

# Undue Influence and Financial Capacity: A Clinical Perspective

Older adults are particularly susceptible to undue influence—the exploitation of the weak, typically for the financial gain of the strong.

As many of those who work frequently with older adults know, cases of undue influence abound. In such instances, typically a second party (the “influencer”) coerces the elder to act in a manner that is not in their best interest, taking advantage of the elder’s vulnerabilities, typically for financial gain. Although there have been cases of such influence that include ends other than financial gain (i.e., sexual abuse), the focus of this article is to provide a clinical framework for understanding the dynamic of undue influence (UI), and to present case examples illustrating aspects of the problem. These cases often involve a gray area that may or may not include issues of financial capacity, cognitive impairment, dependency, and complicated family dynamics.

## Constructs of Undue Influence:

### A Short History

Undue influence is a legal construct defined differently by the courts dependent upon jurisdiction (Peisah et al., 2009). Definitions typically require some combination of the following elements (Peisah et al., 2009; Spar and Garb, 1992):

- there is a confidential relationship;
- there are factors that increase the susceptibility of the elder (physical dependence, depression, cognitive impairment, etc.);
- there is a power differential resulting in susceptibility to coercion; and
- the coercion results in suspicious financial or testamentary decisions (i.e., not proportionate to services provided).

Theoretical frameworks have included work from social psychology, work with cult members (Singer, 1993), and work on domestic violence (Cialdini, 2008; Singer, 1993; American Bar Association Commission on Law and Aging/the American Psychological Association, 2008). These theoretical accounts share the element of a power differential between the alleged influencer and the older adult.

Despite the rich theoretical and historical work done elucidating the construct of undue influence, empirical data to support these conceptual models have lagged. However, Quinn and colleagues recently completed a study examining definitions and applications of UI in California’s probate courts and based on the observation that UI, while used, is not clearly

## Undue Influence: A Closer Look

Undue influence refers to a coercive dynamic between two individuals that involves unfair persuasion. More formally, an authoritative legal source defines UI as follows: “Undue influence is unfair persuasion of a party who is under the domination of the person exercising the persuasion or who by virtue of the relation between them is justified in assuming that that person will not act in a manner inconsistent with his welfare (Restatement of Contracts, 1981).

defined (Quinn et al., 2010). The report reviewed definitions of UI in all fifty states. To obtain data, the authors conducted a chart review of twenty-five cases in San Francisco Superior Court, with each case being selected because probate court investigators or researchers had determined it had elements of UI.

### *Alleged abusers were noted to be friends, neighbors, family members, or scam artists.*

The preliminary data from the Quinn study (2010) described a population, half of which was male and half female, less likely to be married, more likely to live in some sort of living facility versus in independent homes, cognitively impaired, and frequently experiencing multiple other impairments in such areas as executive functioning, judgment, and insight. Alleged abusers were noted to be friends, neighbors, family members, or scam artists (25 percent). In this small sample there were no cases of people in authority (a party acting in a fiduciary capacity, for example) accused of abuse.

In summary, although, conceptually, undue influence and cognitive impairment are independent constructs, at least in this preliminary sample, cognitive impairment was ubiquitous, underlying the commonsense belief that it is easier to influence individuals who are not

mentally intact (Spar and Garb, 1992). More research on UI is needed to more fully characterize the older adults who have fallen victim to this type of exploitation.

### Clinical Models of Undue Influence

Various clinical models, all with considerable overlap, have been put forth to help clinicians provide a framework for considering undue influence and to build a legal case regarding its presence (American Bar Association Commission on Law and Aging/American Psychological Association, 2008; Blum, 2005; Shulman et al., 2007; Shulman et al., 2009; Singer, 1993; Spar and Garb, 1992). To discuss them all is beyond the scope of this article, but for illustration purposes, three models are described here.

#### The IDEAL model

Psychiatrist Bennett Blum, M.D., created a model emphasizing the social conditions prevalent in cases of alleged undue influence. Blum’s IDEAL model is organized around five categories: isolation from family and friends, dependency on the perpetrator, emotional manipulation of the victim, acquiescence of the victim because of previous factors, and financial loss (Blum, 2005).

#### The SCAM model

The SCAM model, developed by Susan I. Bernatz, Ph.D., has four domains of undue influence: susceptibility factors of the victim, the presence of a confidential and trusting relationship between the victim and perpetrator, initiation (active procurement) of financial transactions by the perpetrator, and monetary loss of the victim (American Bar Association Commission on Law and Aging/American Psychological Association, 2008).

#### The IPA analysis framework

More recently, The International Psychogeriatrics Association (IPA) formed a task force on