

TOL Workbook for Financial Exploitation Mini-Module

Undue Influence



Developed by Kevin Bigelow

Topic:

Undue influence has to do with people, often perpetrators, using their personal power to exploit others. Undue influence is often used to commit financial exploitation. Undue influence differs from persuasion or salesmanship in that undue influence is the substitution of one person's will for the true desires of the other (Mary Jo Quinn-2001). The use of undue influence may include fraud, duress, threats and other types of deceptions. The undue influence mini-module explores undue influence, its relationship to financial abuse, indicators of undue influence, and information pertinent to investigating cases of alleged financial abuse where undue influence may be a factor.

Objectives

At the end of the training, participants will be able to:

- **Define undue influence**
- **Recognize the elements of undue influence**
- **Identify the steps to take in the investigation.**
- **Identify partners in the field with whom to work the case.**

Activities - Supervisors can use this workbook to provide training for new staff or as a refresher or supplemental training to more experienced staff on undue influence. This information will include detecting its presence in the case environment, and determining an appropriate response or intervention to financial abuse involving undue influence.

Suggested Readings:

"An interview with Margaret Singer on Undue Influence" by the National Council on Elder Abuse.

<http://www.preventelderabuse.org/issues/capacity.html>

"Exploitation of the Elderly: Undue Influence as a Form of Elder Abuse" Clinical Geriatrics, a Peer-Reviewed Clinical Journal of the American Geriatrics Society, citation: pages 28-36 , Ryan C. W. Hall, MD, Richard C. W. Hall, MD, and Marcia J. Chapman

<http://www.clinicalgeriatrics.com/article/3773>

Learning Objective #1:

Define undue influence

Undue influence is defined as the following in Black's Law Dictionary:

“Persuasion, pressure, or influence short of actual force, but stronger than mere advice, that so overpowers the dominated party's free will or judgment that he or she cannot act intelligently and voluntarily, but acts, instead, subject to the will or purposes of the dominating party.”

Discussion Questions:

Discuss the following questions in a new staff orientation session or a staff meeting:

- Identify how a perpetrator may influence another person without using direct threats of violence or harm.
- What personal beliefs on the part of victims might make them susceptible to undue influence by perpetrators?
- How do personal belief systems (i.e. a good mother doesn't raise bad children, or an independent person shouldn't ask for help, or family problems shouldn't be told to outsiders) or fear of social embarrassment be used by perpetrators to control the behavior of victims?
- Identify some indicators that might identify that a client is at risk of financial abuse due to the undue influence of an alleged perpetrator.

Learning Objective #2:

Recognize the elements of undue influence

Victims of financial exploitation through undue influence may be anyone, however, victims controlled through undue influence often share one or more characteristics that may be elements of the undue influence 'picture'. Some of these 'often seen' characteristics of undue influence/financial exploitation victims include: physical disability, dependency, isolation, grief, depression, and a trusting nature. These characteristics pertaining to clients should be assessed and noted, whether the allegation being investigated is financial abuse or not. It is not uncommon for financial abuse issues to emerge in cases that began with other types of allegations. Even if no financial abuse allegations are discovered, identification of these characteristics may provide an opportunity for the worker to offer suggestions to the client that may help to keep them safe. In addition, documentation of these perceived vulnerabilities may assist future workers if future allegations are made.

Discussion Questions:

- How can physical disability lead to potential vulnerability to undue influence?
- What role does client dependency play in making a client more vulnerable to undue influence and financial exploitation?
- How does social isolation give a perpetrator more power and control over victims?
- How can grief over the loss of a significant other make a client more vulnerable to the influence of others, and to possible financial abuse?

Activity #1

Vignette- Mrs. L.:



A report of alleged financial abuse and neglect by others is received about Mrs. L. You are assigned the case to investigate. Mrs. L. is a 74 year old female diagnosed with Multiple Sclerosis (MS). She is able to ambulate, although she is very shaky when standing. On days when she is doing well, she can use a walker to ambulate short distances in her home. However, much of the time she uses a wheel chair to move about, especially if she is taken out to the doctor's office or to buy groceries, etc. Mrs. L's husband was her caregiver from the time that she was diagnosed with MS seven years ago; however, he died just over a year ago. After his death, she was assisted by a neighbor until four months ago when the neighbor's health necessitated the neighbor going into a nursing facility. Mrs. L. had an In Home Supportive Services (IHSS) caregiver that assisted her with shopping, cooking and bathing for several hours daily after that; but the caregiver quit after several weeks.

Mrs. L misses her husband of nearly 50 years, and is often listless and tearful remaining in bed long after she awakes early in the morning. Mrs. L. has an adult daughter, who lives in Colorado and calls weekly to talk to her, and a son who lives in Massachusetts who makes infrequent contact. Mrs. L. had given both her neighbor, and her IHSS caregiver keys to her home and she never asked for them back when they stopped assisting her. She often leaves her

door unlocked and directs persons who knock to 'come on in' as it takes her so long to go to the door and answer when infrequent callers do come to her home.

Several weeks ago, Mrs. L. answered an advertisement in "The Pennysaver" flyer for a caregiver, named Monica. Monica agreed to take care of Mrs. L. Initially Monica came in to assist Mrs. L. three days a week, but was soon coming daily, and increased her fees significantly. Two weeks ago Mrs. L. agreed to let Monica move in with her, allegedly because Monica was being treated badly by her apartment landlord. Mrs. L. also recently paid a large sum of money to repair Monica's car, telling her daughter "Monica can't go buy me groceries without a car." Mrs. L also provides for Monica's meals. Recently when Mrs. L's daughter has called, Monica has told her that Mrs. L is sleeping, or 'unavailable' and Mrs. L. has not returned her daughter's calls as she had in the past. There is a concern that Monica may be taking advantage of Mrs. L.

Answer the following questions about Mrs. L's case:

1. How might Mrs. L's physical disability make her more vulnerable to undue influence by Monica?
2. Is Mrs. L socially isolated? How so?
3. How does Mrs. L's grief over the loss of her husband make her potentially vulnerable?
4. Does Mrs. L show any signs or symptoms of depression?
5. Does Mrs. L seem to have a 'trusting nature' that may make her vulnerable to the influence of others? What leads you to this conclusion?

Discussion:

Cases of financial exploitation are many and varied. Because undue influence can take so many different forms, there are many potential indicators that should raise a red flag that undue influence may play a significant role in your case. If even one indicator raises a red flag to look for undue influence, the more indicators that you come across should indicate an even greater need for you to explore undue influence factors in your case. Some of the many potential indicators of undue influence include:

- Unusual activity in a bank account, including activities inconsistent with victim's abilities and/or financial situation.
- Disconnected utilities, eviction notices or lack of amenities when victim's income should cover expenses.
- Placement, care, or living conditions not commensurate with size of estate or victim's history of expenditures.
- Victim's lack of awareness or understanding of financial arrangements.
- Purchases with victim's funds or credit cards which are not for the victim, or occur when the victim is confused or mentally incapacitated.
- Problems with signatures: Newly authorized signatures on credit accounts or signatures on checks/other documents which do not resemble the victim's signature, or were made when the victim is unable to write.
- Pre-payment for goods or services which are not received.
- Missing checks.
- Mailing address changed on checks or bills; income deposited in someone else's account.
- Missing belongings.
- Implausible explanation about victim's financial affairs.
- Destruction or removal of victim's financial records.
- Recent acquaintances expressing undying affection for or moving in with adult who has assets.

- Caretaker evasive about, or shows unusual interest in, the victim's financial arrangements.
- Caretaker promises lifelong care, or threatens to leave victim, in exchange for all of victim's property.
- Violation of fiduciary responsibility.

Activity #2

See Handout at end of workbook

Vignette- Mrs. L. continued:

In order to take a look at how some of these indicators may play a role in a financial exploitation case we will return to Mrs. L. As of this time, you have made a visit and talked to Mrs. L. Recorded below is what happened when you visited Mrs. L. for the first time:

Mrs. L.'s front door was opened by Monica, her caregiver. When you asked to see Mrs. L. she was reluctant to let you talk with her. Monica initially said that Mrs. L. was asleep, but then Mrs. L. called out from the other room, asking who was at the door. After you had identified yourself, Monica reluctantly let you in and took you into the living room to see Mrs. L. Initially Monica settled herself on the couch to listen to your conversation, and left the room only after you asserted that you needed to talk to Mrs. L. alone.

Mrs. L. tells you about her diagnosis of Multiple Sclerosis (MS) and the death of her husband a year ago. She tells you about how her neighbor, Mrs. Brown helped her for months after her husband died until she, too, became ill and had to move into assisted living. Mrs. L. tells you that she then had an IHSS caregiver, Maria who came in for several hours a day 5 days a week, but Maria quit about two months ago. When you ask about why Maria quit, she says that shortly after she met Monica, Maria got upset and quit. When you ask what she was upset about Mrs. L. says I don't know, Monica took Mrs. L. to the market and all of a sudden, after Maria and Monica had talked, Maria came in and said she quit. Mrs. L. said, I asked her why, and she said that she knew I was going to fire her anyway. I asked Monica about it, and she said not to worry, Maria would have probably quit soon anyway.

You ask Mrs. L. about Monica and she says that she answered Monica's ad because Maria was going to go to Mexico to visit family, and she needed someone to help out for a week. Monica spoke to her on the phone, then came and met with her. Monica was described as being "very nice" and she even offered to take Mrs. L. to the store while Maria was busy. It was when they had returned from the store, after Maria and Monica were talking in the kitchen that Maria suddenly quit. Mrs. L. says "thank God for Monica, or I would have been up a creek."

You ask Mrs. L. about her relatives and she tells you that she has a son that she never hears from, and a daughter who “used to call.” When you ask her about this, she says that her daughter used to call almost every week, but that she does not like Monica, and has stopped calling since. When you ask why she does not call now, she says, “I don’t know why” but “Monica tells me that my daughter just wanted to put me in a home and get my money...so good riddance to her.”

You ask Mrs. L. about her finances, and she tells you that Monica has taken over “all of that.” You ask to see her checkbook and any credit card statements she has, and Mrs. L. calls Monica and asks her for that information to show you. Monica says she does not know where those papers are, but you notice some papers on a desk in the corner of the room and Mrs. L. tells you that, yes, those are the ones. There are several checks missing from the checkbook that are not listed in the register. Mrs. L. tells you that Monica keeps several blank checks in her purse, “in case we get to the store and we forgot the checkbook.” You notice that the last 10 checks recorded in the register are all in a different handwriting, one of them for a large automobile repair bill. Mrs. L. confirmed that she paid for Monica’s car repair expenses that included a new stereo and window tinting. Mrs. L. tells you that Monica moved in with her two weeks ago and that she now writes out the checks for her and records them in the register. When asked why Monica moved in with her, Mrs. L. tells you that Monica’s landlord was treating Monica badly.

Mrs. L.’s hair is rather unkempt, but you notice a check to a hair salon two days ago. You ask Mrs. L. about this check, and she seems baffled by the check. Monica overhears this and says the charge was for her own hair, then puts her arm around Mrs. L. and says, you remember, I wanted to get you to go with me? I thought if you saw how nice my hair looked, you’d go with me next time. Mrs. L. reluctantly says, well...that’s okay.

You also notice a number of recent charges to Mrs. L.’s credit cards and point them out to Mrs. L. She does not recognize them, but adds quickly, “Monica has my charge cards and she probably bought me things that I needed.” Mrs. L. adds, we had to replace some things recently too because they were stolen. You ask her to tell you about this, and she says that Monica took the car to run an errand, and when she returned, she said that someone must have broken into the car and stolen some of Mrs. L.’s things.

Your interview ends when Monica enters the room again and says that Mrs. L. has to go to a doctor's appointment. You tell Mrs. L. that you will see her again, and leave after giving you her card.

Discussion points:

With a new employee, in an orientation group, or at a staff meeting, have staff read the interview with Mrs. L. above. After reading about the interview, ask them to identify any of the undue influence indicators listed just above the visit. Which indicators are applicable to the information obtained from Mrs. L's first interview?

Undue Influence-Similarities with Domestic Violence

Some striking similarities between Undue Influence and Domestic Violence have been identified. Listed below are some of the similarities between undue influence and domestic violence:

- The victim and the abuser have an ongoing relationship. It is this relationship that allows the abuse to occur
- In both types of abuse, the perpetrator may 'groom' their victim, charming or manipulating them into giving them control
- In both cases, the abuser isolates their victim and creates a dependency on the abuser
- The abuser imposes his or her will on the victim, perhaps taking steps to weaken the victim (i.e. possibly providing inadequate nutrition, withholding medication, or depriving the victim of sleep)
- The abuser sometimes behaves in a kind and loving manner, giving the victims reason to hope that things will get better
- The abuser disparages or devalues the victim (with undue influence this may involve convincing them that they are unable to function without the abuser's help)
- In both cases, victims will often act against their own best interests in order to maintain their relationship with the abuser
- In both undue influence and domestic violence situations, victims will often withhold evidence or recant information that might get the abuser into trouble

Undue Influence Wheel

Based on the similarities between domestic violence cases and undue influence cases, Brandle, Heisler and Stiegel have adapted the domestic violence “Power and Control” wheel to explain the elements of undue influence. Their model is entitled the Undue Influence Wheel. You can use these elements to identify cases of financial exploitation through undue influence. Let’s explore each element of the wheel and see how they apply to our sample case. It is important to remember that not every element will be present in every case.

See Undue Influence Wheel Handout at end of the workbook.

Discussion:

Using the case of Mrs. L., or using a current or recent financial exploitation case with undue influence aspects, evaluate the case from the perspective of each section of the Undue Influence Wheel.

Developing a Timeline

Undue influence takes place over time, and often the financial exploitation perpetrator has goals that they are working toward such as control of the victim, isolation from other parties, financial gain, theft of property, etc. Analyzing the timing of events and documenting these events are very important in addressing these cases. In cases of this type, a timeline should be developed showing when events took place. Listed below is a timeline for our fictional case of Mrs. L. Please review the timeline.

Mrs. L.'s Timeline

- 2005 - Mrs. L. diagnosed with Multiple Sclerosis.
- January 2011 - Her husband dies.
- January-September 2011 - Mrs. L. is cared for by a neighbor.
- September 2010 - November 2011 - Mrs. L. has an IHSS caregiver - 'Maria'.
- November 2011 - Mrs. L. finds Monica through a 'Pennysaver' advertisement. After Monica talks with Maria, Maria suddenly quits.
- December 2011 - Monica takes over all of Mrs. L.'s financial affairs. She controls all check writing and documentation, she writes checks that Mrs. L. is unaware of, and makes purchases for herself without Mrs. L.'s permission. Several checks are missing.
- January 2012 - After Monica takes out Mrs. L.'s car, several valuable items are reported (by Monica as stolen).

Discussion:

Review Mrs. L.'s timeline and look for:

- Indications of possible theft
 - When and how did our alleged perpetrator, Monica, enter Mrs. L.'s life; and when did she take over Mrs. L.'s finances?
 - Evidence of the victim's vulnerability (such as illness, and loss of spouse and caregivers)
 - Evidence of isolation
1. What indications of possible theft do you find after the first interview with Mrs. L?
 2. When did Monica enter Mrs. L.'s life and how? Does Maria's departure after talking to Monica seem suspicious? What might have Monica told Maria to influence her to leave so that she (Monica) could take over as caregiver?
 3. What are Mrs. L.'s vulnerabilities?
 4. How may these events and your assessment of them affect how you will pursue the case?
 5. What do you speculate may be taking place? What can you do to gather more evidence and to protect Mrs. L?

Learning Objective #3:

Identify the steps to take in the investigation

Undue influence cases can be extremely complex and difficult to investigate. The alleged perpetrator is often so charming and manipulative that it is difficult to believe they could be exploiting the victim. Often the victim has given the perpetrator their property or money, but is unable to see how much this will affect them or that they are being manipulated. Since these cases are difficult, and may likely end up in a legal proceeding, it is important to follow the appropriate steps in the investigation. Although all cases are different, the worker should be sure that all of these areas are covered, and usually it is best to approach them in this order.

1. Interview the victim
2. Explore the relationship between the victim and the alleged perpetrator
3. Assess the total situation
4. Consider the victim's mental capacity
5. Determine who benefitted, and examine prior patterns of decision making by the victim
6. Document discrepancies and lies
7. Contact collaterals, either for additional information or for assistance from other appropriate entities (i.e.-financial abuse services team, law enforcement, the victim's doctor)
8. Collect evidence (documentation)
9. Make your determination and complete your case

Activity #3:

Taking a recently closed case involving financial exploitation and undue influence, first evaluate the initial allegation. Next, have staff review the case and compare it to the steps of investigation described above. Important points to discuss include whether the initial allegation should have sent up red flags about possible financial abuse, or did the abuse come to light after the initial visit. Did the worker involved cover all of the items described in the recommended steps of investigation? If not, were there reasons for this. (It is important to remember that financial exploitation cases are all different. The emphasis of the transfer of learning activity should be to emphasize use of the concepts and tools, not to blame staff for varying from the models).

If time permits, explore the Undue Influence Wheel to see if the perpetrator's actions and behavior toward the victim fit any of the pieces listed on the wheel. Bear in mind, not all cases will feature all pieces shown on the wheel.

Learning Objective #4:

Identify partners in the field with whom to work the case

Due to their complexity and the financial exploitation crimes often committed in financial exploitation cases, especially those where undue influence is a feature of the case, will often require interaction with other professionals. Some of the professionals that may be useful in Mrs. L's and other financial exploitation cases involving undue influence are as follows:

- **Medical Doctors** - the client's primary care physician, neurologist, psychiatrist, or geriatrician may have information on Mrs. L's mental state and health if you can obtain permission from the client to talk with them.
- **Law enforcement officials** - a cross-report may be required and you may need their help to prosecute Monica, the caregiver, if it appears that she has committed a crime.
- **Financial Abuse Specialist's Team** (if one is available in your area)
- **Bank manager or representative** - may be able to tell you about changes to Mrs. L's finances and suspicious charges if you have Mrs. L's permission to talk with them. They may also be able to freeze Mrs. L.'s accounts if it appears she is the victim of a crime)
- **District Attorney's office** - if it appears that a crime has been committed and the perpetrator may be prosecuted.

Discussion Questions:

1. What professionals may come into play in Mrs. L.'s case?
2. Based on the first interview, what possible thefts of Mrs. L.'s money and property will need to be explored further?
3. In what ways is Mrs. L. still at risk?
4. What might the above listed professionals be able to help you with regarding Mrs. L.'s case?
5. Who might be able to talk with Mrs. L. about Monica and the situation whom she would believe?

Some possible conclusions about Mrs. L.'s case

Mrs. L.'s case is fictional, and the investigation as described is not complete as written. However, some possible conclusions that we might draw (although we would still need to prove them) are as follows:

- Monica appears to have manipulated her way into Mrs. L.'s life.
- It seems likely that Monica may have convinced Maria, Mrs. L.'s one-time IHSS caregiver that she was about to be fired, causing Maria to quit so that Monica could take her place as Mrs. L.'s caregiver.
- Once she was installed as Mrs. L.'s caregiver, it appears that Monica took over Mrs. L.'s finances and began spending Mrs. L.'s money on herself without Mrs. L.'s knowledge or permission.
- Monica has control of blank checks and credit cards belonging to Mrs. L.
- Monica has apparently attempted to alienate Mrs. L. from her daughter, and to prevent Mrs. L. and her daughter from talking.
- While Monica remains in Mrs. L.'s home as her caregiver, Mrs. L. remains at risk for financial exploitation.

Discussion questions:

Assuming that the above hypotheses are true, what actions could you take to help Mrs. L. with the following areas (assuming you have the appropriate releases or permission to pursue them):

1. Her checking account and credit cards (should Mrs. L. ask for them back and perhaps watch for illegal activities? Do they need to be flagged for further possible illegal use?).
2. Monica as a caregiver (should she fire Monica and seek a new, more reliable caregiver?).
3. Mrs. L.'s daughter (would Mrs. L.'s daughter be able to convince her to beware of Monica? Does Mrs. L. need some additional assistance with financial management?).
4. Law enforcement (based on what you cross-report and what they find, can they investigate and/or arrest Monica?).
5. Monica (if you speak to her about these possible illegalities, will she leave the situation? Or will she conceal evidence? Should you talk with law enforcement first?).
6. Mrs. L.'s medical professionals (do they feel that she is competent to handle her affairs? Do they feel that she needs a higher level of care?).

Conclusion

This concludes the Supervisor Transfer of Learning Activity Workbook section on undue influence. This is a complicated topic, and an allegation that is often difficult to address. It is important to remember that APS staff may be the only entity that is aware of the undue influence situation and may be able to identify and stop financial exploitation to protect the client. Although it may be frustrating, seeing victims protect their abusers, APS staff must remember the power of undue influence, and the tendency for many victims to believe the falsehoods that they have been told. APS must also remember that unscrupulous people such as financial exploitation perpetrators can also be dangerous people, and take precautions to assure the clients and workers are safe. APS staff will often need to consult with supervisors on these cases due to their complexity.



Handout

Activity #1: Vignette- Mrs. L

A report of alleged financial abuse and neglect by others is received about Mrs. L. You are assigned the case to investigate. Mrs. L. is a 74 year old female diagnosed with Multiple Sclerosis (MS). She is able to ambulate, although she is very shaky when standing. On days when she is doing well, she can use a walker to ambulate short distances in her home. However, much of the time she uses a wheel chair to move about, especially if she is taken out to the doctor's office or to buy groceries, etc. Mrs. L's husband was her caregiver from the time that she was diagnosed with MS seven years ago; however, he died just over a year ago. After his death, she was assisted by a neighbor until four months ago when the neighbor's health necessitated the neighbor going into a nursing facility. Mrs. L. had an In Home Supportive Services (IHSS) caregiver that assisted her with shopping, cooking and bathing for several hours daily after that; but the caregiver quit after several weeks.

Mrs. L misses her husband of nearly 50 years, and is often listless and tearful remaining in bed long after she awakes early in the morning. Mrs. L. has an adult daughter, who lives in Colorado and calls weekly to talk to her, and a son who lives in Massachusetts who makes infrequent contact. Mrs. L. had given both her neighbor, and her IHSS caregiver keys to her home and she never asked for them back when they stopped assisting her. She often leaves her door unlocked and directs persons who knock to 'come on in' as it takes her so long to go to the door and answer when infrequent callers do come to her home.

Several weeks ago, Mrs. L. answered an advertisement in "The Pennysaver" flyer for a caregiver, named Monica. Monica agreed to take care of Mrs. L. Initially Monica came in to assist Mrs. L. three days a week, but was soon coming daily, and increased her fees significantly. Two weeks ago Mrs. L. agreed to let Monica move in with her, allegedly because Monica was being treated badly by her apartment landlord. Mrs. L. also recently paid a large sum of money to repair Monica's car, telling her daughter "Monica can't go buy me groceries without a car." Mrs. L. also provides for Monica's meals. Recently when Mrs. L's daughter has called, Monica has told her that Mrs. L is sleeping, or 'unavailable' and Mrs. L. has not returned her daughter's calls as she had in the past. There is a concern that Monica may be taking advantage of Mrs. L.

Answer the following questions about Mrs. L's case:

1. How might Mrs. L's physical disability make her more vulnerable to undue influence by Monica?
2. Is Mrs. L socially isolated? How so?
3. How does Mrs. L's grief over the loss of her husband make her potentially vulnerable?

4. Does Mrs. L show any signs or symptoms of depression?
5. Does Mrs. L seem to have a 'trusting nature' that may make her vulnerable to the influence of others? What leads you to this conclusion?

Handout

Activity #2: Vignette- Mrs. L. continued

In order to take a look at how some of these indicators may play a role in a financial exploitation case we will return to Mrs. L. As of this time, you have made a visit and talked to Mrs. L. Recorded below is what happened when you visited Mrs. L. for the first time:

Mrs. L.'s front door was opened by Monica, her caregiver. When you asked to see Mrs. L. she was reluctant to let you talk with her. Monica initially said that Mrs. L. was asleep, but then Mrs. L. called out from the other room, asking who was at the door. After you had identified yourself, Monica reluctantly let you in and took you into the living room to see Mrs. L. Initially Monica settled herself on the couch to listen to your conversation, and left the room only after you asserted that you needed to talk to Mrs. L. alone.

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You ask Mrs. L. about her relatives and she tells you that she has a son that she never hears from, and a daughter who "used to call." When you ask her about this, she says that her daughter used to call almost every week, but that she does not like Monica, and has stopped calling since. When you ask why she does not call now, she says, "I don't know why" but "Monica tells me that my daughter just wanted to put me in a home and get my money...so good riddance to her."

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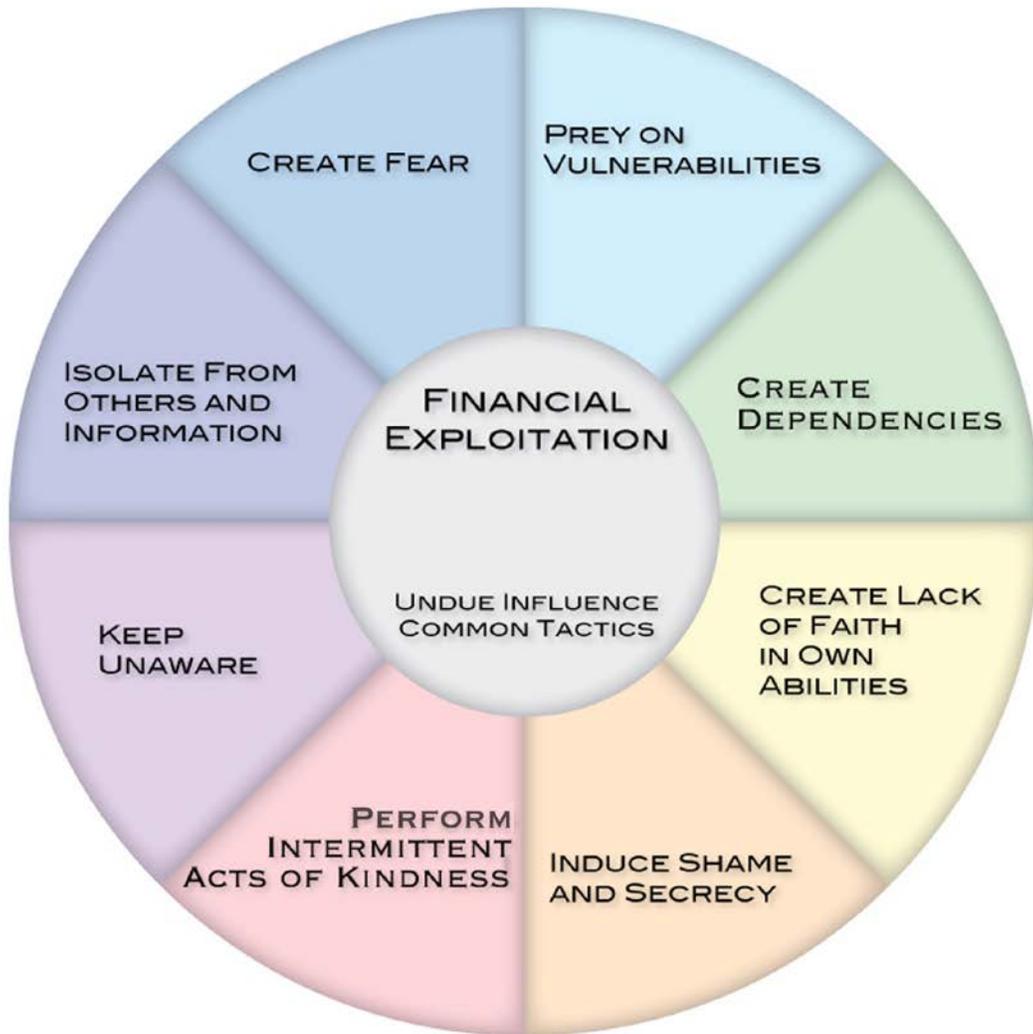
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Discussion points:

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Handout

Undue Influence Wheel



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