

APS Investigations Involving Allegations of Undue Influence

Instructor Led Training

PARTICIPANT MANUAL



The Academy for Professional Excellence is a project of the San Diego State University School of Social Work

Funding Sources



This training was developed by the Academy for Professional Excellence, with funding from the California Department of Social Services, Adult Programs Division.

**Curriculum Developer, 2023
Candace Heisler, JD**

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Introduction

We are pleased to welcome you to **APS Investigations Involving Allegations of Undue Influence Participant Manual**, developed by Adult Protective Services Workforce Innovations (APSWI), a program of the Academy for Professional Excellence under a grant from the California Department of Social Services, Adult Programs Division.

The Academy for Professional Excellence, a project of San Diego State University School of Social Work, was established in 1996 to provide exceptional workforce development and organizational support to the health and human services community by providing training, technical assistance, organizational development, research, and evaluation. Serving over 20,000 people annually, the Academy continues to grow with new programs and a diversity of training focused on serving the health and human services community in Southern California and beyond.

The Academy is a project of San Diego State University School of Social Work (founded in 1963), which offers both a bachelor's and master's degree in Social Work. The School of Social Work at San Diego State University was founded in 1963 and has been continuously accredited by the Council of Social Work Education since 1966.

APSWI is a program of the Academy for Professional Excellence. APSWI is designed to provide competency-based, multidisciplinary training to Adult Protective Services professionals and their partners. APSWI's overarching goal is the professionalization of Adult Protective Services professionals to ensure that abused and vulnerable older adults and adults with disabilities receive high quality, effective interventions and services.

In partnership with state and national organizations, APSWI is developing curricula available to APS programs throughout the nation. This curriculum is developed, reviewed and approved by experts in the elder and dependent adult abuse fields.

APSWI's partners include:

- National Adult Protective Services Association (NAPSA) Education Committee
- California Department of Social Services (CDSS), Adult Programs Division
- County Welfare Directors Association of California (CWDA), Protective Services Operations Committee (PSOC)
- California's Curriculum Advisory Committee (CAC)

Partner Organizations

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Academy for Professional Excellence

<https://theacademy.sdsu.edu/programs/apswi/>

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Academy for Professional Excellence

<https://theacademy.sdsu.edu/programs/apswi/>

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California Department of Public Social Services

cdss.ca.gov/Adult-Protective-Service

Melinda Meeken and Carey Aldava, Co-Chairs, Protective Services Operations Committee of the County Welfare Director's Association (PSOC)

<https://www.cwda.org/about-cwda>

Acknowledgements

This training is the result of a collaborative effort between Adult Protective Services administrators, supervisors, staff development officers and workers across the state and the nation; professional educators; and the Academy for Professional Excellence staff members. APSWI would like to thank the following individuals and agencies:

Agencies

California Department of Social Services, Adult Programs Division National Adult Protective Services Association

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Executive Summary

APS Investigations Involving Allegations of Undue Influence

APS professionals often investigate complex cases of financial exploitation. Cases may be especially difficult when they involve allegations of undue influence, that is, when the will of the perpetrator is substituted for the true wishes of the client, often contrary to longstanding patterns of conduct and against their best interests. Undue influence is difficult to define and can be frustrating when criminal justice professionals deem the matter as a civil case, without any criminal inquiry. Clients may have full decision-making ability, diminished ability, and/or other circumstances that make them vulnerable to undue influence.

This course will offer definitions and frameworks to increase identification of undue influence situations, including introducing a tool developed for Adult Protective Services to use when undue influence is suspected. Using relevant laws, it will suggest situations in which undue influence may be part of a crime, explore how to investigate and document the elements, and will discuss common influencer explanations when undue influence is suspected.

Goal

By the end of the course, participants should be able to distinguish cases of undue influence from other situations, know how to conduct the investigation, interview the client and others, and effectively document the evidence using the tool.

Instructor-Led Training

This course was developed to be delivered either in-person or virtually. Depending on the modality, the following instructional strategies are used throughout the course: short lectures (lecturettes); interactive activities using a case scenario, breakout groups, chat box discussions, and large group discussions. PowerPoint slides are used to stimulate discussion.

Participants will need their participant manual either printed or sent virtually. If training virtually, access to a computer with video conferencing capability and be able to connect to the virtual platform being used to deliver this training is essential. A headset or earbuds with microphone and a video camera are highly encouraged.

Course Requirements

This workshop is intended for APS professionals and supervisors who have previously completed a course on financial exploitation investigations, the

eLearning on Undue Influence titled “*Undue Influence: What APS Needs to Know*”, or have significant experience handling financial exploitation investigations.

Intended Audience

This course is designed for APS professionals and supervisors who have previously investigated allegations of financial exploitation. The length of the course limits review of basic financial exploitation investigative principles. It will be particularly useful for APS professionals who are dealing with or have already dealt with cases in which undue influence was alleged or was discovered.

Learning Objectives

After completing this course, participants will be able to:


- Define undue influence through legal and psychological lenses, including cases in which the alleged perpetrator has a professional relationship with the person being harmed
 - Describe how consent and decision-making ability relate to undue influence
 - Describe investigative steps and how to document an undue influence investigation
 - Describe how undue influence can be part of a crime in California

Course Outline

<u>CONTENT</u>	<u>MATERIALS</u>	<u>TIME</u>
WELCOME, INTRODUCTIONS, COURSE OVERVIEW		TOTAL: 20 minutes
Land Acknowledgment Housekeeping <ul style="list-style-type: none"> • Technology • Participant Intro 		
Activity #1: Experience with UI (<i>Large Group</i>) Course Overview Learning Objectives Terminology		5 minutes
DEFINING UNDUE INFLUENCE		TOTAL: 75-80 minutes
Psychological Construct Common Tactics Case Example <ul style="list-style-type: none"> • Activity #2: Larry’s Tactics (<i>Breakout Groups</i>) 	Handout #1- UI Wheel Handout #2- Sam and Larry Case Study (Part 1)	20 minutes
Legal Definition <ul style="list-style-type: none"> • Those Harmed • Decision-Making Ability • Those who Harm • Fiduciaries and Professionals 		
California Statute UI Summary		
CONSENT & UNDUE INFLUENCE		TOTAL: 50-55 minutes
Elements <ul style="list-style-type: none"> • Activity #3: Case Study- Questions for Consent (<i>Breakout Groups</i>) • Activity #4: Developing Questions to Address Elements (<i>Breakout Groups</i>) 	Handout #3- Interview Questions for Sam Handout #4- Consent vs. Undue Influence Questions	20 minutes 15-20 minutes


INVESTIGATION CONSIDERATIONS		TOTAL: 65-70 minutes
UI in relationship to Crimes Investigating Allegations of UI <ul style="list-style-type: none"> • Activity #5: Case Study Investigation Steps (<i>Breakout Groups</i>) 	Handout #5- Sam and Larry Case Study (Part 2)	20 minutes
Documentation <ul style="list-style-type: none"> • California Undue Influence Screening Tool (CUIST) • Activity #6: Using the CUIST (<i>Breakout Groups</i>) 	Handout #6- CUIST	15 minutes
Meeting Client Needs and Collaboration	Handout #7- Remedies for Undue Influence	
WRAP UP AND EVALUATIONS		TOTAL: 15 minutes
Key takeaways Evaluations		
TOTAL (EXCLUDING BREAKS)		4 hours

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APS Investigations Involving Allegations of Undue Influence

Instructor Led Training

We create experiences that transform the heart, mind, and practice.







About the Academy & APSWI



The Academy is a project of San Diego State School of Social Work. Serving over 20,000 health and human services professionals annually, the Academy's mission is to provide exceptional workforce development and learning experiences for the transformation of individuals, organizations and communities.

APSWI, or Adult Protective Services Workforce Innovations, is a training program of the Academy that provides innovative workforce development to APS professionals and their partners.



ACADEMY PROGRAMS




Housekeeping

- Length of training
- Participation
- Breaks
- Technology
- Introductions




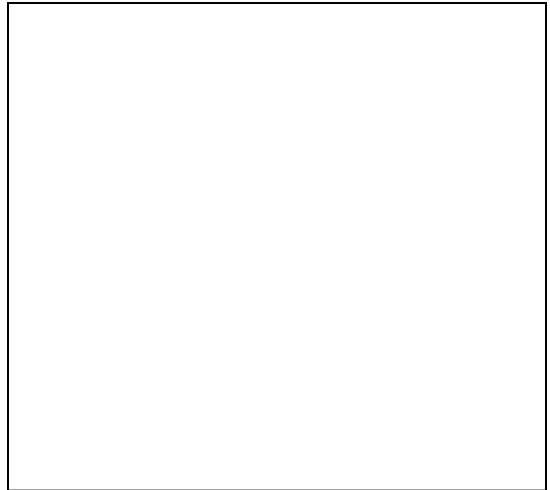

Who You Are and Your Experience with Undue Influence Cases

- Who here are:
 - APS professionals (investigators)
 - APS Supervisors
 - APS Trainers
 - Other Roles
 - How many cases have you handled in which undue influence was suspected?
 - None
 - Under 10
 - Under 25
 - Under 100
 - More than 100
- 

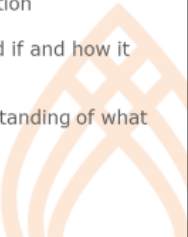


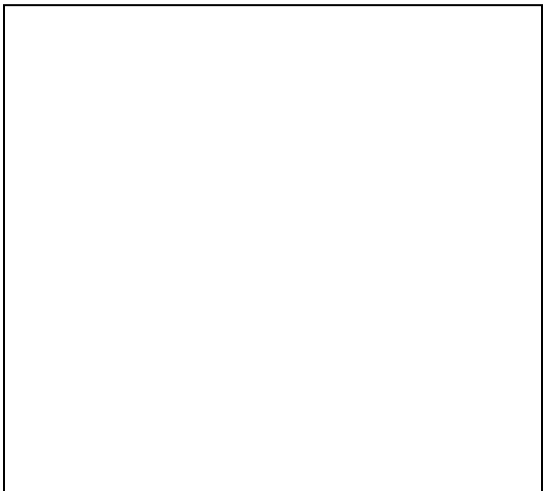
Thinking About Your Experience or Knowledge

- Share a word that comes to mind when you think about undue influence.
 - If any, what makes undue influence investigations different or challenging from other types of investigations?
- 



Why This Course

- Undue influence cases are complex, typically occurring behind closed doors
 - Undue influence is difficult to define or fully understand
 - The concept is not named in CA crimes so law enforcement may not treat a matter as a criminal case, including conducting an investigation
 - Prosecutors may also be unfamiliar with undue influence and if and how it may support a criminal charge
 - Clients may have cognitive conditions that limit their understanding of what has occurred
 - Clients may not acknowledge what has occurred
- 



Learning Objectives

- Define undue influence through legal and psychological lenses, including cases in which the alleged perpetrator has a professional relationship with the person being harmed
- Describe how consent and decision-making ability relate to undue influence
- Describe investigative steps and how to document an undue influence investigation
- Describe how undue influence can be part of a crime in California

A Word about Terminology

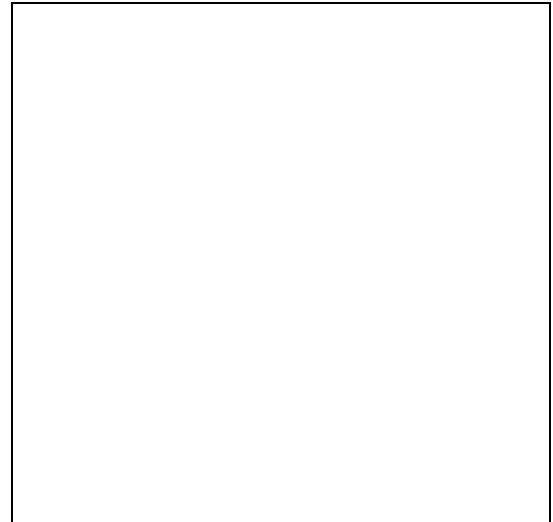
- Different programs use varied terms. For clarity these terms will be used:
 - The person who is harmed will be referred to by that term or as the "client" or "victim"
 - The person who caused the harm will be referred to by that term or as the "influencer" or "alleged perpetrator"
 - Statutory language will be used when referencing statutes
 - Undue Influence will be abbreviated as UI at times

Undue Influence Overview

- Is a process, not a single event
- May occur in a variety of types of cases:
 - financial abuse, neglect, domestic violence and sexual abuse
- Typically arises when an alleged abuser justifies actions as consent, i.e., the client agreed or wanted this to be done
- Requires that the APS professional conduct an investigation of the underlying form(s) of abuse as in any case **and** also explore whether the tactics of undue influence have been used to overcome the client's free will and decision making.
- May require collaboration across systems to address

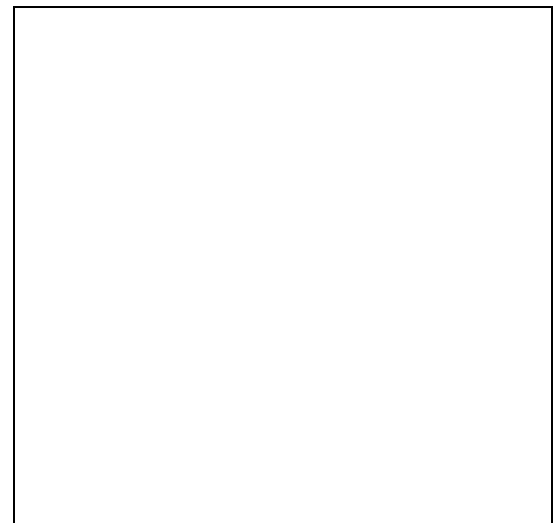
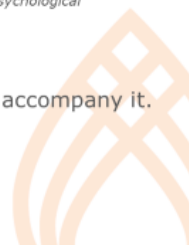
Defining Undue Influence

- Psychological Construct
- Legal Statutes
 - Welfare & Institution Code §15610.70
 - Probate Code §86



Undue Influence: Psychological Construct

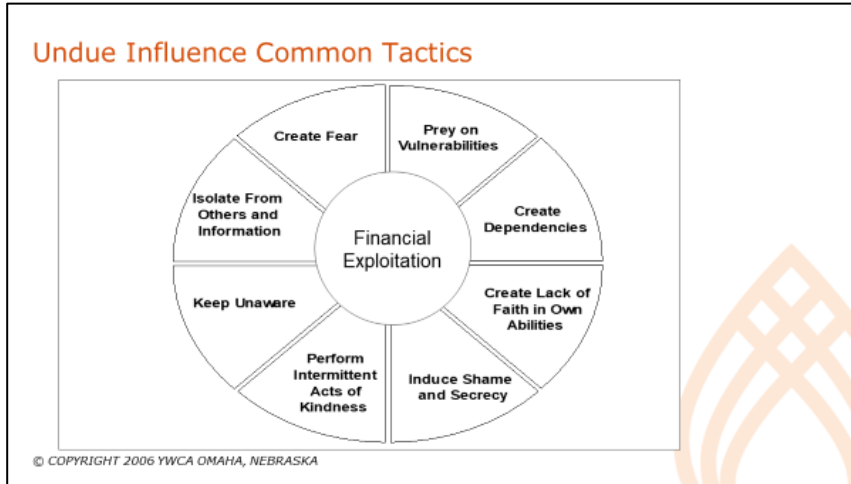
- “The substitution of one person’s will for the true desires of another.”
(Singer, 1996)
 - It occurs when “one person uses his or her role and power to exploit the trust, dependency, and fear of another in order to gain control of that person’s decision making.” *(American Bar Association, American Psychological Association, 2021)*
- Fraud, duress, threats or other types of pressure often accompany it.
(Quinn, 2001)



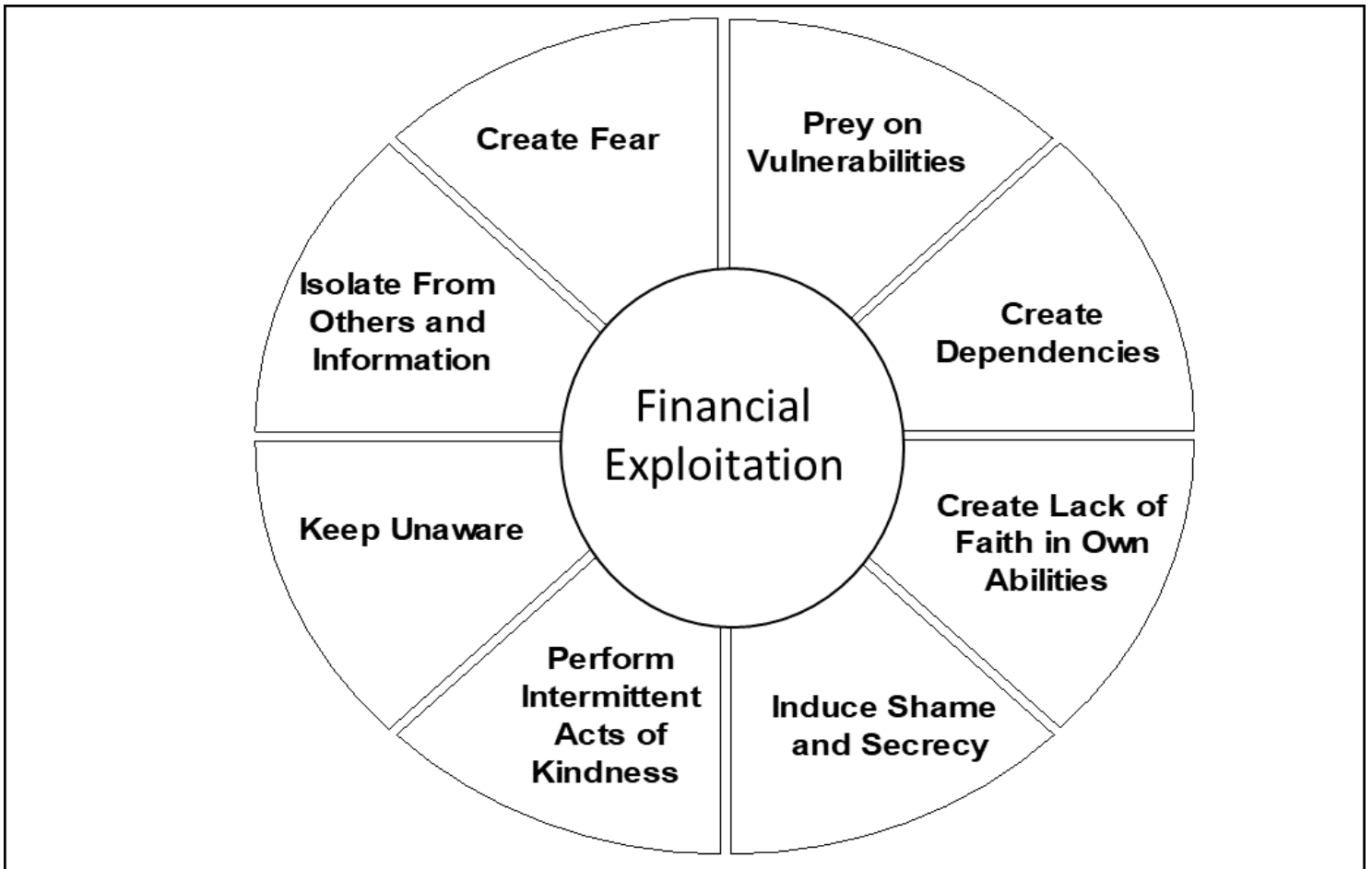
The Undue Influence “Process”

- Find someone likely to be influenced
- Gain confidence of potential victim
- Induce dependence through exploitation of weakness
- Gain dominance of victim’s life circumstances and wealth





Handout #1- Undue Influence Wheel



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Case Example (Summary)

- Client= Sam, 65, symptoms of his lifelong anxiety disorder have been debilitating in areas of finances and work
- Meets Larry when seeking legal help, who becomes Sam’s support in various areas and requests payment (to be kept secret)
- Sam contacts his niece who contacts APS and LE
- During a joint investigation, Sam seemed confused and nervous, knew little about his finances and referred questions to Larry
- Larry contacted LE as Sam’s “legal advisor”, and complained that Sam should not have been interviewed
- Evaluations from a psychologist and psychiatrist concluded that Sam has borderline intellectual functioning that is apparent to others
- Sam had a total loss of \$600,000

Notes:

Handout #2- Sam and Larry Case Study (Part 1)

Case History

- Client is Sam: 65 years old, who has lived with a life-long anxiety disorder. Due to his anxiety disorder symptoms, is unable to work, needs someone to manage his finances and shopping. His mother did so until her death. Sam met Larry when Sam sought legal help from a law firm where Larry worked.
- Larry spent a lot of time with Sam, serving as his driver, helping him through anxiety attacks, and traveling with him at Sam's expense. Over 8 years the two talked on the phone every day, sometimes multiple times a day.
- Larry frequently asked for and received money from Sam. If Sam did not give him a requested check, Larry would fill out the check, follow Sam around, and hound him until he signed it.
- Larry asked Sam to keep these payments secret so his employer law practice would not learn about them.

How Case Came to Light

- Sam told his niece that he was concerned about all the checks he had written to Larry.
- The niece also noticed that expensive furniture was missing.
- She contacted APS about possible financial exploitation.
- APS then contacted law enforcement.

APS and Law Enforcement Actions

- APS and Law Enforcement conducted a joint interview with Sam and observed
 - He talked slowly, seemed confused and fearful at times, and did not appear to be taking his medications prescribed for his anxiety disorder.
 - He knew little about his finances and became agitated when asked about them.
 - He displayed nervous verbal and motor tics and referred questions about finances to Larry
 - Sam provided the officer with requested bank statements and checks but could not explain the expenditures.
- Larry complained the police after the interview

- That Sam was interviewed without his knowledge,
- That Sam was too anxious to speak with law enforcement, and
- That Sam could not give informed consent for the removal of the checks and bank statements
- Larry told law enforcement that he was Sam's legal advisor
- Sam was examined by a psychologist and a psychiatrist who concluded:
 - Sam has a cognitive disorder, neurocognitive impairment, and borderline intellectual functioning. His cognitive disorder is obvious to lay persons.
 - Sam has a dependent relationship with Larry and a strong desire to please.
 - Sam focuses on immediate results and not long-term implications of his actions. He is unable to focus on a topic, deal with details, make calculations, recall facts about his life, or understand the long-term consequences of depleting his assets
- Loss \$600,000.00

Larry's Financial Actions

- Larry represented himself as Sam's legal advisor (he is not an attorney but has a law degree) to Sam's bank and ordered that Sam's annuity be canceled.
- He also convinced Sam to cancel a different annuity benefitting his niece, and wrote a letter for Sam to effectuate the cancellation
- Larry **failed** to carry out various commitments he made to Sam including:
 - Failure to file his tax returns over a 6-year period, resulting in liens and penalties
 - Failure to repay a mortgage he convinced Sam to take out on Larry's behalf
 - Pocketing \$30,000 Sam gave him to invest for him, and
 - Keeping the proceeds from the sale of 2 cars belonging to Sam

Small Group Discussion

- What tactics of undue influence did you observe in the case study?



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A large, empty rectangular box intended for participants to write their responses to the discussion question.

Legal Definitions

- “Undue influence” means excessive persuasion that causes another person to act or refrain from acting by overcoming that person’s free will and results in inequity. (*Welfare & Institutions Code §15610.70*)
- Probate Code §86 defines undue influence for **all probate actions** as having “the same meaning as defined in [Section 15610.70 of the Welfare and Institutions Code](#).”
 - Probate Code §1801 authorizes creation of conservatorship when there is substantial inability to resist fraud or undue influence and all less restrictive options have been explored.
- Same definition as for APS Standards for Consistency in Determining Findings Matrix

Those Harmed by Undue Influence

True or False?

All victims of undue influence have diminished decision-making ability



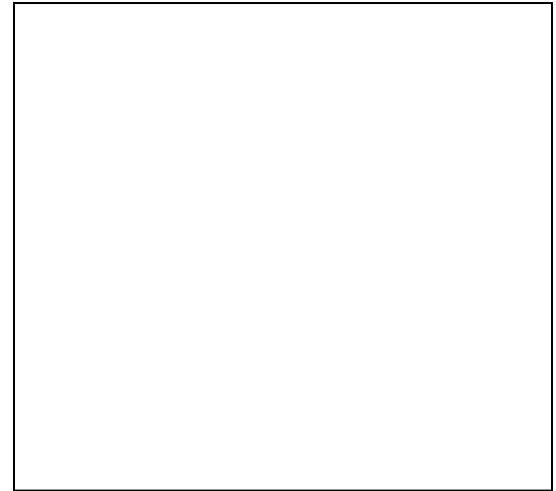
Decision-Making Ability and Undue Influence

- **Under the right circumstances anyone can be victimized by undue influence**
 - Those with full decision-making ability
 - Those with diminished decision-making ability
 - Those with some decision-making ability
- Easier to victimize those with cognitive impairments
 - Less likely to recognize what is occurring, be able to report, or be believed if attempt to report
 - Lack of decision-making ability is just one area of vulnerability and not always present in UI situations.
- Explore all vulnerabilities

Explore What Makes Your Client Susceptible/Vulnerable to Undue Influence

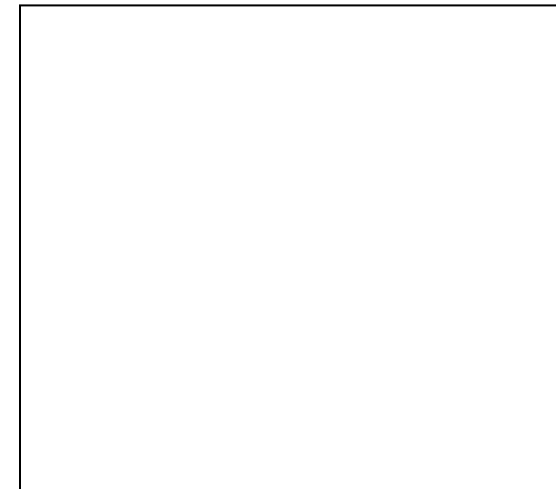
What life situations and vulnerabilities may make a client susceptible or vulnerable to undue influence?

- Lonely
- Frightened
- Naive, uninformed
- Dependent
- Ill or cognitively impaired
- Fatigued, exhausted
- Distracted
- Adverse life conditions (e.g. grief, trauma)
- Inexperience handling financial matters
- Lacking developmental ability to read or write and/or limited education



Class Discussion

- Think about the Case Study of Sam and Larry, what made Sam vulnerable/susceptible to undue influence by Larry?



Who are the Perpetrators?

In your experience who are the perpetrators of undue influence?

- Perpetrators may be
 - Family
 - Friends and neighbors
 - Caregivers
 - Fiduciaries
 - Professionals
 - Others
- Those able to gain (or have gained) your client's trust/confidence
 - Opportunists
 - Predators/career criminals



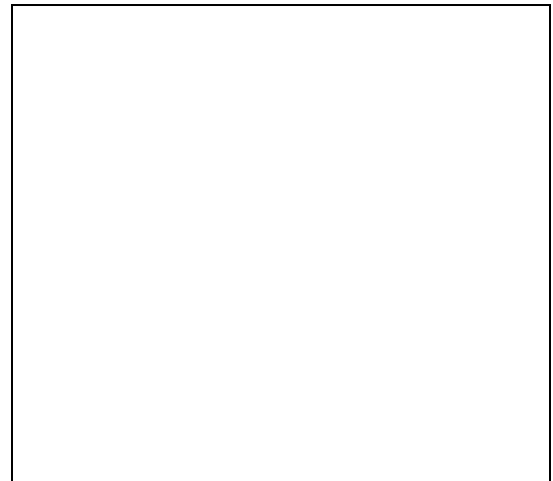
Fiduciaries and Professional as Perpetrators

Types of fiduciaries and professionals:

- Attorney-in-fact, conservator, trustee
- Financial advisor, doctor, spiritual advisor

What is different when the person doing the harm is a professional or a fiduciary?

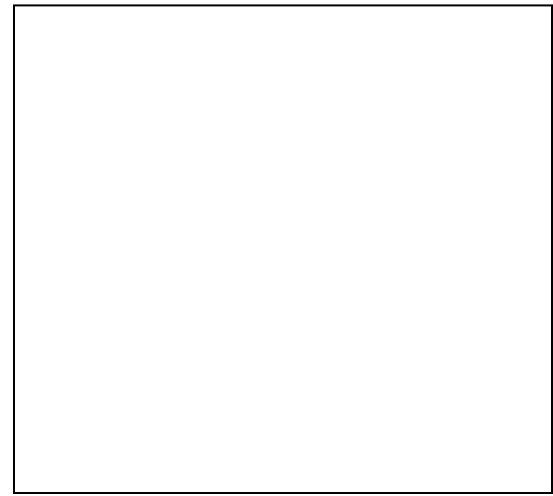
- Relationship of trust
- Inherent power imbalance
- May be professional codes of conduct for that professional
- May be ethical standards for that professional
- May be a professional body that oversees the conduct of members
 - They may have prior cases or may conduct an investigation of your case
 - May have restitution funds



Establishing that Undue Influence Has Occurred

Remember, undue influence is: **“Excessive persuasion that causes another person to act or refrain from acting by overcoming that person’s free will and results in inequity.”** (Welfare & Institutions Code §15610.70)

- What kind of evidence or information do you think is needed to show that undue influence has occurred?



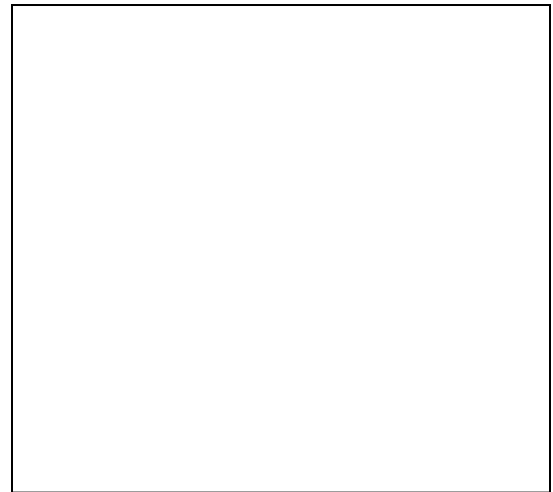
California Undue Influence Law

- In determining whether a result was produced by undue influence, **all of the following shall be considered:**
 - Victim’s vulnerability to undue influence
 - Influencer’s apparent authority (e.g., confidential or fiduciary relationship)
 - Actions or tactics used by the influencer to overcome victims free will
 - Equity of the outcome



Vulnerability/Susceptibility

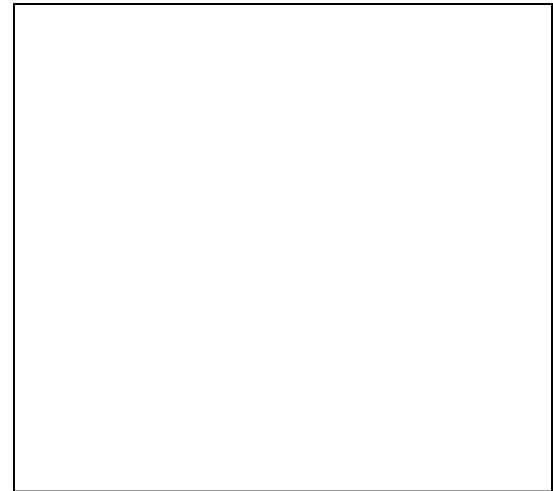
- Evidence of vulnerability may include, but is not limited to:
 - Incapacity, illness, disability, injury, age, education, impaired cognitive function, emotional distress, isolation, or dependency, and
- Whether the influencer **knew or should have known** of the alleged victim’s vulnerability.



Evidence of Apparent Authority

May include, but is not limited to:

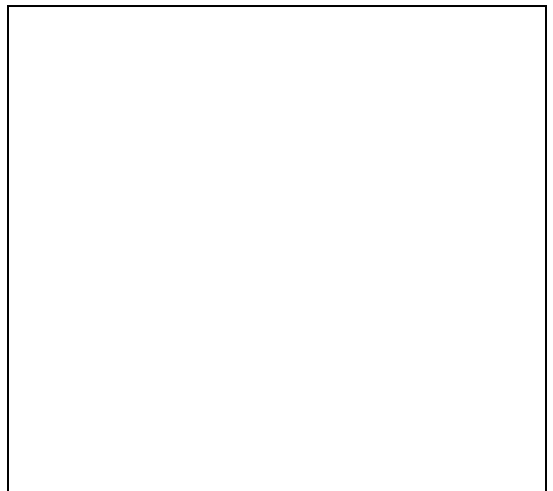
- Status as a fiduciary
- Family member
- Care provider
- Legal professional
- Spiritual adviser
- Expert, or
- Other qualification



Actions or Tactics of the Perpetrator

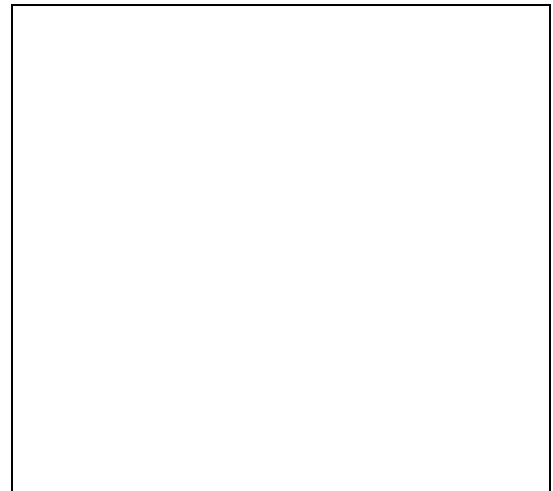
Evidence of actions or tactics used may include, but is not limited to, all of the following:

- (A) Controlling necessities of life, medication, the client’s interactions with others, access to information, or sleep
- (B) Use of affection, intimidation, or coercion.
- (C) Initiation of changes in personal or property rights, use of haste or secrecy in effecting those changes, effecting changes at inappropriate times and places, and claims of expertise in effecting changes.



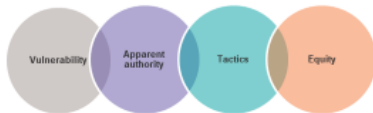
Equity of the Result

- Evidence of the equity of the result may include, but is not limited to:
 - The economic consequences to the victim, any divergence from the victim's prior intent or course of conduct or dealing, the relationship or the value conveyed to the value of any services or consideration received, or the appropriateness of the change in light of the length and nature of the relationship.
- Evidence of an inequitable result, without more, is not sufficient to establish undue influence.



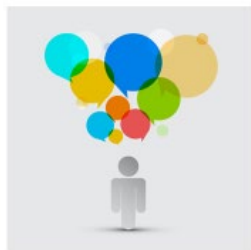
Undue Influence Summary

- Undue influence is the substitution of the will of the influencer for the free will of the APS client.
- The investigation must establish that all 4 elements of undue influence are present:
 - Victim vulnerability to influence;
 - Influencer's apparent authority;
 - Actions or tactics of the influencer; and
 - An inequitable result



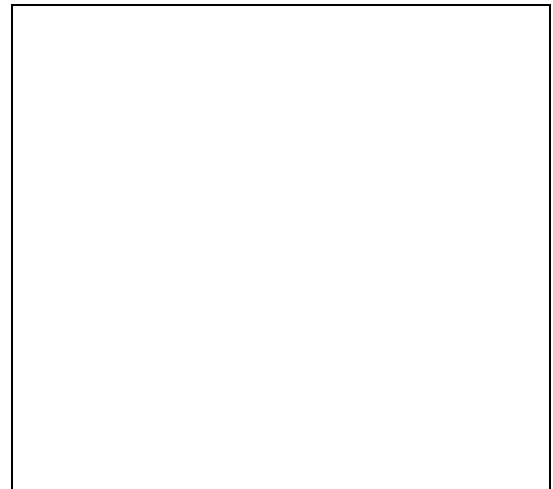
Consent and Undue Influence

- How do influencers justify their actions when questioned?



Consent and Personal and Cultural Values, Beliefs, and Practices

- Consent has both legal, personal and cultural elements
- Important to invite clients to discuss their values as part of understanding **their** view of consent.
 - "How do you make decisions?"



What Is Consent--Elements

A person giving consent must:

- Have **decision making ability** to make the decision; and
- Understand the **true nature** of the transaction; and
- **Freely and voluntarily** agree



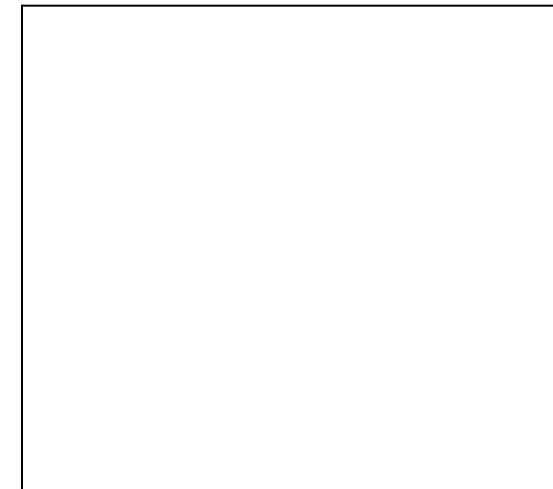
Consent and Undue Influence Activity: Part 1

Assume that you are interviewing Sam and he says he consented to having Larry cancel the annuity he obtained for his niece.

- Develop at least **2 questions for each of the elements** of consent.



- Select a spokesperson to report back to the class.



Handout #3- Interview Questions for Sam

Develop questions to interview Sam around his consent to have Larry cancel the annuity he obtained for his niece.

Questions to screen for is decision-making ability for this decision:

Questions to assess if he understood the true nature of the transaction:

Questions to clarify if Sam gave his consent freely and voluntarily:

Undue Influence and Consent

- If there is evidence of consent, then explore if the consent was the result of undue influence.
- **Do not accept consent at face value. Dig further if you suspect undue influence.**
- Undue influence focuses on whether the person harmed understood the true nature of the transaction and whether they freely and voluntarily give consent.
- When consent results from undue influence, consent is not valid.

Consent and Undue Influence Activity: Part 2

Using the case study, work in your groups to develop questions that explore the four elements of undue influence.



- Develop at least 2 questions for each of the elements of undue influence.
 - Victim’s vulnerability to undue influence
 - Influencer’s apparent authority
 - Actions or tactics used by the influencer to overcome victims free will
 - Equity of the result
- Select a different spokesperson to report back to the class.

Handout #4-Consent vs. Undue Influence Sample Questions

Consent

- Does client have capacity to make a gift?
 - What is client's health status?
 - Client's medications?
 - Is client experiencing confusion or forgetfulness?
 - Has client been diagnosed with any medical or cognitive conditions?
 - Does client have any conditions affecting vision or hearing?
 - Does client receive assistance with any IADLs?
- Did client understand the true nature of the transaction?
 - What did client understand would occur?
 - Has client had previous experience with similar transactions?
 - Reasons client wanted to agree to transaction?
 - Was there any deception, misstatements, or lies about what client was agreeing to do?
 - Who told client about transaction and its meaning?
 - What is relationship between client and the person who asked client to agree to transaction?
 - Is outcome what client expected? Wanted?
 - Are there now concerns that client will not have sufficient assets to live on or will the consent require a change in living circumstances?
- Freely and voluntarily agreed
 - Did client actually agree?
 - If yes, reasons client agreed? Any promises, pressure, or coercion to agree to transaction? By whom?
 - Did client have any concerns or reservations about agreeing?

Undue Influence

- Victim Vulnerabilities
 - How is client's health? Any diagnosed medical, mental health, or cognitive conditions?
 - Any recent losses of loved ones? Friends?
 - Education?
 - Financial literacy?
 - Employment and special training or education for position.
 - What can client do for self and what do they need help accomplishing?
 - How apparent are any vulnerabilities?
- Apparent Authority
 - What is the relationship between client and the suspected influencer? How long has relationship existed? Has relationship changed more recently? In what ways?
 - What role does the suspected influencer play in client's life? What does suspected influencer do for the client?

- Does client trust the suspected influencer? Love the suspected influencer?
- Is there a legal relationship between the client and suspected influencer? Is there a power of attorney? Type of POA. Trust. Conservatorship? Other? Attorney-client? Financial advisor-client? Is suspected influencer the client's faith leader, doctor, therapist?
- Who handles client's finances? For how long? Why does suspected influencer handle client's finances?
- Tactics and Actions
 - Has there been a change in the people client regularly sees or visits? If so, why? Who initiated? What did suspected influencer say about these people or why the client is no longer seeing them.
 - When is the last time client had contact with family members? Is there a reason client has not seen them for so long?
 - Has there been a change in the client's activities? If so, why? Who initiated? What did suspected influencer say about the prior activities?
 - How has the client historically made decisions? Has there been a change in how decisions are made? Why? Who initiated the changes?
 - Have there been any transactions that the client does not fully understand, or were made in secrecy or had to be made quickly?
 - Whose idea was the transaction?
 - If an attorney was involved, who picked the attorney? Is this the client's regular attorney (if client has one). If not, why did client not work with the regular attorney?
 - Who drove the client to the meeting?
 - Did client meet privately with the attorney?
 - How long was the appointment?
 - Was client asked about reasons for the transaction?
 - If property or other asset ownership was changed, why? Who suggested the change? Reasons provided by that person. What previous plans had client for that property or asset?
- Equity of Outcome
 - What are the relative benefits to the client and the suspected influencer?
 - What is the effect of the transaction on the client's life?
 - Is there a change in the client's ability to live in their customary way?
 - Will client have sufficient assets to last through end of life?
 - What percentage of the victim's assets were obtained by the suspected influencer?
 - How does client feel about their current situation?
 - Does client understand their change in circumstances? If yes, how do they feel about the change?

Is Undue Influence a Crime in California?

- There is no crime called “Undue Influence”
 - Evidence discovered in an UI investigation can be used to support evidence of other crimes
- Theft Can Be Committed by:
 - Taking without consent or without the owner’s knowledge, including where owner is unable to give valid consent and offender is aware of owner’s inability
 - Embezzlement—taking by person authorized to have owner’s assets who uses them for an unauthorized purpose, e.g., attorney in fact or conservator who uses a client’s funds to benefit self when not authorized.
 - False Pretenses: obtaining property/funds by deceitful representations and then using them for own benefit

What Does This Mean?

- The tactics of undue influence can undermine a claim of consent for theft
- Lies and deceits by an influencer may help prove theft by false pretenses
- Misuse of legal authority obtained by undue influence may help prove embezzlement.
- **When discussing or referring cases to law enforcement, rather than talking about undue influence, discuss case in terms of theft.**

Investigating Allegations of Undue Influence (1)

- Process, not an event—affects investigation
 - Examine entire relationship and how it changed
 - Length, closeness, is this person a new friend?
 - What caused change in relationship? Are there any efforts to isolate from family, friends or others or efforts to undermine existing relationships?
 - How does victim view the suspected influencer?
 - Professional consultant, friend, spiritual advisor, clergy, family, etc.
 - Is client afraid of influencer?
 - Is client able to make decisions that the influencer does not like?
 - Client susceptibilities and vulnerabilities and influencer’s knowledge of them

Investigating Allegations of Undue Influence (2)

- How did client historically make important decisions?
 - Gifting patterns
 - Spending patterns
 - Income sources
 - Use online banking, or face to face, or mail to do banking
 - Consult others on major/significant purchases (what did that process look like)
 - Financial concerns if any (make sure have enough to live on for rest of life; savings for possible LTC; leave legacy for family, causes)
 - Financial arrangements—trust, POAs, financial advisor, advanced directives, personal attorney

Investigating Allegations of Undue Influence (3)

- Compare with what is known about questionable transactions/decisions once influencer came into the picture
 - Who suggested transaction? Who benefits? How does transaction help victim and overall financial planning and patterns
 - Was transaction completed in haste? Secrecy?
 - If attorney involved, was this the victim’s regular attorney? If not, who selected the attorney? Who was present attended any meetings with the attorney? Who set up appointment? Did victim have time alone with the attorney? Did suspect tell victim what to say or do in meeting
 - Did victim see a medical professional prior to event? Who? Why? Usual doctor or someone new? Who selected? Who present?
- Use information to build timeline illustrating when critical events happened

Sam and Larry Part 2- APS Report

Reporting Party: Karen, Sam’s niece
 Allegation: Financial Exploitation
 Alleged Perpetrator: Larry, legal advisor and friend of Sam

- Sam was setting up an annuity for her but he canceled it right after setting it up.
- Reports that Sam said that his legal advisor, Larry, told him he did not have sufficient money to fund it.
- Has been unable to speak to her uncle as Larry, who says he is taking care of Sam, tells her that Sam is too sick to talk.

Handout #5- Sam and Larry Case Study (Part 2)

Report to APS

Reporting Parting: Karen, Sam’s niece

Allegation: Financial Exploitation

Alleged Offender: Larry, friend and legal advisor of client.

Report: Karen reports that she is not able to speak with her Uncle Sam. He had told her he was setting up an annuity for her but he canceled it right after setting it up. She says he (Sam) said that his advisor Larry told him he couldn’t set it up as he did not have sufficient money to fund it. She does not understand as her uncle has loads of money and inherited much more when his mother died last year. She has tried to call her uncle but the phone is always answered by a man named Larry who says he is taking care of Sam and that Sam is too sick to talk.

Element	Investigative Steps
Victim Vulnerability	
Influencer’s apparent authority	
Influencer's actions and tactics	
Equity of the result	

Activity: Investigative Steps

- Work with your group and develop a list of investigative steps you would take, including types of evidence, to investigate each element of undue influence in the case of Sam and Larry.
- Use the handout to collect and organize your ideas:
 - Victim Vulnerability
 - Influencer's apparent authority
 - Influencer's actions and tactics
 - Equity of the result
- Select a different spokesperson for report backs.



A large empty rectangular box intended for participants to write their investigative steps and ideas.

The CA Undue Influence Screening Tool (CUIST)

- **Screening tool**, not assessment tool, patterned on CA Welf & Instit §15610.70
- Created for APS, with input from APS
- Helps distinguish cases where UI may be present from others
 - If anything missing, either this is not UI or further investigation is needed to determine if UI is present
- Roadmap for analyzing and assessing a case for protective measures, or referrals, and/or possible legal action
 - Offers a way to categorize and organize information and evidence to determine if elements can be proven and to identify gaps in information or evidence
 - May provide guidance for when to refer for assessment

CUIST in Detail

Influence Authority/Position of Power	Examples/Comments
<input type="checkbox"/> Stands in a position of trust, authority, or confidence resulting from: <ul style="list-style-type: none"> <input type="checkbox"/> Intimate family relationship <input type="checkbox"/> Caregiver <input type="checkbox"/> Professional standing (e.g., legal professional, spiritual adviser, health care professional, real estate agent, banker, accountant) <input type="checkbox"/> Legal authority (e.g., power of attorney, conservatorship, trust, representative payee) <ul style="list-style-type: none"> <input type="checkbox"/> Controls elder's finances <input type="checkbox"/> Immigration sponsor <input type="checkbox"/> Landlord or long term care facility operator <input type="checkbox"/> Predatory salesperson (e.g., idemarketer, annuity company, lottery) 	
<input type="checkbox"/> Has access to client's home/possessions, finances, documents, or private information (e.g., legal/immigration status, sexual orientation/identity) <input type="checkbox"/> Other (please specify) _____ <input type="checkbox"/> No apparent authority, power, or access to assets and information	

Handout #6- CUIST

California Undue Influence Screening Tool (CUIST)¹

Client's Name: _____

Date: _____

The purpose of CUIST is to aid Adult Protective Service personnel screen for suspected undue influence. Undue influence means excessive persuasion that causes another person to act or refrain from acting by overcoming that person's free will and results in inequity.² CUIST is divided four categories: Client Vulnerability, Influencer's Authority/Power, Actions/Tactics, and Unfair/Improper Outcomes. Check all the factors that apply to the victim's circumstances and provide examples. For more details and examples, see *Instructions for Completing California Undue Influence Screening Tool (CUIST)*.

Client's Vulnerability	Examples/ Comments
<ul style="list-style-type: none"> <input type="checkbox"/> Poor or declining health or physical disability <input type="checkbox"/> Depends on others for help or care <input type="checkbox"/> Problems with hearing, vision, or speaking <input type="checkbox"/> Problems with memory <input type="checkbox"/> Problems communicating and understanding <input type="checkbox"/> Does not understand consequences of decisions <input type="checkbox"/> Developmental disability <input type="checkbox"/> Dependent or passive behavior <input type="checkbox"/> Emotional distress (e.g., grief, anxiety, fear, depression) <input type="checkbox"/> Language/literacy barriers <input type="checkbox"/> Isolated from others <input type="checkbox"/> Lives in chaotic or dysfunctional environment <input type="checkbox"/> Influencer knew or should have known of person's vulnerability <input type="checkbox"/> Other (please specify) _____ <input type="checkbox"/> No apparent vulnerability 	

¹ Quinn, M. J., Nerenberg, L., Navarro, A. E. & Wilber, K.H. (2017). Developing an undue influence screening tool for Adult Protective Services. *Journal of Elder Abuse & Neglect*, 29(2-3). doi: 10.1080/08946566.2017.1314844

² Probate Code §86 and Welfare and Institutions Code §15610.70

Influencer Authority/Position of Power	Examples/ Comments
<ul style="list-style-type: none"> <input type="checkbox"/> Stands in a position of trust, authority, or confidence resulting from: <ul style="list-style-type: none"> <input type="checkbox"/> Intimate/family relationship <input type="checkbox"/> Caregiver <input type="checkbox"/> Professional standing (e.g., legal professional, spiritual adviser, health care professional, real estate agent, banker, accountant) <input type="checkbox"/> Legal authority (e.g., power of attorney, conservatorship, trust, representative payee) <input type="checkbox"/> Controls elder's finances <input type="checkbox"/> Immigration sponsor <input type="checkbox"/> Landlord or long term care facility operator <input type="checkbox"/> Predatory salesperson (e.g., telemarketer, annuity company, lottery) <input type="checkbox"/> Has access to client's home/possessions, finances, documents, or private information (e.g., legal/immigration status, sexual orientation/identity) <input type="checkbox"/> Other (please specify) _____ <input type="checkbox"/> No apparent authority, power, or access to assets and information 	

Actions or Tactics	Examples/ Comments
<ul style="list-style-type: none"> <input type="checkbox"/> Manipulates or controls the client’s access to food, sleep, medication or personal care <input type="checkbox"/> Makes promises to help the client get rich <input type="checkbox"/> Makes false claims or promises, or misrepresents self (e.g. claims to be an expert) <input type="checkbox"/> Professionals or paid caregivers involve clients in their personal lives or ask for gifts/loans <input type="checkbox"/> Controls access to information <input type="checkbox"/> Isolates from visitors, telephone/computer, or mail <input type="checkbox"/> Instills distrust and fear (e.g., nursing home placement, abandonment, threats of violence, “poisons relationships”) <input type="checkbox"/> Moves into client’s residence or changes their residence <input type="checkbox"/> Changes clients's usual providers (e.g. physicians, lawyers, bankers, accountants) <input type="checkbox"/> Makes frequent/repeated requests that benefit the influencer <input type="checkbox"/> Pressures during periods of distress, illness, transition <input type="checkbox"/> Uses affection, sex, intimidation or coercion <input type="checkbox"/> Rushes client to make decisions secretly and at inappropriate times and places <input type="checkbox"/> Solicits or encourages gifts, loans, bequests, or cash <input type="checkbox"/> Other (Please specify) <hr style="width: 25%; margin-left: 0;"/> <ul style="list-style-type: none"> <input type="checkbox"/> No apparent use of actions or tactics described above 	

Unfair or Improper Outcome(s)	Examples/ Comments
<ul style="list-style-type: none"> <input type="checkbox"/> Economic losses (e.g. money, property, investments) <input type="checkbox"/> Changes in prior intent, conduct, or practices (e.g., new beneficiaries on wills; new signatories on bank accounts, changes in property ownership, changes to estate plans or charitable contributions) <input type="checkbox"/> Excessive gifts, payments, or donations in light of length and nature of relationship <input type="checkbox"/> Loss of home or residence, or eviction <input type="checkbox"/> Deterioration of home and environment <input type="checkbox"/> Loss of control of credit cards, bank accounts, or property <input type="checkbox"/> Identity theft <input type="checkbox"/> Unexplained physical decline or injury including weight loss, physical function <input type="checkbox"/> Negative mental or emotional changes including depression, loss of will to live, suicidal thoughts <input type="checkbox"/> Violation of rights (e.g., to live where one wants, to marry or divorce, agree to or refuse treatment) <input type="checkbox"/> Other (please specify) _____ <input type="checkbox"/> No apparent unfair or improper outcomes 	

Summary

Check the following boxes that you believe apply to this client:

- Victim appears to be vulnerable
- Suspected influencer appears to have power or authority over the client.
- Suspected influencer has taken steps suggestive of undue influence.
- Influencer’s actions appear to have resulted in unfair, improper, or suspicious outcome.

Further steps may include but are not limited to: referral for conservatorship, neuropsychological evaluation, multidisciplinary team review, capacity assessment, or medical evaluation; interviews with friends, family, neighbors or professionals; maintain form in agency file for future reference; contact law enforcement to discuss case or client’s bank to request information or monitoring. Specific action will depend on supervisor input and agency policy.

CUIST in Detail

Influence: Authority/Position of Power	Examples/Comments
<input type="checkbox"/> Stands in a position of trust, authority, or confidence resulting from: <ul style="list-style-type: none"> <input type="checkbox"/> Intimate/Family relationship <input type="checkbox"/> Caregiver <input type="checkbox"/> Professional standing (e.g., legal professional, spiritual adviser, health care professional, real estate agent, banker, accountant) <input type="checkbox"/> Legal authority (e.g., power of attorney, conservatorship, trust, representative payee) <input type="checkbox"/> Controls elder's finances <input type="checkbox"/> Immigration sponsor <input type="checkbox"/> Landlord or long term care facility operator <input type="checkbox"/> Predatory salesperson (e.g., telemarketer, annuity company, lottery) 	
<input type="checkbox"/> Has access to client's home/possessions, finances, documents, or private information (e.g., legal immigration status, sexual orientation identity)	
<input type="checkbox"/> Other (please specify) _____	
<input type="checkbox"/> No apparent authority, power, or access to assets and information	

Activity- Using CUIST with Sam and Larry's Investigation

In groups:

- Using the case study of Sam and Larry, fill out your assigned element(s) by putting in relevant information on the CUIST.
- Remember, the left side provides some but not all possible examples. You may have something different from what is listed.
- Be creative with what types of evidence you "gathered" in this case

Meeting Client Needs

- Who will you need to collaborate with to best help minimize or mitigate the undue influence?
- Make a list of client needs and what systems or professionals will be needed to meet those needs.



Various Remedies for Undue Influence

- Civil Justice Remedies
- Criminal Justice Interventions
- Health Care
- Community Services
- Others
- **Importance of MDTs and collaborations**



Handout #7- Remedies for Undue Influence

System	Possible Remedies
Civil Justice System	<ul style="list-style-type: none"> • Law Suits for Conversion, Improper Takings, Elder Abuse Cause of Action • Revocation of POAs, appointment of trustees • Accountings • Restraining orders • Settle title • Restore Credit • If victim lacked capacity to consent when consent given, transactions may be void • Last resort, guardianship, especially if victim lacks decisional capacity and cannot legally revoke documents or form an attorney-client relationship
Criminal Justice System	<ul style="list-style-type: none"> • Prosecution • Restitution • Victim Compensation benefits • Victim advocacy through process
Health Care	<ul style="list-style-type: none"> • Mental Health care • Treat untreated medical conditions • Decision-making ability assessments
Community Services	<ul style="list-style-type: none"> • Advocacy • Mental health counseling and support • Debt and credit services • Support Groups to break isolation • Housing • Benefit programs • Linkage to religious or cultural community

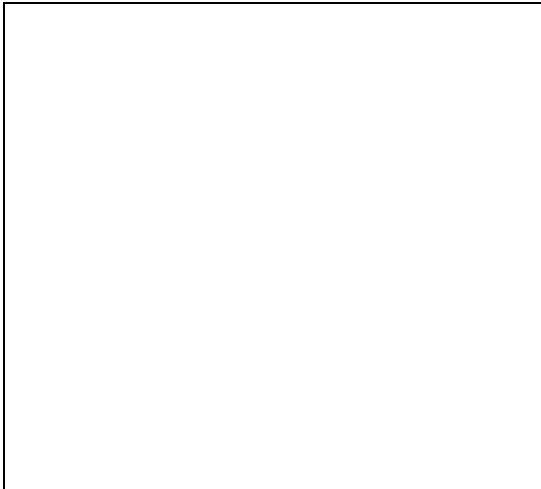
Course Wrap Up

Today we covered:

- What Undue Influence is including all 4 legal elements
- Decision-Making and Consent
- Additional investigative steps needed in UI cases
- CUIST and collaboration opportunities

Final Questions?

What will you take from the course that you will use when investigating allegations where undue influence might be present?



Thank You!

We envision a world where the quality of life for individuals, organizations, and communities is transformed into a healthier place.



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OUR WHY: REVOLUTIONIZE
THE WAY PEOPLE
WORK TO ENSURE
THE WORLD IS A
HEALTHIER PLACE.



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