Assessment of Undue Influence in the Elderly

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Learning Objectives

1. Participants will learn how forensic psychologists assess this issue

2. Participants will become familiarized with the main psychological/conceptual assessment models

3. Participants will learn about psychological factors which can increase susceptibility to undue influence

4. Participants will be provided information about common errors in psychological/medical assessment and testimony in cases in which undue influence is suspected
Grounds for Challenging a Will

1. Technical error
2. Mistake
3. Fraud
4. Duress
5. Insane delusion, and . . .
Lack of testamentary capacity.

(Lowest level of legal capacity)
• Know the nature and extent of his or her property;
• Know the natural objects of his or her bounty;
• Know and understand how the will disposes of the property;
• Have the ability to make a rational plan of disposition.
A will can be also be disallowed - because of undue influence.
Undue influence is alleged with diminished capacity.
Proof of undue influence requires showing
– Influencer substituted his wishes for testator’s.
Typical undue influence case:

*In re Estate of McCoy*, 844 P.2d 1131 (Alaska 1993)
Undue influence is difficult to prove.
Elements of Undue Influence
1. Susceptibility
2. Confidential relationship.
3. Active procurement.
4. Change in distribution of property.
5. Change unconscionable or not testator’s true desires.
Susceptibility
Confidential Relationship
Active Procurement
Change in the Plan of Disposition
Unconscionable Gift
• Indicia of Undue Influence
  – Active Role Procuring: Factual
  – Confidential/Fiduciary Role: Factual
  – Profiting Unduly: Factual
  – Unnatural Provisions: Factual and Clinical
  – Control Testamentary Act: Factual and Clinical
  – Mental or Physical Condition: Factual and Clinical
• Main Models for Assessment
  – Singer/Nievrod
  – Blum IDEAL
  – Bernatz SCAM
  – Brandle/Heisler/Stiegal
• Model Commonalities
  – Isolation
  – Dependency
  – Susceptability
• Common Conditions That Can Increase Susceptibility
  – Organic/Neuro (MCI, Dementia, Delirium, Stroke/TBI)
  – Functional (Psychosis, Mood Disorder
  – Situational (Bereavement, Relocation)
  – Non-Neuro Medical (Medication, Pain)
• Assessment Procedures
  – Comprehensive Record Review
  – Colatterals With No Dog in the Fight
  – Full Psychological Examination
    • Mental Status
    • Clinical Interview
    • Testing (Emphasis on Functional Assessment)
• **Common Errors**
  – Conflating Diagnosis with Capacity
  – Over-Reliance on Inadequate Data
  – Ignorance of Controlling Statutes
  – Overuse of Traditional Neuropsychological Testing