A. DUTIES OWED TO CLIENTS, 1. FIDUCIARY DUTY:

12: APPLYING THE FIDUCIARY DUTY TO A RECOMMENDATION TO PURCHASE PROPRIETARY LIFE INSURANCE

Frank, a CFP® professional, has a Client, Margaret, who is a single parent of two young children. Margaret is in her early 30s and works full time at a large technology firm. Margaret became Frank's Client after they met while serving together on the Board of Trustees at the school their children attend. Margaret tells Frank that she has started saving for her children's education but needs life insurance to provide for their care and education through college if she passes away before then. She asks Frank for his advice.

Frank is an insurance agent for Old Jersey Life who is appointed only to sell life insurance and annuity products. Frank is compensated by commissions and employment benefits. His agent agreement with Old Jersey requires him to offer only Old Jersey products. Frank fully discloses his Conflicts of Interest to Margaret and obtains her informed consent to the conflicts, including the limitations on the products and services he is able to offer.

Old Jersey is a financially sound, highly rated insurer that offers a variety of life insurance products, including term and permanent life insurance. Permanent life insurance accumulates cash value over time that the policy owner may use to fund a lifetime death benefit. Term insurance provides a death benefit only for a defined period. Premiums for permanent life insurance are usually higher than premiums for term insurance. Old Jersey is known for conducting periodic due diligence to ensure that its products offer highly competitive features and prices.

Frank conducts a careful analysis of Margaret's goals, risk tolerance, objectives, and financial and personal circumstances, and determines that a life insurance product would be in Margaret's best interest. He also analyzes Old Jersey's life insurance products. Based on that analysis, Frank concludes that term insurance is the best product for Margaret. Frank recommends that Margaret purchase an Old Jersey term insurance policy that is reasonably priced compared to other similar policies.

QUESTION:

Did Frank satisfy his Fiduciary Duty of Care to Margaret? (You may assume that Frank satisfied the Duty of Loyalty, including the Duty to Disclose and Manage Conflicts of Interest.)

RESPONSE OPTIONS:

A. **Yes. The Fiduciary Duty does not apply to insurance product recommendations.**

B. **No. Frank could not satisfy his Fiduciary Duty because he was obligated to recommend only Old Jersey products and thus could not recommend the best available product.**

C. **No. Frank did not satisfy his Fiduciary Duty because he recommended a term insurance product.**

D. **Yes. Frank satisfied his Fiduciary Duty because he analyzed Margaret's goals, risk tolerance, objectives, and financial and personal circumstances and the available Old Jersey life insurance policies, and recommended an Old Jersey term insurance policy that best met Margaret's circumstances.**

Best Response: Response D is the best response. This case involves the Fiduciary Duty (Standard A.1.) and the definition of Financial Advice (Glossary).

At all times when providing Financial Advice to a Client, a CFP® professional must act as a fiduciary, and therefore, act in the best interests of the Client. Financial Advice includes communications that, based on their content, context, and presentation, would reasonably be viewed as a recommendation to take or refrain from taking a particular course of action with respect to the advisability of investing in, purchasing, holding, gifting, or selling Financial Assets. "Financial Assets" include securities, insurance products, real estate, bank instruments, commodities contracts, derivative contracts, collectibles, or other financial products.

The Fiduciary Duty includes a Duty of Loyalty, a Duty of Care, and a Duty to Follow Client Instructions. The Duty of Care requires a CFP® professional to act with the care, skill, prudence, and diligence that a prudent professional would exercise in light of the Client's goals, risk tolerance, objectives, and financial and personal circumstances.

Here Frank has an Engagement with Margaret, and has recommended that Margaret purchase life insurance. Therefore, Frank has provided Financial Advice to a Client and thus must satisfy the Fiduciary Duty.

Margaret told Frank that she wanted life insurance that would provide financial security for the care and education of her children through college, and not for longer term purposes. Frank determined, based on Margaret's goals, risk tolerance, objectives, and financial and personal circumstances, that term life insurance was in Margaret's best interests. Under different circumstances, Frank might reasonably determine that another type of insurance would be in Margaret's best interests.

Frank then considered whether any of the available Old Jersey term insurance offerings would be in Margaret's best interests. Frank determined that he could reasonably recommend an Old Jersey term insurance policy because Old Jersey is a financially sound insurer and the cost of the term policy was reasonable compared to other similar policies.

If Frank determined that none of the available Old Jersey would be in Margaret's best interest, Frank would not be able to recommend an Old Jersey insurance product to Margaret. Under such circumstances, he would fulfill his obligation to act as a fiduciary by informing Margaret that she should purchase insurance elsewhere.

Here, however, Frank satisfied his Duty of Care by acting with care, skill, prudence, and diligence when he followed a process that was designed to assess Margaret's goals, risk tolerance, objectives, and financial and personal circumstances, to evaluate the insurance company and the available types of policies, and to select a policy that he reasonably believed was in Margaret's best interests.

Response A is not the best response because insurance products are Financial Assets, and Frank's recommendation that Margaret purchase an insurance product is Financial Advice that is subject to the Fiduciary Duty.

Response B is not the best response because Frank's ability to offer only Old Jersey policies is not, by itself, a breach of the Fiduciary Duty. This limitation on the products and services that Frank may offer does not prevent Frank from acting in Margaret's best interests by recommending, from among the reasonably available options, the policy that is the best match for Margaret, so long as the policy has reasonable features, is reasonably priced, and is offered by a financially sound insurer. In contrast, Frank would not satisfy the Fiduciary Duty if he were to recommend the least bad option from a menu of options that are not a good match for Margaret.

Response C is not the best response because the facts and circumstances will determine whether a term insurance policy recommendation satisfies the Duty of Care. One Client's circumstances will vary from that of other Clients. Therefore, a recommendation that is in the best interest of one Client may not be in the best interest of another Client.

Relevant Standards and Definitions: Fiduciary Duty (Standard A.1.) and the definition of Financial Advice (Glossary).