



1 misappropriating funds in the amount of \$40,000 which Giannetti solicited and received from  
2 Steven Mocket in May 1993. The department further alleged that Giannetti, who was not  
3 licensed in Oregon as an insurance agent, violated ORS 744.051(1)(a) in five instances by  
4 soliciting and receiving insurance applications and submitting them to insurance companies  
5 under the signature of Michael DePaolo who was licensed in Oregon as an insurance agent. The  
6 department proposed to order Giannetti to cease and desist from transacting insurance in Oregon  
7 pursuant to ORS 731.252<sup>1</sup>. The department further proposed to assess Giannetti a civil penalty  
8 of \$6,000 pursuant to ORS 731.988<sup>2</sup>.  
9

### 10 ISSUES

- 11 1. Did Giannetti violate ORS 744.051(1)(a) in May 1993 by soliciting an annuity and by  
12 misappropriating \$40,000 he obtained from Steven P. Mocket?
- 13 2. Did Giannetti violate ORS 744.051(1)(a) by soliciting and receiving an application  
14 for life insurance from Edward L. Herenckx and submitting the application to First  
15 Colony Life Insurance Company (FCLIC) under the signature of Michael DePaolo as  
16 agent?
- 17 3. Did Giannetti violate ORS 744.051(1)(a) by soliciting and receiving an application  
18 for life insurance from Barbara L. Jeffries and submitting the application to FCLIC  
19 under the signature of Michael DePaolo as agent?
- 20 4. Did Giannetti violate ORS 744.051(1)(a) by soliciting and receiving an application  
21 for life insurance from Sue E. Wendling and submitting the application to FCLIC  
22 under the signature of Michael DePaolo as agent?

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21 <sup>1</sup> ORS 731.252(1) provides in part:

22 “Whenever the Director of the Department of Consumer and Business Services has reason to believe that any person  
23 has been engaged or is engaging or is about to engage in any violation of the Insurance Code, the director may issue  
24 an order, directed to such person, to discontinue or desist from such violation or threatened violation”

25 <sup>2</sup> ORS 731.988(1) provides:

“Any person who violates any provision of the Insurance Code, any lawful rule or final order of the Director of the  
Department of Consumer and Business Services or any final judgment or decree made by any court upon application  
of the director, shall forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount  
determined by the director of not more than \$10,000 for each offense. In the case of individual agents, adjusters or  
insurance consultants, the civil penalty shall not be more than \$1,000 for each offense. Each violation shall be  
deemed a separate offense.”

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2 5. Did Giannetti violate ORS 744.051(1)(a) by soliciting and receiving an application  
3 for life insurance from Michael D. Yochim and submitting the application to FCLIC  
4 under the signature of Michael DePaolo as agent?

5 6. Did Giannetti violate ORS 744.051(1)(a) by soliciting and receiving an application  
6 for health insurance from Barbara L. Jeffries and submitting the application to  
7 QualMed of Oregon Health Plan, Inc. (QualMed) and submitting the application to  
8 QualMed under the signature of Michael DePaolo as agent?

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10 **EVIDENTIARY RULINGS**

11 Exhibits 1 through 28 including 10A, offered by the department, were received into the  
12 record.

13  
14 **FINDINGS OF FACT**

15 Giannetti became licensed in Oregon as an insurance agent in approximately 1973. (Exs.  
16 2-3, 22-8). In March 1992, the department revoked Giannetti's Oregon insurance license for  
17 misappropriation of client's funds. (Ex. 4-11). In the Final Order, the Insurance Division  
18 Administrator noted,

19 "When Giannetti experienced severe personal financial problems  
20 he used the money innocently entrusted to him by his best friend's  
21 father, and converted that money to his own needs. Giannetti  
22 made no attempts at restitution until forced to do so by Arveson's  
23 attorney. From these acts and our inability to believe Giannetti's  
24 alleged remorse, we can only make one assumption. If Giannetti  
25 were allowed to keep his license and he experienced another  
personal financial need while in possession of the money of an  
unsuspecting purchaser of insurance, another 'unfortunate set of  
circumstances' would likely occur." (Ex. 4-9).

Following revocation of his Oregon insurance license in 1992, Giannetti maintained a  
business card listing "Giannetti Insurance Agency" (Ex. 7; testimony of Herinckx). Following  
revocation, Giannetti maintained listings under the heading "Insurance" in US West Yellow  
Pages (Exs. 17, 18; testimony of Mocket and Zafuto) and US West web site (Ex. 19; testimony

1 of Zafuto). Following revocation, Giannetti maintained a listing in an insurance quote service  
2 advertised in Money Magazine (testimony of Herinckx).

3 In 1994, Giannetti leased office space located at 3707 SE Milwaukie Avenue in Portland,  
4 Oregon and maintained the phone number from the office he occupied prior to license  
5 revocation. (Exs. 25, 2, 7, 17 and 18). In 1996, Michael DePaolo moved his business operation  
6 into Giannetti's office. (Exs. 16 and 21-9). DePaolo was licensed in Oregon as an insurance  
7 agent. (Ex. 1).

8 Steven P. Mocket first met Giannetti in the early 1960's when they worked together  
9 while they were college students. Giannetti served as Best Man at Mocket's wedding.  
10 (Testimony of Mocket). Over the years, Mocket purchased life insurance through Giannetti,  
11 visited Giannetti's business office and referred potential clients, believing that Giannetti was a  
12 licensed insurance agent. (Ex. 3; testimony of Mocket). Mocket observed DePaolo on the  
13 premises in Giannetti's office and overheard Giannetti and DePaolo discussing insurance  
14 business matters. (*Id.*) In 1993, Mocket's father passed away and Mocket inherited \$40,000  
15 which he intended to invest as his only retirement savings. (*Id.*) Mocket sought investment  
16 advice from Giannetti and Giannetti suggested purchasing an annuity which would yield 6  
17 percent interest with 10 percent advances available tax free. (*Id.*) On May 13, 1993, Mocket and  
18 Giannetti met at a bank to transfer funds for the purpose of purchasing an annuity. (*Id.*) At  
19 Giannetti's request, Mocket to made the check payable to "Giannetti Premium Trust Account".  
20 (Ex. 24; testimony of Mocket).

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22  
23 In 1996, Mocket requested Giannetti to withdraw 10 percent from the annuity in order to  
24 remodel the kitchen in his home. (Testimony of Mocket). After repeated requests and delays,  
25 Mocket contacted the department and learned that Giannetti was not licensed as an insurance

1 agent and there was no annuity. (*Id.*) Mocket brought a civil suit against Giannetti and  
2 eventually obtained a civil settlement. (*Id.*) In June 1997, Mocket complained to the  
3 department. (Ex. 3). The ensuing investigation revealed the following facts:

4           In the May 1994, Herinckx answered a quote service advertisement in Money Magazine.  
5 (Ex. 5; testimony of Herinckx). The quote service referred Herinckx to Giannetti as an Oregon  
6 licensed insurance agent. (Testimony of Herinckx). Herinckx telephoned Giannetti and they  
7 scheduled an appointment. Herinckx, his wife and Giannetti met in the Herinckx home twice.  
8 (*Id.*) In the first appointment, Giannetti provided a business card, conducted an interview, and  
9 filled out an First Colony Life Insurance Company (FCLIC) application for Edward Herinckx.  
10 (Exs. 5 and 6; testimony of Herinckx). Herinckx signed the application. (Ex. 5-1). In the  
11 second appointment, Giannetti delivered the policy application which was signed by Michael  
12 DePaolo as agent. (Ex. 5-1; testimony of Herinckx). Herinckx asked Giannetti who DePaolo  
13 was and Giannetti replied that he was an associate. Herinckx never met DePaolo. (Testimony  
14 of Herinckx).  
15

16           Barbara Jeffries (Garvey) has known Giannetti since 1964 and has purchased several life  
17 insurance policies through him over the years. (Testimony of Jeffries). In October 1994, Jeffries  
18 telephoned Giannetti to replace an existing policy that reflected increasing premium rates. They  
19 scheduled an appointment and met in Jeffries' home. Giannetti filled out an FCLIC life  
20 insurance policy application and Jeffries signed it. (Exs. 8 and 9). Michael DePaolo  
21 subsequently signed the policy application as agent. (Ex. 8-1, 8-7 and 9). Jeffries was aware  
22 that Giannetti and DePaolo had worked together in some capacity, but she never met DePaolo.  
23 (Testimony of Jeffries).  
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1 Michael Yochim has known Giannetti since the early 1970's when their children played  
2 on a baseball team. In May 1997, Yochim contacted Giannetti to replace an existing policy at a  
3 lower premium rate and they scheduled an appointment. (Testimony of Yochim). Yochim, his  
4 wife, Cynthia, and Giannetti met in Yochim's home. Giannetti interviewed the Yochims and  
5 filled out FCLIC applications for each of them. (Exs. 14 and 26). Michael Yochim and Cynthia  
6 Yochim signed the applications. (Exs. 14-3 and 26-16). Michael DePaolo subsequently signed  
7 the applications as agent. (Exs. 14-3, 14-5 and 26-16). Yochim never met DePaolo. (Testimony  
8 of Yochim). Yochim and Giannetti exchanged documents at Giannetti's office. Yochim asked  
9 Giannetti who DePaolo was and Giannetti replied that he was a business partner. (*Id.*)  
10

11 Sue Wendling has known Giannetti for twenty years and has purchased several insurance  
12 policies through him beginning approximately eleven years ago. (Testimony of Wendling). In  
13 December 1994, Jeffries contacted Giannetti to discuss two life insurance policies she had  
14 previously purchased through him. (Ex. 11; testimony of Wendling). They met in Wendling's  
15 dental office; Giannetti filled out an FCLIC life insurance policy application and Wendling  
16 signed it. (Exs. 11 and 12; testimony of Wendling). Michael DePaolo subsequently signed the  
17 application as agent. (Ex. 11-1). Wendling never met DePaolo. (Testimony of Wendling).  
18

19 In May 1998, Barbara Jeffries became self-employed and needed health insurance  
20 coverage. She contacted Giannetti; they scheduled an appointment and met in her home.  
21 (Testimony of Jeffries). Giannetti filled out a QualMed application and Jeffries signed it. (Ex.  
22 10-5). DePaolo signed the application as agent. (Exs. 10-5, 10-6, 10-8). Jeffries was aware that  
23 Giannetti and DePaolo had worked together in some capacity, but she never met DePaolo.  
24 (Testimony of Jeffries).  
25

1 DePaolo's check register from August through December 1994 shows several cash  
2 payments from DePaolo to Giannetti. On July 12, 1994, in check number 4201, DePaolo paid  
3 Giannetti \$400 with a balance forward of \$330.13. (Ex. 23-7). On July 29, 1994, in check  
4 number 4206, DePaolo paid to Giannetti \$610.82 with a balance forward of \$780.31. (*Id.*) On  
5 October 17, 1994, in check number 4236, DePaolo paid Giannetti \$370 with a balance forward  
6 of \$900.45. (Ex. 23-9). On November 16, 1994, in check number 4256 DePaolo paid to  
7 Giannetti \$300.00 with a balance forward of \$124.38. (Ex. 23-10). On December 23, 1994,  
8 DePaolo paid to Giannetti \$125 with a balance forward of \$1,672.36. (Ex. 23-11).  
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### 10 CONCLUSIONS OF LAW

11 The issues to be resolved in this sanction case are whether Giannetti's conduct in several  
12 instances violated ORS 744.051(1)(a). In this regard, the department bears the burden of proving  
13 the allegations by a preponderance of the evidence. *See* ORS 183.450(2) and (5); *Harris v.*  
14 *SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the  
15 burden is on the proponent of the fact or position.); *Cook v. Employment Div.*, 47 Or App 437  
16 (1980) (in the absence of legislation adopting a different standard, the standard in administrative  
17 hearings is preponderance of the evidence).

18 ORS 744.051(1)(a) provides:

19 “(1) Except as otherwise provided in this section, a person shall not  
20 act as an agent in this state with respect to a domestic risk unless  
21 the person:

22 (a) Holds a valid license or a temporary license issued by the  
23 Director of the Department of Consumer and Business Services  
24 that authorizes the person to act as an agent;”

25 The un rebutted evidence establishes that Giannetti violated ORS 744.051(1)(a) after the  
department had revoked his Oregon insurance license, by soliciting an annuity and converting

1 the funds to his personal use in one instance involving Steven Mocket. Furthermore, the  
2 un rebutted evidence establishes that Giannetti violated ORS 744.051(1)(a) by soliciting FCLIC  
3 life insurance policies after the department had revoked his Oregon insurance license in four  
4 instances involving Edward Henrinckx, Barbara Jeffries, Sue Wendling, and Michael and  
5 Cynthia Yochim. Additionally, the un rebutted evidence establishes that Giannetti violated ORS  
6 744.051(1)(a) by soliciting a QualMed health insurance policy after the department had revoked  
7 his Oregon insurance license in one instance involving Barbara Jeffries.

8  
9 In his department interview, Giannetti made several assertions that are not borne out by  
10 the facts presented. For example, Giannetti represented that he personally introduced De Paolo  
11 to his existing clients after his license was revoked. (Ex. 22-10). Giannetti specifically stated  
12 that DePaolo accompanied him to Wendling's dental office. (Ex. 22-27). However, Jeffries,  
13 Yochim and Wendling never met DePaolo. In the department interview, Giannetti represented  
14 that he had not had any business cards since 1992. (Ex. 22-26). However, Giannetti provided  
15 Herinckx, a new client, with a business card in May 1994. In the department interview,  
16 Giannetti denied that he sold any insurance policies after his license was revoked in 1992. (Ex.  
17 22-14). However, after the revocation, he maintained listings in the US West yellow pages and  
18 web site and with a quote service advertised in Money magazine. In the department interview,  
19 Giannetti claimed that the cash amounts DePaolo paid to him in 1994 represent repayment of a  
20 \$300 or \$400 loan that Giannetti had made to DePaolo plus \$125 monthly office space rental.  
21 (Ex. 22-15). However, Giannetti produced no documentary evidence to support his contention  
22 that he made a loan to DePaolo and I find the assertion not credible. Also, the dollar amounts  
23 listed in DePaolo's check register do not match Giannetti's representations. In light of the facts  
24 presented, the logical inference is that Giannetti and DePaolo entered into a business  
25

1 arrangement whereby Giannetti solicited insurance business despite his previous license  
2 revocation, DePaolo signed the applications as agent, and they split the commissions. The  
3 evidence establishes that Giannetti continued transacting insurance business in Oregon with both  
4 previous and new clients for a number of years after the department revoked his license.  
5 Moreover, as a former Oregon licensed insurance agent, Giannetti possessed knowledge of  
6 Oregon insurance regulations and did not transact insurance without a license innocently.  
7 Finally, Giannetti presented no evidence of any remorse for harm he caused to Mockett in  
8 converting \$40,000 for his own use. Under the circumstances, I conclude that the department  
9 established a *prima facie* case on the record supporting the allegations contained in the notice  
10 and that the sanctions proposed by the department are warranted.  
11

12 **ORDER**

- 13 1. Giannetti is ordered to cease and desist from transacting insurance in Oregon.  
14 2. Giannetti is assessed a civil penalty of \$6,000.

15 **IT IS SO ORDERED.**

16 Dated this 2nd day of November, 2001.  
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18 /s/ Catherine P. Coburn  
19 Catherine P. Coburn, Administrative Law Judge  
20 Hearing Officer Panel  
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1                                    **NOTICE OF OPPORTUNITY FOR ADMINISTRATIVE REVIEW**

2                    NOTICE: Pursuant to ORS 183.460, the parties are entitled to file written exceptions to  
3 this Proposed Order and to present written argument concerning those exceptions to the Director.  
4 Written exceptions must be received by the Department of Consumer and Business Services  
5 within 30 days following the date of service of this Proposed Order. Mail exceptions to:

6                                    Department of Consumer and Business Services  
7                                    Insurance Division  
8                                    C/o Cindy Jones  
9                                    350 Winter Street NE  
10                                    Salem, OR 97301-3883

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**CERTIFICATE OF SERVICE**