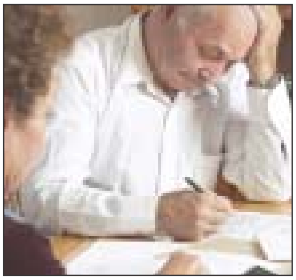

Exploitation of the Elderly: Undue Influence as a Form of Elder Abuse

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Each year in the United States, 2.5-3 million senior citizens are victims of abuse.[1] Mistreatment of seniors occurs in 3-10% of the older population.[2,3] After reviewing information on the rising incidence of elder abuse, the Select Committee on Aging of the U.S. House of Representatives issued a report on "Elder Abuse: The Hidden Problem" in 1978. A full congressional report in 1981 encouraged all states to develop and implement laws to protect elderly persons from physical, emotional, and financial exploitation.[4] Since that report, all 50 states have enacted elder abuse statutes, and several include financial exploitation as a specific part of their statutes dealing with the mistreatment of senior citizens.[5,6] In spite of these laws, many inconsistencies exist from state to state concerning the reporting of domestic and institutional elder abuse, neglect, and exploitation.[5] The American Medical Association's definition of elder abuse states, "Abuse shall mean an act or omission which results in harm or threatened harm to the health or welfare of an elderly person. Abuse includes intentional infliction of physical or mental injury, sexual abuse, or withholding of necessary food, clothing and medical care to treat the physical and mental health needs of an elderly person by one having the care, custody or responsibility of an elder person." A section on financial abuse notes that "Exploitation is the misuse of a vulnerable adult's income or other financial resources."[7]

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One dilemma faced in enforcing laws to protect the elderly from financial exploitation is our cherished view that seniors should maintain self-determination and autonomy. Many states take the position that seniors' normal financial transactions, unless they are clearly impaired or coerced, are their responsibility, and that such financial decisions carry the full legal protections and responsibilities accorded to younger persons. The law assumes that the unimpaired elderly are fully capable of making decisions and are thus responsible for their financial acts. One must therefore determine whether a senior has been unduly influenced and, if so, how. In cases where contested financial decisions are brought before a jury, one must decide what standards should be used to show coercion or exploitation. The most commonly used standards involve reduced mental capacity, exploitation of increased need, or induction by fear to force older persons to inappropriately divest themselves of cash, property, or other valuable assets.

Wilber and Reynolds[8] note that exploitation of the elderly is seen in several different frameworks, which are referred to under such terms as *financial abuse*, *material abuse*, *fiduciary abuse*, *financial exploitation*, *financial mistreatment* or *maltreatment*, and *economic victimization*. In each case, the perpetrator misappropriates the assets of an elder for his or her own benefit through coercion, misrepresentation, or theft.

Current Florida statutes note that:

"(1) 'exploitation of an elderly person or disabled adult' means: (a) knowingly, by deception or intimidation, obtaining or using, or endeavoring to obtain or use, an elderly person's (or disabled adult's) funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who: 1. stands in a position of trust and confidence with the elderly person or disabled adult; or 2. has a business relationship with the elderly person or disabled adult; or (b) obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent. (2)(a) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at $100,000 or more, the offender commits a felony of the first degree. . . (b) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at $20,000 or more, but less than $100,000, the offender commits a felony of the second degree. . . (c) If the funds, assets, or property involved in the exploitation of an elderly person or disabled adult is valued at less than $20,000, the offender commits a felony of the third degree..."[9]

This statute indicating felonious intent requires that there is a knowing deception or intimidation, and places a heavy burden of proof on the state that whatever funds are transferred are not being given knowingly, voluntarily, or with proper intent. Many states require that the elderly person, who is the victim of financial exploitation, show some sign of diminished capacity. In these cases, it is necessary to prove that the victim is infirm because of advanced age, frailty, organic mental deterioration, and/or physical, mental, or emotional dysfunction. These impairments are taken legally to show that such an older person is defenseless and more vulnerable to the power and control asserted against him or her by the perpetrator, and are thus more easily exploited.[6] Factors predisposing elderly to undue influence are shown in Table I.[10-14]

Most states, in their elder abuse statutes, address the issue of whether the perpetrator should have reasonably known that his or her actions were exploitative or beyond what might be seen in normal commerce, and require those doing business with the elderly to apply a standard of "reasonable judgment" in determining that an older person may lack cognitive or emotional capacity to make specific financial decisions. It is often difficult, however, to legally define whether the financial interactions between two individuals, one of them being a senior, were conducted as a matter of routine

TABLE I

Factors Predisposing to Financial Exploitation[10-14]

- Advanced age (> 75)
- Female
- Unmarried/widowed/divorced
- Organic brain damage
- Cognitive impairment
- Physical, mental, or emotional dysfunction (especially depression)
- Recent loss of a spouse or divorce
- Living with abuser
- Dependence on abuser
- Living alone
- Social isolation
- Estranged from children
- Financially independent with no designated financial caretakers
- Middle- or upper-income bracket
- Taking multiple medications
- Frailty
- Fear of change of living situation (ie, transfer from home to institution)
- Implied promise by perpetrator to care for elderly person if funds or material goods are transferred
- Elderly person subject to deception (misrepresentation/concealment of information for selfish gain)
- Elderly person subject to intimidation (perpetrator induces dependency with fear of rejection if demands not met, or creates fear by threat of physical or emotional harm or abandonment)

business or were based on coercion. It is clear, however, that such coercion is common.

Heisler and Tewksbury[10] suggest that the prevalence of elder financial abuse approximates 12% of the population over age 65; other studies report figures as high as 50%.[11] In 1990, the U.S. House of Representatives Select Committee on Aging, studying data compiled from 24 states, believed that 20% of Americans who were the victims of elder abuse were victims of financial exploitation.[12] In a 1988 study reviewing 186,000 cases of elder abuse, the California County Welfare Director's Association found that 41% of abused seniors had been victims of financial exploitation.[13] Similar findings from a 1992 study in Canada showed that more than 50% of cases of elder abuse involved economic exploitation.[14]

The characteristics of male and female perpetrators who financially exploit older individuals are shown in Tables II and III.[6,15-17] The most pernicious predators are those who establish long-term controlling relationships with their elderly victims. These individuals tend to be sociopaths with malignant narcissistic traits who progressively breed fear and helplessness in their victims. In about one-third of cases, the perpetrator is a family member or close family acquaintance. The modus operandi is to offer themselves as a savior, healer, advocate, or protector and, over time, cause the elder to sever relationships with friends, business associates, and family, thereby isolating the "victim." They instill paranoia and suspicion in the victim to increase his or her sense of helplessness and dependency on the perpetrator. When the victims have been adequately brainwashed into believing that no one else cares for them or that the objects of their natural bounty are either helpless to positively effect their situation or, worse, are plotting against them, the perpetrator makes his or her ongoing support and "protection"

TABLE II

Characteristics of Male Perpetrators Who Exploit Elderly[6,15-17]

- Sociopathic or antisocial character disorder
- Developing a caregiver role
- Living with victim
- Being economically dependent on victim
- History of mental illness or substance abuse
- Often related to victim
- Has health problems

contingent on receiving increased financial control or remuneration.

These sociopaths often portray themselves as healers, spiritualists, housekeepers, financial advisors, guardians, or altruistic community members looking after the infirm. Police records show that they often exhibit a pattern of recurrent behavior, preying on victim after victim. Their characteristic modus operandi is to actively seek out disabled vulnerable victims, with the specific intent of exploiting them financially after establishing trust and confidence. These acts are criminal and predatory in nature and are predicated on the dominance and control of the helpless older person through psychological abuse, undermining self-esteem, diminishing self-worth, and providing deceitful information, intimidation, threats, and insults.[6,18]

TABLE III

Characteristics of Female Perpetrators Who Exploit Elderly[6,15-17]
Has some caregiving relationship to elderly person
Instills sense of helplessness and dependency
Isolates the elderly person from family members and other social contacts
Presents herself as protector of the elderly victim while isolating them from others
Enhances inadequacy and diminished self-worth in victim, making him or her more vulnerable
Often has history of multiple unstable relationships
Often falsifies credentials or embellishes personal power, role, or position
Opportunistic
Psychologically dysfunctional
Predatory
Antisocial with little regard for rights of others
Methodically identifies victims and establishes power and total control over them
Gains control of assets through deceit, intimidation, and psychological abuse

The typical sociopathic exploiter will identify a wealthy but vulnerable older person. Exploiters look for specific areas of impairment or vulnerability, such as a dependent personality, depression, cognitive impairment, physical frailty, or loneliness. They often attach themselves to victims by pretending to offer services or care until they have gained their confidence and trust. Once the victim becomes comfortable and dependent, exploiters enhance their control by isolating the victim from relatives and friends, often by restricting access through monitoring or restricting mail or phone calls, causing the older person to sever relations with friends and organizations, and implanting the idea in the victim that his or her relatives and friends are only there because they desire to exploit the senior. This enhanced sense of vulnerability and paranoia makes the victims more dependent on the perpetrator, whom they now see as their only protector.

Once this role has been established, sociopaths often insist that they start handling the victim's money, be paid excessive fees for their "services," or that they are put on the senior's bank account. They develop access to security boxes, begin to take possession of assets, and may work with unscrupulous attorneys to execute quick-claim deeds for property. They often establish further legal control by obtaining power of attorney or guardianship, or having themselves included in the victim's will. They often drain funds by having victims gift them large sums of money (commonly, annual amounts of $10,000 or more), and have the senior designate the money as a gift for IRS purposes. Psychologically, the enforced helplessness, dependence, fear, undermining of self-esteem, and unwillingness to effect change once the elder becomes trapped and dependent are similar to what occurs during cult indoctrinations and with hostages (Stockholm Syndrome). Additionally, older victims are controlled through use of overmedication, disruption of day/night schedules, sleep deprivation, or fraudulent information, which makes them suspicious of others whom they once trusted.

Older individuals, particularly those living in retirement communities, may also become the targets of professional swindlers who go door to door representing themselves as tradesmen, repairmen, salesmen, or representatives of various charities. They may, for example, tell an elderly widow that they have noticed her roof is sagging and in danger of collapse, provide her with a contract to fix it, bill or double-bill her for their services, and then exit without providing the work. Other scams include taking donations for charities; advising elderly that they are representatives of the federal government checking on the honesty of bank personnel and asking if they would assist by writing a check that can be followed through the bank system; or presenting themselves as representatives of a taxing agency, advising elderly persons that their properties will be foreclosed on if "taxes" are not paid. They provide them with a bill on formal letterhead showing payment due and collect the money at the scene. All of these scams require an authoritative presence and are most often perpetrated on senior citizens who are alone, lonely, impaired, or confused.

Another group of predators are legitimate business professionals who steal money from the elderly when they believe that their victims do not have the cognitive capacity to appreciate their losses. They tend to have established relationships with the victim or they work toward the development of trusting relationships by befriending the victim and assisting in his or her daily life. They cheat the victim through bogus financial advice, elaborate schemes, bogus investments, or misappropriation of funds that the business professional may be holding. This type of abuse is common among unscrupulous lawyers, financial advisors, insurance agents, and caretakers.

Those most likely to financially deceive elderly persons are family members, friends, and caregivers, who feel entitled to take funds because of their established relationship.

CASE REPORT

A 76-year-old woman became involved with an unlicensed "spiritual healer" during a bout of severe depression. Her husband of 40+ years was unsupportive of her and had been abusive. The elderly victim had come from an abusive, unstable, and poor family. She had left home during early adolescence. She had her first bout of major affective disorder in her early 20s and received inpatient care and electroconvulsive therapy (ECT). Her mood stabilized for a time and she married, but became despondent again. She had worked diligently her entire life in a professional capacity and had accrued a considerable fortune. Because two of her siblings were confined to mental hospitals, she became fearful that she also would spend her later years depressed, alone, and incarcerated in a mental hospital, drugged or undergoing an endless series of ECTs. Because of these fears, she was reluctant to seek psychiatric consultation.

While attending a seminar on spiritual healing, she was befriended by the perpetrator and became increasingly dependent on her. This "faith healer" advised her that she was an agent of God and that she had been sent to relieve the woman's suffering, but to do so the woman had to acknowledge her many faults and weaknesses, including her "addiction to money." The faith healer told her that she was a selfish, willful, stubborn, deceitful, immature, conniving, and controlling person who dominated others through her social position and financial wealth, and that she would never recover or find spiritual freedom as long as her money addiction persisted.

The faith healer made clear that all of her friends and acquaintances were out to cheat her and to take her money, and that they had no real interest in her well-being. The healer advised her that her son, from whom the woman had been estranged, wished her only ill because of her "nasty" personality. The faith healer began to see her for multi-hour sessions, charging excessive fees ($360/hr). Often, she would have her draw pictures or meditate while the faith healer was doing other things. The patient became increasingly isolated from all contacts and activities and totally dependent on the faith healer, who began demanding prepayment for her marathon therapy sessions. These prepayments would range up to $100,000. The faith healer began to demand gifts and extravagant travel, and that the woman use her influence to obtain privileges for the faith healer. Over four years, more than $3 million was taken from the patient.

During the course of "treatment," the faith healer employed techniques similar to those used by the North Koreans on U.S. servicemen and that, in another context, are termed *brainwashing*. She distorted reality, made the patient dependent on her, made her admit to profound character flaws, and isolated her by removing all "toxic and dangerous" persons from her life. The faith healer threatened to reject her unless she begged for redemption and forgiveness and agreed to turn over control to this "messenger from God." She was coerced to write dissertations on the virtues of the faith healer, itemizing her own weaknesses, failings, and shortcomings. She was forced to acknowledge that the faith healer was the only person who cared for her, loved her, could help her, or could keep her from spending the rest of her days in a mental institution, neglected and abused.

Her day and night patterns were disrupted. The faith healer ordered 6- to 10-hour therapy sessions beginning at 2:00 or 3:00 AM. When the victim's liquid assets were depleted, the perpetrator had her mortgage her properties. When the woman ran out of resources and had no further cash or valuables available, the faith healer ended the relationship in an acrimonious manner. The victim was fearful, ashamed, and guilt-ridden, but began to realize that she had been exploited and betrayed, and had an attorney file suit on her behalf. During the litigation, the faith healer contended that she provided valuable services of a spiritual and therapeutic nature, that her ministrations fell under religious purview and thus did not require state licensure, that money for presents and travel were willfully given, and that one check for $95,000 was a gift.

DISCUSSION

This case illustrates the six factors well defined by Dr. Margaret Singer as commonly present in cases of undue influence.[19,20] The spiritual healer created a sense of isolation, fostered a siege mentality, induced dependence, promoted a sense of powerlessness, manipulated the victim's existing fears and instilled new fears to create and enhance her sense of worthlessness and vulnerability, and kept the woman unaware and uninformed by the creation of a "pseudo-world," which the perpetrator controlled.

The predator set about isolating her victim and taking control of all means of communication. She advised the woman that no one cared about her and that it was dangerous for her to deal with friends and associates. She enhanced her fears of ending up in a mental institution and portrayed physicians as threatening. She emphasized that only she could keep the victim safe and cure her. Relatives were portrayed as cold and uncaring, and their motives were questioned. The elderly woman was told that if she trusted anyone other than the faith healer, she would end up in a hospital with no assets. Throughout her therapy, the victim was told that no one would deal with her because of her severe character faults and poor memory. She came to believe that only the faith healer had the power to help and protect her. The faith healer exploited the older woman's fears and fostered new ones—loss of independence, being abandoned, others taking assets, and being forgotten and alone in a mental hospital. The woman was discouraged from seeking effective treatment with her physicians and made to believe that only the spiritualist could or would care for her. The unusual mental process that ensued emulated those situations where victims develop strong emotional bonds for their aggressors. Such identifications occur between hostages and their captors, some incest victims and their abusers, physically abused children and their abusers, prostitutes and their pimps, and prisoners of war and their captors. In this case, the victim suffered from chronic depression and was lonely, fatigued, frightened, dependent, uncertain, and needy. She had been encouraged to divorce her husband of more than 40 years. After the divorce, she was even more alone, vulnerable, overwhelmed, and guilty. Clearly, the perpetrator had asserted her influence through coercion, deception, subterfuge, misrepresentation, and mental conditioning techniques that preyed on the woman's vulnerabilities and fears.

DEALING WITH UNDUE INFLUENCE

Forty-two states require mandatory reporting by health care professionals of suspected elder abuse. Colorado, Illinois, New Jersey, New York, North Dakota, Pennsylvania, South Dakota, and Wisconsin have voluntary reporting laws.[5,6] Several signs or symptoms should alert physicians evaluating patients for undue influence (Table IV).

Victims of undue influence often initially deny that any abuse has taken place and may try to stop any investigation of the perpetrator on whom they are dependent. The pseudo-reality of the situation blinds them and they are brainwashed into believing themselves at great risk if their valued relationship with the abuser should end. Often, as they begin to realize what happened to them, they feel foolish, but may be too ashamed to pursue any legal remedy.

If any members of a medical team suspect financial abuse, the case should be reported to state authorities such as the Department of Human Services. Other avenues include notification of the police, particularly if it is believed that the elderly person is in physical danger. To institute temporary guardianship or conservatorship one should contact senior advocates or make arrangements through a probate court to safeguard the elderly person's assets, property, or person.

Petitioning for an emergency temporary or permanent guardianship or conservatorship is an effective means of stopping undue influence and protecting an elderly person's assets. Communication with family is vital; often a trustworthy family member can be found who will accept responsibility and represent the person's best interest. If that is not possible, a public guardian may be appointed. Another option is to directly confront the abuser and make that individual aware that a professional is actively monitoring his or her behavior. During these discussions, it can be suggested that the perpetrator immediately return all gifts and loans to the victim if he or she wishes to eliminate suspicion of abuse. Such interventions may deter further inappropriate action, particularly if the perpetrator believes that a professional might initiate legal action.

If one has a longstanding relationship with the elderly person, a call to his or her attorney may be worthwhile. Alternately, the person's attorney can be

TABLE IV

Signs and Symptoms Suggesting Undue Influence

Elderly person's actions inconsistent with past longstanding values/beliefs
Older person making sudden changes in financial management that enrich one individual
Elderly persons changing their will or disposition of assets, belongings, property, and direct assets toward one who is not natural "object of their bounty"
Caretaker dismisses previous professionals and directs older person to new ones (eg, bankers, stockbrokers, attorneys, physicians, realtors)
Elderly person isolated from family, friends, community, and other stable relationships
Nonfamily caretaker has moved into the home or taken control of daily schedule
Older person directs income flow to caretaker (eg, Social Security, pensions, trust distributions)
Wills, living wills, trusts altered with new caretaker or friend as beneficiary/executor
Elderly person develops mistrust of family members, particularly about financial affairs, with this view supported by new friend, acquaintance, caretaker
Older person finds new caretaker guaranteeing lifelong care if he or she gives the caretaker his or her assets
Elderly person in relationship characterized by power imbalance between parties, with caretaker assuming restrictive control and dominance
Caretaker or friend accompanies elder to most important transactions, not leaving him or her alone to speak for himself or herself
Elderly person writes checks for cash, in round numbers or large amounts, or gives cash gifts to caretaker or caretaker's family
Older person increasingly helpless, frightened, despondent, feeling that only the caretaker can prevent his or her further decline
Elderly person sees acquaintance or caretaker as exalted, with unusual powers or influence

asked to attend a meeting with the suspected perpetrator. A letter from the attorney to the alleged abuser defining the state statutes concerning undue influence can be an effective means of halting abuse. If the relationship with a controlling perpetrator is disrupted, the health care professional needs to be cognizant that the victim may find his or her fears of abandonment suddenly realized and may be feeling increasingly vulnerable. It is essential that other supports and social contacts are offered to the patient so that he or she can develop new relationships with trustworthy caregivers. Many states have eldercare workers who are available to provide counseling and assist in these situations. If the pattern of exploitation is particularly egregious and the perpetrator appears sociopathic and predatory, criminal or civil lawsuits may be appropriate.

CONCLUSION

Undue influence of elderly persons is becoming an increasingly severe problem. Through fraud, duress, threat, intimidation, emotional manipulation, isolation, and other techniques that foster helplessness and dependency, unscrupulous perpetrators cheat vulnerable older persons out of their life savings. This trend is increasing because those older than age 50 now control at least 70% of the nation's household net worth. Wealthy older persons have become frequent targets for criminals and sociopaths who want to divest them of their assets.[21]

Legally, the concept of undue influence, particularly when it occurs to the competent elderly, is a contentious issue. It should be suspected when significant others or caretakers develop trusting relationships that isolate the victim; foster a siege mentality;

induce dependence; promote a sense of helplessness, hopelessness, or powerlessness; and manipulate the elderly person's fears or instill new fears and vulnerabilities. Early intervention and reporting can prevent devastating emotional and financial losses for older persons who have worked their entire lives to become financially independent.

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