated by cognitive impairment, physical or mental illness or some other vulnerability such as recent bereavement. Undue influence is usually accompanied by fraud or duress by the perpetrator, generally someone in a position of trust or authority, who seeks financial gain at the expense of the victim.

How does undue influence occur?

According to Dr. Margaret Singer, a psychologist with expertise in mind-control and brain-washing, the perpetrator usually takes deliberate actions to gain control of the victim. These actions include:

- Isolating the victim – The abuser attempts to cut off access to the victim by other persons by withholding or controlling phone calls, visits and mail. The perpetrator tells callers and visitors that the victim is asleep, busy, or too unwell for visits and calls.
- Creating a siege mentality – The abuser convinces the victim that no one else cares about the victim, and that family members, clergy, doctors and others are trying to put the victim in a nursing home. The perpetrator reassures the victim that only the abuser will take care of the victim.
- Creating dependency – The perpetrator manipulates the

victim's activities, food and medication to create dependency on the abuser. This may include confining the victim to bed, overmedicating the victim, or providing inadequate food and liquid that result in physical deterioration.

- Promoting powerlessness – The abuser uses his power to convince the victim that only the abuser can care for the victim. The abuser may threaten the victim with harm, neglect or abandonment if the victim doesn't comply with the abuser's actions and wishes.
- Keeping the victim unaware of reality – Because of the process of abuse, the victim, in the role of a captive, becomes bonded to the abuser as do hostages, prisoners of war, incest victims, and abused children.

Who is likely to be a victim of undue influence?

Elderly people with assets such as their own homes, stocks, bonds, and other material and financial assets, are most likely to become victims of undue influence due to their life circumstances. This can include ill health with physical dependency, cognitive impairments, grief and bereavement, and decreased independence in such activities as shopping, bill paying and the need for transportation. Mentally ill individuals are also at risk for victimization, as are those with developmental delays, chemical dependency, and other such conditions that result in

need for assistance with various activities.

What are the risk factors for being a victim of undue influence?

There are a number of identified risk factors that predispose people to being victims of undue influence and financial exploitation. These include:

- Being elderly, mentally ill, physically disabled, and/or cognitively impaired.
- Living alone, especially in own home rather than in an apartment or condo.
- Being recently bereaved. (Some exploiters read obituaries and prey on widows and widowers).
- Being dependent in transportation and/or shopping.
- Having few local family or friends.
- Being isolated from community activities and health care services.
- Being naïve and overly trusting and open with strangers.
- Lacking knowledge about own finances.
- Not having reputable assistance with financial matters.

Who is likely to be a perpetrator of undue influence?

Perpetrators almost always begin with a close and trusting relationship with the victim, and most often perpetrators are family members. Family members sometimes have a financial duty to the victim as their attorney-in-fact, and use that relationship to take financial advantage of the

victim. Authorities have found that oftentimes there is a family member who lives with the victim, sometimes an adult child who never left home, and that person is in a prime position to isolate the victim from others.

Unrelated perpetrators, such as accountants, trustees, attorneys or guardians, may have a financial duty to the victim. Other times the perpetrators are housekeepers, caregivers, neighbors, nursing personnel, physicians, church members, or even clergy. Occasionally these people deliberately develop a close relationship with the victim with the goal of financial gain. Some people “make their living” preying on elderly people and go from one victim to the next. Young women may become “girlfriends” of elderly men, and young men may woo older women in an effort to become their “significant others.” The appearance of a new young “friend” in an elder’s life is often cause for concern.

What are some signs of undue influence and financial exploitation?

While it may be difficult to identify a pattern of isolation and undue influence in the early stages of an exploitative relationship, there are certain characteristics – that when considered together – should raise questions about the integrity of the relationship. These fall into three categories: victim behavior, perpetrator behavior, and financial implications.

Victim behaviors that may be observed include:

- Victim makes loans or gifts to someone who needs money for car repairs, surgery, etc.
- Victim is never left alone with anyone.
- Victim is pressed into transactions without being given time to contact advisors.
- Victim appears to have been coached when meeting with attorney, stockbroker, accountant, etc.
- Victim seems reluctant to discuss matters that were routine with formerly trusted professionals.

- Victim seems sedated or appears to be intimidated or controlled by perpetrator.

Behaviors demonstrated by the perpetrator may include the following:

- Perpetrator speaks for the victim and doesn’t allow the victim to speak even when present.
- Perpetrator doesn’t appear to have any other means of support other than the victim’s income.
- The perpetrator has a controlling and defensive attitude if questioned about relationship to victim.
- Perpetrator denies access to victim by formerly trusted persons including victim’s family, friends, attorney, etc.
- Perpetrator moves into victim’s home and promises to care for them now in exchange for property upon their death.
- Perpetrator convinces victim that family members, friends and other previously trusted persons are trying to put victim in an institution and take their assets.
- Perpetrator creates alliance with victim’s physician by insisting that only the perpetrator can successfully care for the victim.
- Perpetrator takes victim to a new attorney to make changes to estate planning documents, convincing victim that previous attorney wasn’t looking out for victim’s best interest.

Financial issues that should raise red flags to the possibility of undue influence and financial exploitation include the following:

- Change in bank or other financial institutions.
- Financial activity inconsistent with the victim’s habits and abilities, such as ATM withdrawals.
- Numerous withdrawals or checks to cash, often in round numbers such as \$50.00, \$100.00, \$1,000.00, etc.
- Increased activity on credit cards for purchases not generally made by victim, i.e. gasoline, music and electronic stores, etc.

- Withdrawals made from savings or CDs in spite of penalties.
- Change in account beneficiaries.
- New accounts and/or new authorized signers on accounts.
- Change in financial planning documents, such as wills, trusts, powers of attorney, especially when there is question about victim’s capacity and/or the will or trust is in favor of a new or much younger “friend.”
- Changes in property title, quitclaim deeds or new or refinanced mortgage.
- Changes in attorney, stockbroker, physician or other professionals.

How does one deal with suspected undue influence and financial exploitation?

If there were an easy answer to this question, the prevalence of undue influence and financial exploitation would be less and when it occurred, it would be more easily resolved. Dealing with these issues requires that people working with vulnerable adults be highly alert to the possibility of victimization and scrutinize the relationships and financial transactions of their vulnerable clients. While many of those working with the elderly assume that caregivers and others involved with vulnerable adults have altruistic motives, the prevalence of abusers is surprisingly high. Some authorities estimate that as many as half of all vulnerable adults may be preyed upon. Wilber and Reynolds, researchers at the University of Southern California, found that “anywhere from 33% to 53% of elder abuse victims are believed to experience financial abuse.”

When any of the warning signs listed above are identified, it is imperative that a trusted family member or professional – or even better, several people working together – insist on a private visit with the suspected victim. Social workers, especially those with expertise in vulnerable adult issues, can be useful in evaluating these situations and documenting findings of victimization. It is important to realize, however, that a skilled

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perpetrator can cause the victim to develop strong loyalty to the perpetrator, a phenomena known as the Stockholm Syndrome based on bank hostages in Stockholm who were brainwashed by their captives.

The client's attorney should be contacted and notified about legal changes that were made by the perpetrator's attorney. It is often necessary to contact authorities such as Adult Protective Services or police agencies to force the perpetrator to allow a visit from relatives or professionals such as an attorney, accountant or doctor. In some cases,

the victim can be hospitalized for his/her own protection, and interviewed by authorities in the protected environment.

Thorough documentation of any and all signs of undue influence is helpful in establishing the pattern of isolation, siege mentality, dependency and powerlessness that allows the perpetrator to gain control of the victim. When they receive timely notification of undue influence and financial exploitation, law enforcement officials are willing to prosecute this type of abuse and exploitation.

References

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Minnesota Statutes 2001, 609.2335 Financial exploitation of a vulnerable adult.

Subdivision 1. **Crime.** Whoever does any of the following acts commits the crime of financial exploitation:

- (1) in breach of a fiduciary obligation recognized elsewhere in law, including pertinent regulations, contractual obligations, documented consent by a competent person, or the obligations of a responsible party under section 144.6501 intentionally fails to use the financial resources of the vulnerable adult to provide food, clothing, shelter, health care, therapeutic conduct, or supervision for the vulnerable adult; or
- (2) in the absence of legal authority:
 - (i) acquires possession or control of an interest in funds or property of a vulnerable adult through the use of undue influence, harassment, or duress; or
 - (ii) forces, compels, coerces, or entices a vulnerable adult against the vulnerable adult's will to perform services for the profit or advantage of another.

Subdivision 2. **Defenses.** Nothing in this section requires a facility or caregiver to provide financial management or supervise financial management for a vulnerable adult except as otherwise required by law.

Subdivision 3. **Criminal penalties.** A person who violates subdivision 1, clause (1) or (2), item (i), may be sentenced as provided in section 609.52, subdivision 3. A person who violates subdivision 1, clause (2), item (ii), may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

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