

# APS Investigations Involving Allegations of Undue Influence

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Instructor Led Training

**TRAINER 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 Trainer 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

**Dawn Gibbons-McWayne, Program Manager, APSWI**

Academy for Professional Excellence

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

**Kat Preston-Wager, Curriculum Development Supervisor, APSWI**

Academy for Professional Excellence

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

**Jennifer Spoeri, Executive Director, National Adult Protective Services Association (NAPSA)**

<https://www.napsa-now.org/>

**Paul Needham, Chair, NAPSA Education Committee**

<https://www.napsa-now.org/>

**James Treggiari, Adult Protective Services Liaison, Adult Protective Services Division**

California Department of Public Social Services

[cdss.ca.gov/Adult-Protective-Service](http://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

### Curriculum Advisory Committee

Ralph Pascual, Human Services Administrator I, Los Angeles County,  
Rachel Vo, Senior Social Services Supervisor, County of Orange  
Jessica Burke, Staff Development Officer, Riverside County  
Nancy McPheeters, Training and Development Specialist, San Bernardino County  
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Mary Grace Juanta, Sr. Adult Protective Services Specialist, San Diego County  
Quatana Hodges, Social Services Supervisor 1, County of Orange

### Committees

National Adult Protective Services Association (NAPSA) Education & Development Committee

### Curriculum Developer

Candace Heisler, JD

## How to Use This Manual

This curriculum was developed as **4-hour workshop**, excluding breaks, to be delivered either in-person or virtually using the Zoom platform, paying close attention to virtual training best practices. It can be tailored to a different virtual platform (WebEx, GoTo Training, etc.), if necessary.

**Use of language:** Throughout the manual, “APS professional” is used most often to describe APS staff conducting interviews and assessments. The term “client” is used most often to describe the individual at the center of the APS investigation. However, if concept or material was directly quoted from copyrighted material, another term may be used.

“He” and “she” have been replaced with the gender-neutral “they” throughout this manual, unless quoted from copyrighted material or statute. This should not be thought of as plural persons, but rather a gender-neutral term describing all humans.

**Customizing the Power Point:** This manual is set up so that the trainer script/ background material is on the same page as the accompanying PowerPoint slide.

Hide a Slide Instructions

1. On the Slides tab in normal view, select the slide you want to hide.
2. On the Slide Show menu, click Hide Slide.

The slide number will have a line through it to show you have hidden it.

NOTE: The slide remains in your file even though it is now hidden when you run the presentation.

The course outline, provided later in this manual, is the class schedule used for development of this curriculum. It can be used to help determine how much time is needed to present each section. However, times will vary based on the experience and engagement of the audience.

### **Participant Manual:**

If training in person, each participant will need a printed copy of the Participant Manual. If training virtually, the Participant Manual should also be sent ahead of time for participants to either use as a fillable PDF if using Adobe Acrobat or to allow participants to print a hard copy.

## Trainer Guidelines

It is recommended that someone with education in or experience with investigating financial exploitation allegations facilitate the content.

Suggestions for virtual training when possible:

- Have a moderator or co-host who can primarily focus on the virtual aspects of this training (e.g., monitoring chat box, launching polls, assigning breakout groups, monitoring participant reactions, etc.).
- Test out the use of the breakout room feature prior to conducting this training as well as audio.
- Log in 30 minutes prior to the training to ensure the virtual classroom is fully functioning and that you are comfortable navigating it.
- Your equipment and platform may dictate how you do some activities or discussion. There are times you may not be able to see everyone's faces, names or reactions (thumbs up, mute/unmute, etc.). There is a need for both verbal discussion and chat discussion. At such times, the moderator will fill a critical role monitoring those features you cannot. Practice during a run through how you will use the various functions for each section.
- The optimal size for this virtual training is 20-25 participants.

## Teaching Strategies

The following instructional strategies are used:

- Lecture segments
- Interactive activities (e.g. breakout groups, chat, polling activities)
- Experiential Activity (documentation with case study)
- Individual reflection
- Question/answer periods
- PowerPoint Slides

## Materials and Equipment

The following materials are provided and/or recommended:

- Trainer Manual
- Participant Manual (fillable PDF)
- PowerPoint Slides
- Headset with microphone, if virtual
- Computer, if virtual



## Virtual Training Tips

Training and facilitation have always been an art. Virtual training is no exception. Below are some helpful tips to remember and implement when training in a virtual environment.

Assume nothing.

- Do not assume everyone has the same knowledge/comfort level with technology or has access to equipment like printers, video camera, headsets or reliable Wi-Fi.

Distractions are everywhere.

- Participants have greater access to distractions (email, phone, others at home or other locations) which can take their focus away from the training. Therefore, explain everything and summarize before asking participants to complete an activity and check for clarification.

Over explain when possible.

- The virtual room doesn't allow for participants to see everything you're doing as they can in person. Share as you navigate the virtual environment. If you are silent while looking for something or finding a screen, they may think something is frozen.

Mute with purpose.

- "Mute all" function can help ensure we don't hear conversations we're not supposed to. However, it can also send a message to the participants that they are a passive participant and may not make them feel comfortable taking themselves off mute when you want them to speak.

Two screens can be a lifesaver.

- This allows you to move your chat box or participant gallery view away from your presentation so you can see more of what's going on.

Rely on practice, not luck.

- Winging it during an in-person training or facilitation may work from time to time, but doesn't work in the virtual environment. In addition to covering the content, you have to manage all of the technology issues, learning styles in a virtual room, and it will show if you're not prepared.

Bring the energy.

- As trainers, we are no strangers to being “on,” standing and moving around. However, some of the body language, subtle nonverbal skills we relied on in the in-person training room do not translate well in the virtual environment. While this may make you more tired, it’s important to up your enthusiasm, voice, and presence in order to engage with attendees.

Be mindful of your space.

- Training virtually brings an entirely new component of what we’re willing to share with others. Learners can get distracted with what’s in your background, whether what is physically there or if you set your video to use a virtual background.
- It’s important to reflect on questions of privilege, diversity and equity when thinking of your training space.
- Are there objects in your background that can symbolize status, privilege and/or power? If so, consider removing them to dismantle any added power dynamics that already exist with you as the Trainer.
- Unknowingly, objects can come across as offensive or can activate unpleasant or traumatic memories, and can instantly discredit your rapport building. Think of neutral backgrounds that are not distracting and allow you to be the focus of what learners see.

## 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

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

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

## Welcome, Introductions, and Course Overview

**Time:** 20 minutes

Associated Objective: NA

**Method:** Lecture, discussion, chat and poll features (if virtual)

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## Slide #1: APS Investigations Involving Allegations of Undue Influence-Instructor Led Training (title slide)



**Welcome** participants to the training.

**Highlight** the following:

- This course is interactive with a blend of lecture, group discussions, and small group activities.
- The course assumes that participants have 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.
- This course will focus on financial exploitation cases which involve allegations of undue influence or where the APS investigation discovers that undue influence may have led to financial exploitation.



## Slide #2: About the Academy and APSWI

**Academy for Professional Excellence** | **APSWI** Adult Protective Services Workforce Innovations

### 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.

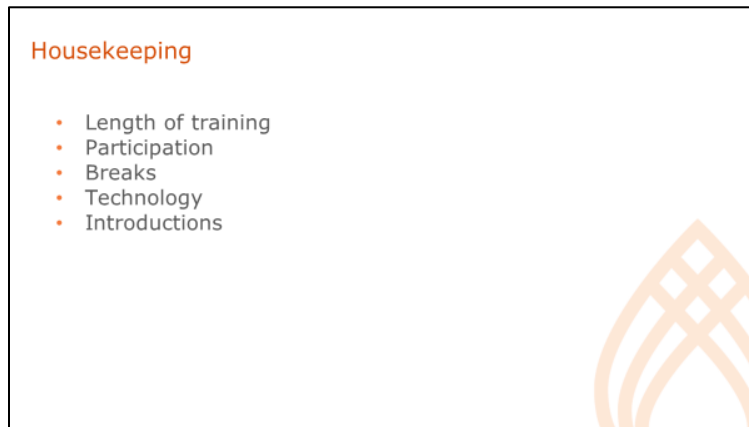
ACADEMY PROGRAMS

APEX | APSWI | CWDS | LIA | RIHS | SACHS

**Explain** that the Academy for Professional Excellence is a project of San Diego State School of Social Work. Its mission is to provide exceptional workforce development and learning experiences for the transformation of individuals, organizations, and communities.

**Explain** that Adult Protective Services Workforce Innovations (APSWI) provides innovative workforce development to APS professionals and their partners. APSWI is a program of the Academy for Professional Excellence along with others listed on the slide.

## Slide #3: Housekeeping



**Cover** any housekeeping items, including virtual technology if needed.


Some items may include:

- Length of course
- Breaks
- Expectations and agreements of participation, timeliness, supporting each other as learners and APS professionals
- Location of restroom, etc
- Introductions (name, program, etc.)

## Slide #4: Who You Are and Your Experience with Undue Influence Cases

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



Trainer notes:

- *This activity can be conducted in person with a raise of hands or as 2 polls if conducted as a virtual class.*
- *This slide helps you better understand the participants’ roles and experience handling undue influence cases (or what someone thought was undue influence).*
- *This slide sets the stage for next slide which further explores participant experiences with undue influence cases.*

**Activity #1- Your Experience (5 minutes)**

***Individual, Large Group***


**Ask** the questions on the screen and **summarize** answers.

1. Who here are:
  - a. APS professionals (investigators)
  - b. APS Supervisors
  - c. APS Trainers
  - d. Other roles
  
2. How many cases have you handled in which undue influence was suspected?
  - a. None
  - b. Under 10
  - c. Under 25
  - d. Under 100
  - e. More than 100

## Slide #5: Thinking About Your Experience or Knowledge

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?



**Pose** the two questions on the screen:

- 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?

### Trainer Notes:

- *The slide is to give participants a chance to describe their experiences with undue influence cases. It is also an icebreaker and models the trainer's expectation that the course will involve participant participation.*
- *Questions can be treated as one discussion or asked and discussed separately for a total of 5 minutes. If course is delivered virtually, responses can be placed in chat box or by hand raising.*
- *Some participants may want to share and describe frustrating situations where another system did not respond as the APS professional wanted. Try to encourage comments but limit such sharing by acknowledging frustration and the complexity of these cases.*
- *If the issue raised by a participant will be covered during the course, the instructor may want to mention that the subject will be discussed at greater length during the course.*

## Slide #6: Why This Course

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

**Review** the following reasons undue influence may be difficult, frustrating, or problematic. Some may have been discussed on previous slide:

- Undue influence cases are complex
- Undue influence typically occurs behind closed doors
- Undue influence is difficult to define or fully understand what is needed to establish that undue influence tactics were used
- 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 or accept that they have been victimized

**Acknowledge** the difficulties and frustrations raised by participants. If participants raise the issue that undue influence is not a crime and law enforcement does not investigate it, **highlight** that this course will address undue influence as criminal conduct and that even if there is no crime of undue influence, the actions of a perpetrator may well prove a theft or financial exploitation crime, which we will discuss more in depth later in the course.

## Slide #7: Learning Objectives

**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


**Review** the learning objectives and **explain** that the hope is that by accomplishing these during the training, participants will receive the support needed to overcome the challenges previously shared.

- 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

## Slide #8: A Word About Terminology

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



**Review** the dot points on the slide:

- 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

**Acknowledge** participants' jurisdictions may use different terms.

## Slide #9: Undue Influence Overview

**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

### Highlight these points:

- Undue influence is a process of overcoming a person's free will.
- As a result, the investigation often must go back to the early days of the relationship between the person harmed and the person who caused the harm and explore:
  - Whether there has been a process of grooming to create a trusting and dependent relationship; a relationship which has changed over time so that the alleged influencer has been able to exercise power and authority over the person influenced;
  - The tactics the influencer used to gain trust and power over the APS client, and has now gained control of the client's free will and decision making, resulting in the loss suffered by the client.
- Undue influence is often thought of being used in financial abuse matters but it can also be used to gain control in:
  - neglect cases (such as by convincing a client that the influencer should make all decisions, including health care and financial on the client's behalf);
  - sexual abuse (so the client feels they must consent or agree to what the perpetrator wants); and in
  - domestic violence (causing the client to not report the abuse, minimize the perpetrator's conduct, or recant earlier statements about the abuse).
- APS will most often confront issues of undue influence when the influencer claims to be acting with the client's permission/consent, doing what that person wanted or carrying out their wishes.



- The APS professional should conduct their usual complete investigation of the allegation or allegations as well as conduct an exploration of whether the elements of undue influence that we will review shortly were used to overcome the client's free will and decision making.
- Assisting clients to recover from the influencer's undue influence will require APS to collaborate with a variety of systems- including legal, health care; financial; mental health; and social services.

We will address each of these considerations during this course.

## Defining Undue Influence

**Time:** 75-85 minutes

Associated Objective: Define undue influence through a legal and psychological lenses, including cases in which the alleged perpetrator has a professional relationship with the person being harmed

**Method:** Lecture, discussion, chat (if virtual), case study, breakout groups

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## Slide #10: Defining Undue Influence

Defining Undue Influence

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



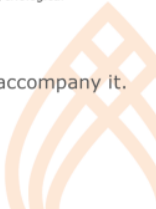
**Share** that in order to investigate cases suspected to involve undue influence, it's important to first know how it's defined.

We'll use both a psychological construct to define undue influence as well as California Statutes.

## Slide #11: Undue Influence: Psychological Construct

**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)*



**State** that undue influence is not a new concept. It is mentioned in old English law, in Shakespeare, and elsewhere.

In the United States much of the early work on undue influence was conducted by Dr. Margaret Singer, a researcher and professor whose work began with returning prisoners of war from the Korean conflict.

She offered a psychological construct or framework, for understanding of undue influence as:

- **“The substitution of one person’s will for the true desires of another.**
- **It occurs when “one person uses his or her role and power to exploit the trust, dependency, and fear of another.”** (Singer, 1996)

Mary Joy Quinn, the retired Director of the SF Probate Court, did decades of work increasing our understanding of how the process of undue influence works. She expanded on Singer’s definition to add that:

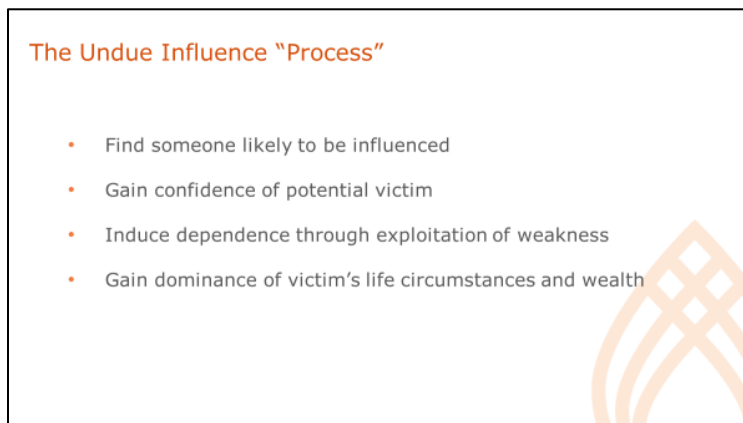
- **“Fraud, duress, threats or other types of pressure often accompany it.”**

In a more recent publication from the American Bar Association and American Psychological Association, undue influence is defined as:

- **“Undue influence is a process that occurs when one person (influencer) uses his or her role and power to exploit the trust, dependency, and fears of another person (victim) in order to gain control of that person’s decision making. The process is**

**accompanied by pressure, manipulation, fraud, duress, threats, or deceptions.”** (Assessment of Older Adults with Diminished Capacities: A Handbook for Lawyers, p. 25, 2021)

## Slide #12: The Undue Influence “Process”



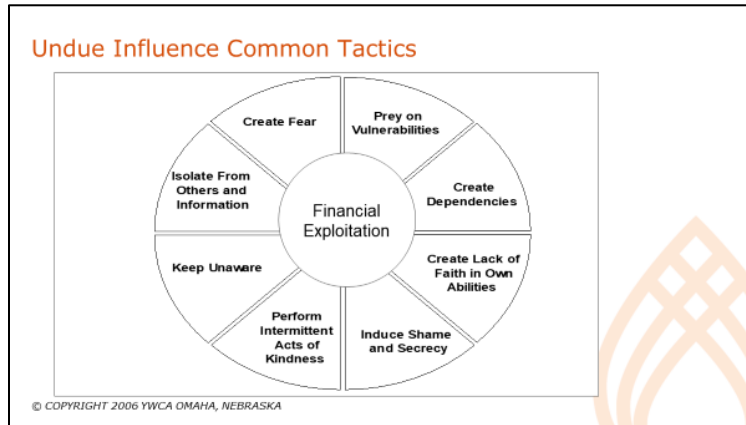
**Cover** the following:

- One of the complexities of undue influence is that it is not a single event or moment in time. It is a **process**.
- The process requires identifying someone to be influenced and then building a relationship of trust and dependency between the person harmed and person causing the harm.
  - Such relationships take time to build and may include **grooming** when there is no previous relationship or when there is already a relationship, to strengthen the bond between the parties significantly changing an existing relationship.
  - In addition to a relationship of trust, the influencer must make the APS client **dependent** on them such as by undermining the client’s strengths, relationships, and beliefs and taking on personal tasks that the client may have previously handled such as banking, handling various financial matters, driving, and managing the client’s routines.
  - The influencer may ask for money or other assets, to be named attorney in fact on a client’s power of attorney, or to be named a beneficiary on a will, trust, or bank account.

For the APS professional, understanding the process will mean investigating the relationship between client and influencer from its beginning, following how assets are handled from the beginning of the relationship to the present, and understanding the tactics used to take over the client’s free will.

To better understand influencer tactics, we will first look at a model that describes influencer’s tactics and then apply it to a case study.

## Slide #13: Undue Influence: Common Tactics



*Trainer notes: Over the decades a number of ways to describe undue influence tactics have been developed. These are psychological frameworks to help identify perpetrator tactics. One such model is offered here, which incorporates many of the common features of other models. This model was developed by the YWCA of Omaha. It is not a legal framework, but a psychological model drawn from existing studies of undue influence. (Singer, Bernatz, Blum, 2006)*

**Tell** participants that there are various frameworks for understanding how influencers achieve their goal of imposing their will and substituting their will for that of the client’s. The model shown here includes many of the same elements contained in other models and frameworks.

**Highlight** that the framework is in the shape of a wheel.

- The **center** is the influencer’s goal—substituting their will for that of the APS client in order to control the client’s assets to benefit themselves.
- The **spokes** represent the kinds of tactics an influencer uses to accomplish that goal. Notice the tactics are not in a particular order; the influencer uses the tactics in various combinations as are helpful at a particular time.

**Refer** participants to **Handout #1-Undue Influence Wheel** and the examples of tactics by category.

**Share** that participants will use a case study to highlight undue influence tactics that could also occur in their own case investigations.

# Handout #1- Undue Influence Wheel



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## Slide #14: Case Example (Summary)

**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

*Trainer notes: After review of the handout with the case scenario facts, there is a small group activity to identify tactics using the wheel framework. It is suggested that participants consider the wheel as they think about the case study.*

*The case study is based on the case People v. Brock (2006) 143 Cal. App. 4<sup>th</sup> 1266.*

**Refer** participants to **Handout #2- Sam and Larry Case Study Part 1**. **Explain** that we will be using this case study throughout the course.

**Ask** for participants to volunteer to read out loud each section of the case study and encourage participants to consider the Undue Influence wheel as we review the case study.

**Summary of** case facts are on the slide and below:

- 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, new 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

- Larry convinced Sam to cancel annuities and failed to carry out various commitments, pocketing the monies

## 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

## Slide #15: Small Group Discussion

Small Group Discussion

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



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*Trainer notes:* This small group activity provides participants an opportunity to apply the case study facts to the tactics in the Undue Influence Wheel. It can be conducted in small groups in-person or as a breakout rooms if course is conducted virtually.

The question for groups to address is "What tactics of undue influence did you observe in the case study?"

### **Activity #2- Larry's Tactics (10 min in breakout groups, 10 min report back (Breakout groups= 20 min total))**

Instructions:

**Break** participants into groups of 3-5.

**Ask** each group to select a notetaker/spokesperson to report back to the entire class.

**Assign** each group 2 segments of the wheel and have them identify tactics Larry used that represent the assigned tactic.

**Give** groups about 10 minutes to discuss. It is suggested that when half way through the time allotted groups be reminded to address the second assigned spoke if they have not already begun to do so.

Report out: Spend no more than 10 minutes on reports back. If multiple groups report on same tactics, have one group lead off and ask remaining groups(s) if they had additional ideas.

**If activity done virtually**, instructor or staff will need to create work groups and broadcast when groups have one minute left to work together. It is suggested that groups be given a time alert when half the time is up so they focus on both spokes of the wheel they are assigned to discuss. It can

be helpful to briefly join various groups to assure that the assignment is clear and groups are progressing with the assignment.

Some possible responses:

- Occasionally act nice: often at beginning of relationship to build trust and dependency. Befriend Sam when in grief and with legal concerns about his mother.
- Induce secrecy and shame: convince Sam not to tell his law office about the payments to Larry.
- Create lack of faith in abilities: while Larry probably did not have to do anything to undermine Sam's existing beliefs in his abilities, he supported Sam's existing anxieties about finances, shopping, being alone.
- Create dependency: took over functions his mother had always handled which Sam could not manage.
- Prey on vulnerabilities: understood his anxieties and took over tasks Sam was afraid to undertake or could not undertake. He was aware of Sam's vulnerabilities because of time they shared, history of anxiety attacks, many phone calls
- Create fear: probably did not have to do much as Sam in state of alarm and anxiety and could not manage his own affairs as evidenced by what his mother had done for him. Likely Larry used threats about what would occur if Sam did not rescind the annuities or fail to write checks when Larry wanted them.
- Isolate: no one else in Sam's world. Larry built on Sam's existing isolation.
- Keep Unaware: Did not tell Sam how he represented himself to police, employer, bank

## Slide #16: Legal Definitions

**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

**Share** that so far course has focused on the psychological construct of undue influence. We will now turn our attention to the legal definition of undue influence, and especially those statutes most related to APS practice.

- The Welfare and Institutions Code defines undue influence to mean “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 Section 15610.70*)
- This definition is applied to all Probate Code matters by Probate Code Section 86 as having “the same meaning as defined in [Section 15610.70 of the Welfare and Institutions Code.](#)”
  - This definition applies to conservatorships. Probate Code Section 1801 authorizes creation of conservatorship when there is substantial inability to resist fraud or undue influence and only after all less restrictive options have been explored and determined to be ineffective or inappropriate.
- It is also the operational definition in CA APS Standards for Consistency in Determining Findings Matrix (*California APS Guidelines to Supplement Regulations, 2022*).

*Trainer note: There is another definition of undue influence in Civil Code Section 1575. It applies to civil actions such as contract disputes. It does not arise in APS practice so is not taught in this course. It is mentioned here in case a participant raises a question about it. It is suggested to review the section prior to teaching this course. Be aware that the case study, based on the case of *People v. Brock*, was prosecuted using that Civil Code definition.*




*The conviction reversed on appeal after Brock was convicted of various theft crimes in which he used the tactics of undue influence because the Court ruled that the Civil Code section is too vague and does not put an offender on notice of prohibited conduct for a criminal conviction. The current Welfare and Institutions Code section 15610.70 has addressed the problems with the Civil Code definition in probate and criminal matters.*

## Slide #17: Those Harmed by Undue Influence

Those Harmed by Undue Influence

**True or False?**

All victims of undue influence have diminished decision-making ability



**Share** that we will discuss the elements of undue influence shortly but first let's discuss those who are harmed by undue influence. Let's think about some common features of those who are harmed.

**Ask:** True or False—"All victims of undue influence have diminished decision-making ability?"

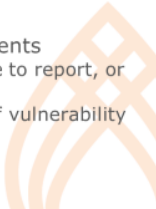
Correct response is False.

*Trainer note: This slide is animated. Can ask for a show of hands if class is taught in person or do a poll or have people respond in the chat box if course is virtual.*

## Slide #18: Decision-Making Ability and Undue Influence

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



**Explain** that some believe that those harmed by undue influence must have cognitive conditions. While the presence of diminished decision-making ability can make it easier to unduly influence someone, the reality is anyone under the right circumstances can be victimized, whether they have full decision-making ability, significantly diminished ability, or somewhere in between.

Because anyone can be harmed by UI, focusing only on impaired decision-making ability can lead to the APS professional having a narrow focus and cause APS to fail to identify or investigate allegations of undue influence.

As in other cases, APS should explore a client's decision-making ability, but that is just one circumstance that might make someone vulnerable to UI.

*Trainer note: There are two points to make in this slide:*


1. *Impairment of decision-making ability can make someone vulnerable to undue influence but it is only one way a person can be vulnerable, there are others; and*
2. *If we assume or believe that undue influence only can happen to those with diminished decision-making ability, APS will miss investigations where undue influence may be occurring.*

## Slide #19: Explore What Makes Your Client Susceptible/Vulnerable to Undue Influence

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
- Naïve, 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



*Trainer note:* This slide is animated to first reveal the question and then the possible answers.

**Share** that instead of focusing on diminished decision-making capacity, what is more helpful is to think about how an influencer identifies someone to be unduly influenced and then builds a relationship of trust and fosters dependence on the influencer.

Influencers look for vulnerabilities or susceptibilities. **Ask** participants what other victim's life situations and vulnerabilities may make someone more susceptible to Undue Influence?

**Invite** participants to share.

Click to review some/all of the dot points on this slide. Can give a few examples from instructor experience.

- Lonely
- Frightened
- Naïve, 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

*Trainer note: participants will identify case study vulnerabilities on next slide.*

## Slide #20: Class Discussion

**Class Discussion**

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



*Trainer note: this is a group discussion to allow participants to first reflect on the question individually and then share answers.*

- *If in-person, provide participants a moment to reflect on their responses and then invite them to raise their hands and share their ideas.*
- *If virtual, ask participants to reflect on the question for a moment and type responses into the chat but not hit "enter" until prompted to do so. After 1-2 ask participants to hit enter which will display the comments in a "waterfall chat". Read some of the responses in the chat box or invite staff or participants to read responses.*

**Ask** participants to think about the case study of Sam and Larry, and "what made Sam vulnerable/susceptible to undue influence by Larry?"

Possible responses:

Sam (victim):

- had cognitive impairments,
- was alone, grieving, no available trusted advisors
- was distracted and unable to focus on important matters,
- was dependent on Larry, and
- appears to have been inexperienced handling financial matters


Vulnerabilities such as these made Sam trusting, dependent, and willing to seek help from someone else. He has a long history of needing and having someone else manage many aspects of his life so once his mother died, he looked for someone to manage these tasks for him.

## Slide #21: Who are the Perpetrators?

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



*Trainer note:* This slide is animated to first ask the question and reveal possible answers.

**Ask:** “Who in your experience are the perpetrators of undue influence”?

**Take** responses and then **share** list of possible perpetrators.

**Highlight** that perpetrators may be anyone around the person who is harmed though there must be a relationship of trust between them.

**Ask:** In the case study, what category or categories best describe Larry?

Answers:

- a friend,
- a fiduciary (represents himself to police and others as Sam’s advisor)
- A professional with a legal background
- Likely an opportunist in the absence of information he has done similar actions before

*Trainer note:* If a participant mentions scammers or telemarketers ask for details of how a stranger built a relationship of trust and dependency. One example could be some, but not all, “romance scams” in which an influencer befriends a person who they know is vulnerable or finds out their vulnerabilities and is able to build a relationship of trust and dependency leading to financial exploitation through undue influence. Remember an influencer needs to know or should know of the person’s vulnerabilities. Be certain any examples include this element. An example from your own experience may be helpful, but it’s suggested to avoid scams unless brought up by participants.



## Slide #22: Fiduciaries and Professionals as Perpetrators

**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

*Trainer notes:* Content can be a group discussion or if virtual, by chat box entry or hand raising. Slide is animated to ask the 1st question and then reveal answers and then the 2<sup>nd</sup> question and reveal the key points after discussion.

**Ask** for or share examples of fiduciaries and professionals.

- Examples of fiduciaries are an attorney-in-fact under a POA, a conservator, or a trustee.
- A professional might include a doctor, financial advisor, or spiritual advisor.

**Acknowledge** that a perpetrator can be both a fiduciary and a professional.

**Ask:** What is different when the perpetrator is a professional or a fiduciary?

- What they share is a duty to their client to act in that person's best interest, to avoid self-dealing, and to place the client's needs above all others, including those of the fiduciary.
- They are given considerable authority but are expected to act in accordance with that authority.

**Mention** that what the professional and fiduciary have in common is a relationship of trust with the older or dependent adult. They also occupy positions of greater power and authority over the other party and are accorded social status. That social status may mean that those victimized are not believed when they report, and are more likely to have funds for excellent legal representation.

The existence of fiduciary or professional relationship may be strong evidence in a civil case supporting an inference of undue influence when the suspected influencer benefits from a transaction and was involved in its creation.

It is important to note that fiduciaries and professionals may be subject to professional codes of ethics and conduct and standards of practice; may be bound by ethical standards that if broken, can be sanctioned or the subject of professional discipline; and may have a professional licensing body that oversees members of the profession.

Those professional bodies may conduct their own investigations of misconduct, may have information about other complaints and victims, and may be able to identify experts to help the APS investigator understand professional standards, documents, and practice requirements.

The licensing body may also have restitution funds to reimburse losses of those victimized by members of that profession.

Even if the professional body does investigate, their timeline and focus are different from those of APS. You should still follow your agency's policies and if applicable, conduct your investigation and arrive at your own findings.


It is prudent for APS professionals to consult with supervisors before contacting licensing bodies and sharing otherwise confidential information.

## Slide #23: Establishing That Undue Influence Has Occurred

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?



**Remind** participants of definition from Welfare & Institutions Code on the slide.

**Comment** that this is not the entire Code section. The rest of the code section explains what must be shown to establish that undue influence has occurred. We will look at these elements next, but first, “What kind of evidence or information do you think is needed to show that undue influence has occurred?”

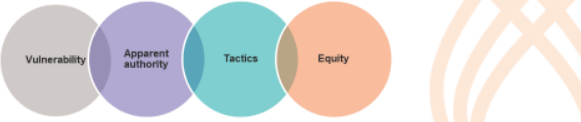
**Ask** participants to write down at least 5 responses to the question. **Give** participants a few minutes (2-3 minutes) to individually come up with a list of items. **Conduct** a group discussion of participant suggestions.

If virtual, **have** participants put their ideas in the chat box or raise their hands to be called on.

## Slide #24: California Undue Influence Law

**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



**Explain** we will now review the elements of undue influence from Welfare & Institutions Code Section 15657.10. There are 4 elements.

- First, Victim's vulnerability to undue influence
- Second, Influencer's apparent authority (e.g., confidential or fiduciary relationship)
- Third, Actions or tactics used by the influencer to overcome victims free will; and
- Lastly, the equity of the result

All must be established and the court must consider information about all four when deciding if undue influence occurred.

What does this mean for APS? You have a roadmap for what has to be established and supported which is the same information the judge must consider when deciding questions of undue influence.

This roadmap can guide you as you investigate, develop questions to ask, help you to document your information, and offer a way to organize your evidence to support your findings.


### Share:

- Next, we will discuss the kinds of information that can be offered as evidence to support each of these 4 elements.
- We will be using the information in these next slides in an activity towards the end of the training.

## Slide #25: Vulnerability/Susceptibility

**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.



*Trainer note: During this section, attempt to get diverse participation with the discussion of each element.*

**Share** evidence of the first element, Vulnerability/Susceptibility, may include:

- 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.
- The list is not inclusive so you may have a case where your client has something else that makes them vulnerable or susceptible.

Highlight that the influencer must **know or should know** of the alleged victim's vulnerability. It is not enough to establish that someone is vulnerable. The investigation must establish the influencer's knowledge of the victim's vulnerability. Think about ways to establish that an influencer knew of the experiences or conditions that made the client vulnerable or susceptible.

**Ask:** Think about the case study of Sam and Larry, what evidence would be helpful in establishing Larry's knowledge of Sam's vulnerabilities?

**Give** participants a little time to respond (either raising hand or chat feature).

*Possible answers:*

- *Amount of time they spent together;*
- *Larry helped Sam through anxiety attacks;*
- *Probability Sam shared his lifelong difficulties and needs that Sam's mother fulfilled while alive.*

## Slide #26: Evidence of Apparent Authority



**Share:** The second element of undue influence under the Welf & Inst Code section 15610.70 is the influencer’s apparent authority.

Examples of things that may confer apparent authority include:

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

Once again, this list is not all inconclusive so you may have something different that confers apparent authority on the influencer.

**Ask:** Turning once again to the case study, what was the basis of Larry’s apparent authority over Sam?

**Give** participants a little time to respond (either raising hand or chat feature).

*Possible responses:*


- *Represented himself to be Sam’s advisor to police and others;*
- *Legal training,*
- *Worked in law office and executed legal type actions such as canceling an annuity Sam obtained to benefit his niece.*

## Slide #27: Actions or Tactics of Perpetrator

**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.



**Share:** The third element focuses on the influencer's actions or tactics and may include such conduct as:

(A) Controlling necessities of life, medications, 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.

**Explain:** This element focuses on what the influencer has done to unduly influence.

- Many of these tactics or actions can be overlooked or not investigated because they are seen as unimportant or unrelated to undue influence or financial exploitation.
- Think about situations in which a client was isolated from people or information, or threatened with abandonment or involuntary placement in a facility. These can all be indicators of undue influence.
- Similarly, think about situations in which the influencer befriended and built a powerful relationship with your client in order to gain control over their assets or to be named their attorney in fact or beneficiary of a bequest. Such situations may all be signs of undue influence.

**Ask:** Returning to the case study, what actions or tactics did Larry use?

This can be a pairs activity if class is in person, or if class is virtual a reflective chat.

*Possible answers:*

- *befriended Sam;*
- *controlled access to information (what Larry was doing with assets he was given by Sam);*
- *made claims of expertise (as legal advisor) in effecting changes in assets;*
- *controlled Sam's interactions with others (bank; niece over annuity);*
- *hounded Sam until he gave Larry money/signed checks to him (coercion)*



## Slide #28: Equity of the Result

**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.

**Share:** The final element of undue influence is the equity of the result, or “fairness” of the outcome.

Equity is from the perspective of the person allegedly harmed.

- Investigators, family members, and others may not think that a gift or other transaction made by the client is wise.
- But remember that as long as we have decision making ability and have not been tricked, deceived, or unduly influenced, we are allowed to make those make choices that others may disapprove of or that are not in our own best interest.
- That is our basic right as an adults—the right to self determination and autonomy.

The evidence of 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.

Even if a result is inequitable, that by itself does not prove that undue influence occurred. There must still be evidence establishing the other 3 elements of undue influence were present.

**Ask:** Thinking about the case study, what evidence supports a finding of inequity of the outcome?

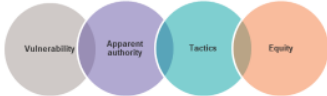
*Possible answers:*

- *Size of loss (and considering the effect of that loss on Sam's future independence);*
- *Value of what Larry did for the what he received.*
- *Also worth considering is that Sam was not aware of all that Larry did (e.g., interactions with the bank, withheld monies he had promised to give to Sam; failure to pay taxes when he led Sam to believe that he had, all of which added to Sam's losses and were not what Sam was led to believe had happened.*

## Slide #29: Undue Influence Summary

**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



The diagram consists of four overlapping circles arranged horizontally. From left to right, they are labeled: 'Vulnerability' (grey), 'Apparent authority' (purple), 'Tactics' (teal), and 'Equity' (orange). The circles overlap in a way that suggests all four elements must be present. To the right of the circles is a decorative orange graphic resembling a stylized arch or a series of overlapping lines.

*Trainer note: This slide is to remind participants of the four elements of undue influence under the Welfare and Institution Code and applicable to Probate Code actions, including conservatorships.*

**Remind** participants that evidence of all four is required to establish that undue influence has been used to commit financial exploitation or support a conservatorship based on inability to resist undue influence.

Even if you have evidence of all four elements some clients will not believe they have been harmed by undue influence. So, when working with clients not all will agree they have been harmed. You can confirm an allegation even if the client does not believe they have been unduly influenced as long as you have established evidence of each element.

## Consent and Undue Influence

**Time:** 50-55 minutes

Associated Objective: Describe how consent and decision-making ability relate to undue influence

**Method:** Lecture, discussion, case study, breakout groups, chat (if virtual)

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## Slide #30: Consent and Undue Influence



**Ask:** How do influencers justify their actions when questioned?

Possible answers include:

- Consent (gift, what the client wanted me to do or have);
- legal authority (as an attorney in fact or trustee or conservator; etc.

**Share** that the most frequent explanations are consent and if the influencer is a fiduciary, that they acted within their legal authority.

We will focus here on consent.

## Slide #31: Consent and Personal and Cultural Values, Beliefs, and Practices

Consent and Personal and Cultural Values, Beliefs, and Practices

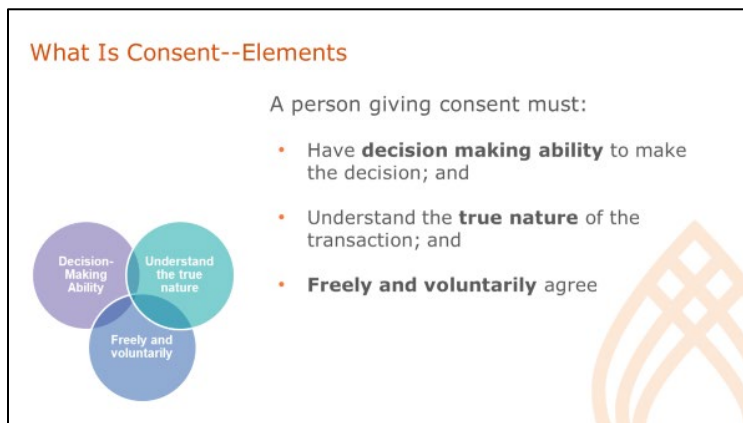
- Consent has both legal, personal and cultural elements
- Important to invite clients to discuss their values as part of understanding **their** view of consent.
  - "How do you make decisions?"



**Explain** that before we discuss the legal elements of consent, it is important to think about what features or factors may play a role in how a client thinks about consent.

- Consent may be affected by your client's cultural and social norms, values, and personal beliefs.
  - For example, your client may believe that consent is a group decision or one made by a person of status such as a leader, male member, or eldest child.
  - A client may come from a tradition of sharing of resources including money, medications, or child rearing.
  - These values may be different from those of the APS professional who is investigating an allegation.
- It is not possible to know all the cultural and other values and beliefs each of your clients may have, so it is appropriate to ask when a response is unexpected.
  - The following questions can help you understand choices expressed by your client:
    - "How do you make decisions?"
    - "Is there someone who makes decisions (like the one in your allegation) for you?"
    - "Please help me understand how decisions about (what occurred in this situation or allegation) are made.

## Slide #32: What Is Consent—Elements



*Trainer note: This is a possible "script" for describing consent. Make changes as you deem necessary.*

Let's look at the elements of valid consent. There are three elements that must all exist at the time the person gave consent.

First, the person must **have decision-making ability** to make the decision.

- We know that decision-making ability can vary by the importance and complexity of the decision. A person can have the ability to do some things but not others. Their ability can be affected by illnesses, medications, neurocognitive disorders like Alzheimer's, etc. But if a person lacks decision-making ability, and that is known by the person benefitting from the consent, their consent is not valid consent.

If a person has decision-making ability or it is unclear if they did, the next question to be explored is did they **understand the true nature of what they were agreeing to do**.

- That means they were not deceived or misled, and had the opportunity to discuss the transaction with others had they wanted to (whether they did or not). Did they have access to an assistive device or translator, if needed. As an investigator, exploring how important decisions were previously made and what the person was told about what they were agreeing to do is important. If the victim was deceived it is important to document the deceitful information and then establish it was false. If deceit was employed and relied on by the person harmed, there is no valid consent defense.

Assuming there was decision-making ability and the person understood the true nature of what they agreed to do, the final element that must exist is that the person who agreed acted **freely and voluntarily**.

- That is, they were not threatened, coerced, or forced to act against their will. Exploring what led up to the person agreeing, whether any threats or promises were made and would the person have agreed if those threats or promises had not been made all will help establish this element. Remember the threats or promises do not need to involve physical harm. Threats to abandon, cut off contact with children or grandchildren, or involuntarily placement in a nursing home can all be powerful ways to obtain agreement.

Exploring consent means obtaining evidence of each element. It is not sufficient to simply ask "Did you agree to this?"

*Trainer note: You can remind participants that some cases may require an evaluation by a capacity assessment expert.*

*If time allows or it's brought up about cases involving consent that was given some time ago, and the person appears to have impairments of decision-making ability when the APS interview is conducted, APS could attempt to locate evidence of their capacity when the consent was given. Think about family members, friends, doctors, and others who have known the client for a long time, medical records from that time, and other evidence that paints a picture of the client's ability in the past when they may have given consent. Consider seeking a capacity assessment and provide the expert with as much information about the person's functioning at the time they gave consent as you have been able to collect.*




## Slide #33: Consent and Undue Influence Activity: Part 1

**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.

*Trainer notes:* This is a small group activity and can be done in breakout groups of 3-4 in-person or virtually. They will be in the same groups for Part 2. This activity provides an opportunity to develop interview questions to use with Sam in the case study.

### **Activity #3: Case Study- Questions for Consent (20 min total)**

#### **Breakout groups**

Instructions:

- 1. Inform** participants that they will be in small groups and using the Sam and Larry Case study, will develop questions they would ask Sam around his consent to having Larry cancel the annuity he obtained for his niece.
- 2. Using Handout #3- Interview Questions for Sam**, they should develop questions for each of the three elements of consent.
- 3. Share** that they will have 10-15 minutes to develop the questions and should assign a spokesperson for a brief report out.
- 4. Give** groups 10-15 minutes to develop questions and 5 minutes for all reports back.

During the report back, **ask** different groups to lead each of the 3 questions and ask other groups if they would add anything else.

*Trainer note:* at the end of part 2 of this activity, a handout of questions for consent and undue influence is provided.

## 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:

## Slide #34: Undue Influence and Consent

**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.

### Share:


- Do not take consent at face value.
- Dig deeper if you suspect that the tactics of undue influence may have been used.
- Remember your client may have been deceived, misled, or forced and not realize it.
- Your client may feel a strong emotional attachment to the influencer and may want to protect them, or your client may not be able to accept that they have been victimized.

Let's recall that 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). Think about how the influencer took advantage of your client's vulnerabilities, asserted their power and authority, and used a variety of tactics to gain control of your client's free will.


## Slide #35: Consent and Undue Influence Activity: Part 2”

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.



*Trainer notes: This Part 2 of the activity is developing interview questions for Sam in the case study. Part 1 focused on questions concerning consent. Part 2 focuses on questions focusing on undue influence.*

*The goal of these 2 activities is for participants to see that questions about consent and undue influence are not the same, though questions may overlap (e.g, consent explores decision making ability while undue influence considers victim vulnerabilities that could include cognitive impairment).*

*At the end of Part 2 participants are provided a handout of sample consent and undue influence questions.*

### **Activity #4: Developing Questions to Address Elements (15-20 total minutes with report out)**

#### **Breakout groups**

**Inform** participants that they will get back in their groups from Part 1 and develop at least two questions for each of the elements of undue influence.

**Give** 7-10 minutes total for groups to develop their questions for each element. Then 3-5 minutes for the reports back, asking each group to provide just one question for one element of their choosing.

After the brief report out, **refer** participants to the **Handout #4- Consent vs. Undue Influence Questions** to use in their practice.

## 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?

## Investigation Considerations

**Time:** 90 minutes

**Associated Objectives:** Describe investigative steps and how to document an undue influence case.

Describe how undue influence can be part of a crime in California

**Method:** Lecture, discussion, case study, breakout groups, chat (if virtual), individual reflection

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## Slide #36: Is Undue Influence A Crime in California?

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

**Share** that while there is no crime of Undue Influence in California (and most other states), the tactics and elements of Undue Influence can provide evidence of a crime. Since most Undue Influence cases involve financial abuse, let's discuss some crimes that may be committed using undue influence.

Three common crimes are different forms of theft, including:

1. **Theft by taking** the property of the client without their knowledge or without their consent. And remember, if your client is unable to give valid consent because of diminished decision-making ability and that is known or should be known by the alleged perpetrator, that is a taking without consent, or theft.

2. **Embezzlement** occurs when a person with authority to have client's property or assets for one purpose uses it for their own benefit. Think about an attorney in fact who is authorized by a POA to handle the client's finances. We know that an attorney in fact is a fiduciary who is required to act in the client's best interest. When that attorney in fact writes checks to pay their own debts, vacations, and other expenses rather than paying for the client's utility bills or nursing home costs, that person may well have committed the crime of embezzlement. Embezzlement is a form of theft. (*Penal Code Section 503—"Embezzlement is the fraudulent appropriation of property by a person to whom it has been entrusted."*).

3. **Theft by false pretenses** is another form of theft. It is committed when an influencer obtains possession of the client's property or other assets by lying, misleading or deceiving them and then uses the asset for their own benefit. (*Penal Code 532—"Any person who knowingly and by design, using any false or fraudulent representation or pretense, defrauds someone of*

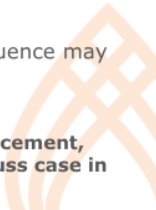
*money, labor, property, or who causes others to report falsely of their wealth or character, and by imposing upon someone obtains credit and fraudulently obtains money, property, or labor is guilty of theft by false pretenses.”)*

These forms of theft also meet the definition of elder financial abuse under Penal Code Section 368 (d) and (e) --“violates any provision of law proscribing theft, embezzlement, forgery, or fraud...”.

## Slide #37: What Does This Mean?

What Does This Mean?

- The tactics of undue influence can undermine a claim of consent for theft
- Lies and deceptions 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.**



**Highlight** the following points on the slide.

- The tactics of undue influence can undermine a claim of consent for theft
- Lies and deceptions 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.**
  - Law enforcement thinks about crimes. They know that undue influence is not a crime so some will think the case must be a civil matter and not take a report or investigate. By using terms that are familiar to law enforcement it is more likely they will treat the case as a criminal matter.

## Slide #38: Investigating Allegations of Undue Influence (1)

**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

*Trainer note: This is the first of 3 slides that highlight some investigative steps to help provide evidence for each of the elements of undue influence.*

**Remind** participants that the UI investigation still requires that APS professionals conduct their usual investigative steps of whatever allegation has been alleged but in addition there are additional steps to be taken that focus on the elements of undue influence.

**Review** the points on the slide for some of those other steps:

- Must 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

## Slide #39: Investigating Allegations of Undue Influence (2)

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

**Highlight** the points on the slide. It is not necessary to review each dot point.

- 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

## Slide #40: Investigating Allegations of Undue Influence (3)

**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

**Highlight** the points on the slide. It is not necessary to review each dot point.

- Compare with what is known about questionable transactions/decisions once influencer came into the client's life.
  - 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

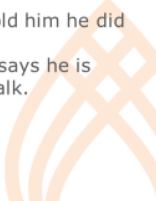
*Trainer note: The next slide is an activity in which participants will apply these suggestions to the Sam and Larry case study.*

## Slide #41: Sam and Larry Part 2- APS Report

**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.



*Trainer note: This and next slide are setting up a small group activity. This slide describes how the case was reported to APS.*

**Refer** participants to **Handout #5- Sam and Larry Case Study (Part 2)** and **ask** for a volunteer to read. (Note- the summary of information is on the slide):

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	



## Slide #42: Activity: Investigative Steps

**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.



*Trainer note: This is an activity for small groups. If class conducted in person, and if chart paper is available, have groups write ideas on chart and post once completed.*

### **Activity #5- Investigative Steps: Sam and Larry (20 minutes total with report back)**

#### ***Breakout groups***

Instructions:

1. **Share** that participants will be put back into groups of 3-4.
2. They are assigned the case with Karen, Sam’s niece as the reporting party.
3. **Ask** them to think of various investigative steps they would take in allegation of financial abuse but to specifically develop a list on **Handout #5**, of investigative steps they would take in this case, including evidence to gather, to explore each element of undue influence of Sam.
4. They will have 15 minutes to complete this task.
5. Once in groups, **circulate** around the room or visit various breakout rooms if virtual, to ensure participants are able to complete the activity.

Reports back: Have one group share their investigative steps for the first element. Move to other groups for the remaining three elements. Keep this report back to 5 minutes.

## Slide #43: The CA Undue Influence Screening Tool (CUIST)

**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

**Share** that there is no standardized way to demonstrate that all of the elements of UI are supported by evidence or to document the undue influence case. So, an instrument was created that can be used to do both. It is called the California Undue Influence Screening Tool, or “CUIST”.

**Highlight** the following:

- CUIST is a screening tool and not an assessment tool.
- It was created for APS, with input from APS on its content and how to use it.
- It is not validated and is probably not admissible in a court.
- It is patterned on CA Welf & Instit §15610.70.
- It 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
- It can be helpful in distinguishing those cases where undue influence may be present from others
- It can help APS professionals identify if additional information is needed or, if critical information is missing, that this is not a case of undue influence.

**Direct** participants to the **Handout #6- CUIST** in their materials. **Give** them a few minutes to review the tool.

**Share** that the CUIST can be found at the California Elder Justice Coalition website:

[https://www.elderjusticecal.org/uploads/1/0/1/7/101741090/final\\_cuist\\_5-27-2016\\_12.4.18.pdf](https://www.elderjusticecal.org/uploads/1/0/1/7/101741090/final_cuist_5-27-2016_12.4.18.pdf).

## Handout #6- CUIST

### California Undue Influence Screening Tool (CUIST)<sup>1</sup>

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.<sup>2</sup> 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
<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	

<sup>1</sup> 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

<sup>2</sup> Probate Code §86 and Welfare and Institutions Code §15610.70

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

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

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

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.

## Slide #44: CUIST in Detail

CUIST in Detail

Influencer 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"> <li><input type="checkbox"/> Intimate family relationship</li> <li><input type="checkbox"/> Caregiver</li> <li><input type="checkbox"/> Professional standing (e.g., legal professional, spiritual advisor, health care professional, real estate agent, banker, accountant)</li> <li><input type="checkbox"/> Legal authority (e.g., power of attorney, conservatorship, trust, representative payee)</li> <li><input type="checkbox"/> Controls elder's finances</li> <li><input type="checkbox"/> Immigration sponsor</li> <li><input type="checkbox"/> Landlord or long term care facility operator</li> <li><input type="checkbox"/> Predatory salesperson (e.g., telemarketer, annuity company, lottery)</li> </ul> <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	

**Ask** participants to follow along with their **Handout #6** and **share:**

- The tool is organized by elements; each of the 4 elements is assigned a page, as seen in their Handout.
- One page, Influencer Authority/Position of Power is displayed on the slide.
- Each page has the name of the element at the top of the page.
- There are two columns. The left hand column lists examples of actions or information that could illustrate that element. The right hand side column is blank and provides a place for the APS professional to fill in information gathered in the investigation, including relevant documents and reports, quotations, who said them, and observations.




## Slide #45: Activity-Using CUIST with Sam and Larry's Investigation

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



### **Activity #6- Using the CUIST (15 minutes, no report out)**

#### ***Breakout groups***

Instructions:

1. **Share** that participants will be back in their groups to fill out a section(s) of the CUIST using their investigative steps, including evidence gathered from Sam and Larry's investigation.
2. **Validate** that because this isn't their real investigation, there may be some unknowns, so encourage them to be creative.
  - a. For example, they may have interviewed Larry who admitted he told police he was Sam's advisor or interviewed police who provided that information.
3. **Assign** each group at least one element that they "investigated" in Sam and Larry's case to document using the CUIST. (*Note- \*Decide if you want to assign the element of equity as that has the least information in the case study. Or you may wish to consider giving every group this additional element in addition to their single assigned element.*)


*Trainer note: The goal of this activity to give participants a chance to become familiar with the tool and practice its use. Because we don't know the actual investigative steps taken, and in the interest of time, there is no report out of this activity.*

**Wrap up** activity by asking participants how they feel about using CUIST in real cases.

## Slide #46: Meeting Client Needs

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.



*Trainer note:* This short segment focuses participants on meeting the varied short and long term needs of their clients who have been financially exploited using undue influence. The questions animated on the slide are intended to remind participants that undue influence is too complex to manage either short term or by a single professional.

**Share** that a large part of APS investigations and assessments are identifying interventions that can mitigate or eliminate risk. One way to do that is by working with other agencies and services.

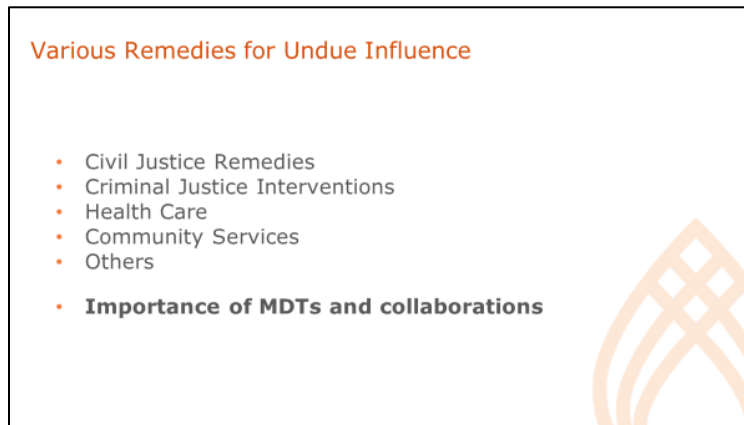
**Cover** the information on the slide:

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

**Provide** a few minutes for participants to individually develop their list. If class is virtual, consider doing a reflective chat.

**Conclude** with discussion on the next slide.

## Slide #47: Various Remedies for Undue Influence



**Refer** participants to **Handout #7: Remedies for Undue Influence** and **highlight** the following:

- There are multiple areas to explore with clients to remedy some of the harm that may have been caused including:
  - Civil Justice Remedies
  - Criminal Justice Interventions
  - Health Care
  - Community Services
  - Others
- Multidisciplinary groups and community collaborations can play a significant role in unifying service agencies.
  - Family Justice Centers (FJCs) are examples of “one stops” where agencies share a common space and those needing help can get multiple services in one location
  - Forensic Centers (FCs) where member professionals can discuss cases and develop a plan to help each other, build cases, and identify services a client may need.

**Acknowledge** confidentiality requirements for disciplines and for member professionals.

**Highlight** that remedies listed in Handout #7 are only some agencies and services that may be needed in a particular case.

## Handout #7- Remedies for Undue Influence

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

## Wrap Up and Evaluations

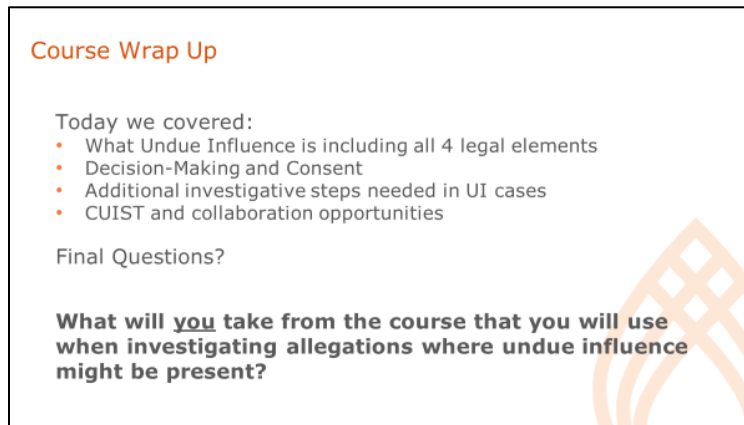
**Time:** 15 minutes

Associated Objective: N/A

**Method:** Discussion, individual reflection, evaluations

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## Slide #48: Course Wrap Up



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?

**Share** that today we've covered a lot of information on a very complex subject:

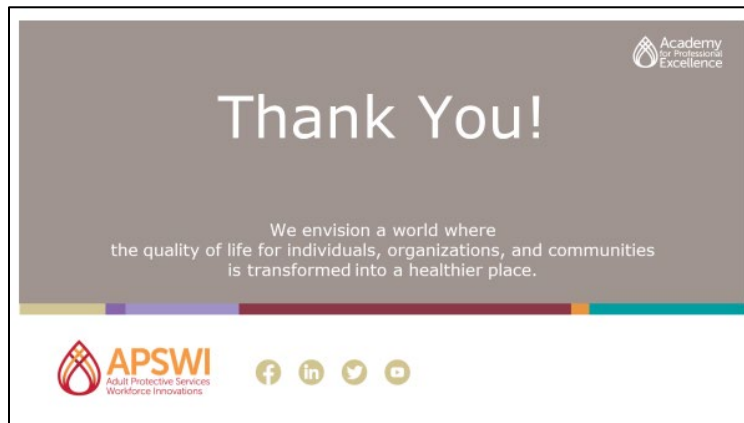
- What Undue Influence is, including all 4 legal elements
- Decision-Making and Consent
- Additional investigative steps needed in UI cases
- CUIST and collaboration opportunities

**Ask** if there are any final questions.

**Ask** each participant to note what is one thing they will take from the course and use in their APS cases where UI might be present.

**Give** everyone a few minutes to note an answer and then **invite** each participant to share their response.

## Slide #49: Thank You and Evaluations



**Thank** participants for their participation and hard work throughout the course as well as their tireless efforts every day on behalf of older adults and adults with disabilities.

**Cover** any final announcements and information regarding evaluations, etc.

If applicable, **provide** instructor contact information.

## References and Resources

American Bar Association, American Psychological Association, 2021. *Assessment of Older Adults with Diminished Capacities: A Handbook for Lawyers*. 2<sup>nd</sup> Edition.

APS Guidelines to Supplement Regulations, 2.2: The CA APS Standards for Consistency in Determining Findings Matrix). County Welfare Directors Association (2022). *California APS Guidelines to Supplement Regulations, Version 2.2 (6/1/2022)*. California APS Standards for Consistency in Determining Findings (PDF). [https://www.cwda.org/sites/main/files/file-attachments/cwda\\_aps\\_guidelines\\_to\\_supplement\\_regulations\\_2022\\_v2.2.pdf?1659637131](https://www.cwda.org/sites/main/files/file-attachments/cwda_aps_guidelines_to_supplement_regulations_2022_v2.2.pdf?1659637131)

Bernatz Experts. 2016. *The SCAM™ Model, Undue Influence*. Retrieved from <http://www.bernatzexperts.com/areas-of-expertise/scam%E2%84%A2-model>

Blum, B. 2012. *Undue Influence Models- IDEAL*. Forensic and Geriatric Psychiatry. Retrieved from [http://www.bennettblummd.com/undue\\_influence\\_ideal\\_model.html](http://www.bennettblummd.com/undue_influence_ideal_model.html)

Nerenberg, L. 1996. *An Interview with Margaret Singer on Undue Influence*. National Committee for the Prevention of Elder Abuse, nexus [PDF]. Retrieved from [https://www.elderjusticecal.org/uploads/1/0/1/7/101741090/nexus\\_interview\\_with\\_margaret\\_singer.pdf](https://www.elderjusticecal.org/uploads/1/0/1/7/101741090/nexus_interview_with_margaret_singer.pdf)

Quinn, M. et al. 2001 *Undue Influence: Definitions and Applications*. Borchard Foundation Center on Law and Aging, Final Report [PDF]. Retrieved from <https://www.courts.ca.gov/documents/UndueInfluence.pdf>



OUR WHY: **REVOLUTIONIZE  
THE WAY PEOPLE  
WORK TO ENSURE  
THE WORLD IS A  
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