



FIDUCIARY

By James E. Wilson, CFP

The word “**fiduciary**” has become somewhat widely used of late in the financial services arena. Exactly what the term means is another matter. As an aside, through my service as President of The National Association of Personal Financial Advisers (NAPFA) and the Board of Governors of The Certified Financial Planner Board of Standards (CFPBS), I have been actively engaged in the debate about fiduciary duty for over 15 years. When I was on the CFPBS Board I attempted, unsuccessfully, to include the word and its meaning in the Code of Ethics. This finally occurred in 2004, some dozen years after I first pushed for its inclusion.

Why should any of this matter? Well, just as a physician has a clear position of trust in a patient relationship, consumers should expect the same type objectivity in financial services relationships. While there are many similarities between health and wealth, the financial services delivery system is not set up to deliver objectivity or trust. Instead, the marketing illusion known as “Wall Street” has at its core a basic maxim...create the “feel” of trust without actually delivering on the implicit promise. Brokers, a.k.a. financial consultants at banks, insurance companies and brokerage firms serve a system that does not place the consumer at the top. Rather, sales commissions and other incentives create a framework where the salesperson and customer are often at odds.

You may note that I used the word “customer”, not client. The dictionary says that a *client* is “one under protection of another”. This is similar to “patient”, “one under medical care.” Most of those who **pretend** to be financial consultants cannot actually provide protection because the manner in which they make money is usually contrary to what protection would offer. The word fiduciary represents the underlying principle of protection.

The nation’s brokerage firms were recently embroiled in a debate with the Securities and Exchange Commission over what has become known as the Broker Dealer/Merrill Lynch Rule. This rule provides an exemption from registration (and regulation) with the S.E.C. as long as the advice rendered in the brokerage setting is “solely incidental” to the sales/brokerage activities. Anyone over the age of 6 who can read the myriad of brokerage firm advertisements or watch the TV ads knows that brokers appear to offer objective advice. In fact, a TV ad for a major brokerage firm uses the words “objective advice” in its ad. The truth is brokers do not provide any “advice” other than that related to which products to purchase and such “advice” is far from being objective.

As I said at the outset, health and wealth are two incredibly important components of ones life. Consumers should be afforded protection in both realms without having to carefully navigate along a path littered with carefully nuanced terms and language. The use and misuse of the “F-word” is becoming widespread. I recently had an opportunity to sit in on a couple presentations by brokers to a non-profit board of which I am a member. One of the brokers said several times in his presentation that they were fiduciaries. I asked him if the firm would put that simple statement in writing and he said they would. A couple hours later the broker recanted and said they could not put this in writing but that they were fiduciaries to the extent that they picked the best managers. The more things change...the more they remain the same.

Brokers and other “advisers” are nothing if not adaptive. Consumers have been clamoring for “fee accounts” for years so brokers introduced “fee based” accounts where the trading costs are imbedded in the account and the brokers “fee” and the underlying managers fee are all wrapped into a single charge to the customer (usually 2-3% per year.) These accounts typically involve money managers that the brokerage firm has contracted to manage funds for their customers. The managers, by the way, typically receive less than one-fourth of the total wrap fee, which provides a clue as to where the brokers perceive the value. The brokers, by using this arrangement are essentially “sloughing off” their duty to protect to the manager who usually has no relationship with the customer and is thus in no position to protect.

TD Waterhouse published a study in November 2004 of U.S. Investor Perceptions. The study found significant confusion in the marketplace about the duties and roles of financial advisers and brokers. Among the findings in the study: “58% of investors believe that both stockbrokers and investment advisers have a fiduciary responsibility to act in an investor’s best interest in all aspects of the financial relationship.” Additionally, “63% of investors believe that both stockbrokers and investment advisers are required to disclose material conflicts of interest prior to providing financial advice.”

Participating in the financial services arena without a clear understanding of the distinction of roles and protections is fraught with danger. Physicians should demand that their financial relationships proceed under the same protection that they provide to patients. Anything less and your financial life could be imperiled.

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