

Board asks high court to revoke doctor's license

By **Patty Decker**
Free Press Editor

The state Board of Healing Arts has asked the Kansas Supreme Court to lift a district court's stay of a revocation order on a Colby doctor's license.

Mark Stafford, the board's general counsel, filed a motion last week with the high court for writ of mandamus, which if granted, would reinstate the board's final order in August revoking the license of Dr. Victor H. Hildyard, 58, a family practitioner at Colby Medical and Surgical Center.

The board in June cited Hildyard as "professionally incompetent" and a danger if allowed to practice. At its August board meeting, the board voted to revoke his medical license. District Judge Jack Burr of Goodland stayed that order two days later, allowing Hildyard to continue working while appealing the suspension.

By appealing that order to the Supreme Court, the board in effect said the doctor is too much of a danger to patients to continue in practice. Hildyard's attorney disagreed.

The Colby doctor had been embroiled in controversy since the board of Citizens Medical Center first attempted to kick him off the hospital staff more than four years ago, in April 2002. The battle has divided the Colby community since. The fight shifted to the Board of Healing Arts when a complaint

was filed against the doctor in August 2004.

In the appeal to the high court, Stafford wrote that because the board has regulatory authority over doctors it licenses, it has an obligation to protect the public.

He said the board, in its final order in August, determined Hildyard practiced below the normal standard of care "to a degree constituting ordinary negligence on multiple counts."

Those instances, Stafford said, included dishonorable and unprofessional conduct; mismanaging two obstetrical cases, one of which ended in death of the fetus; giving eight patients steroids in amounts far exceeding standards; and signing blank patient progress notes.

In the appeal, Stafford claimed the district court did not have discretion to stay the revocation order, based on the judge's findings.

"This is not a personal attack," he said, "but procedural in that the rules were not followed in issuing the stay. The board is not making a personal attack against Dr. Hildyard, but rather protecting its rights within the letter of the law."

Mike O'Neal of Hutchinson, representing Dr. Hildyard, noted that in an initial order, the boards' hearing officer, Edward Gaschler, had cleared the doctor of any wrong doing in medical-related issues.

The board wrote that its members arrived at different findings, adding

Gaschler, a lawyer, does not possess any medical expertise while board members do.

"It was likely proper for him (Gaschler) to use the evidentiary standard," the board said in its final order, adding that the board is "entitled and expected" to rely upon its members' expertise in determining whether the record establishes practices below the normal standard of care.

O'Neal charged that the board's final order was a "valiant attempt to backfill" as a way to justify its vote to revoke the license in June.

He said one of the two obstetric cases dated back to 1998 and the steroid cases were from 2000-04.

"They substituted their judgment after only looking at records for the judgment of the hearing officer, who not only had the records, but saw and heard the witnesses," he said. "He found no deviation."

In the steroid cases, O'Neal said, the board claims Hildyard over-treated the patients.

"These are the cases our expert said were cases where there was no other effective form of treatment," he said, adding that Gaschler agreed these patients required the treatments.

"Not one resulted in a bad outcome from the steroids," he said, noting that some had end-stage diseases for which this was the only way to relieve the suffering.

"The board would take that away

from them."

In his appeal, Stafford noted that Judge Burr, in his order to say the revocation, ruled that he couldn't tell which party was likely to succeed based on the information he had, thus a hearing would be necessary to decide the issue.

O'Neal said the court did not believe a substantial threat existed from allowing Hildyard to practice.

Stafford; however, said the court did not have discretion based on the findings and that the judge did not satisfy all the elements to grant a stay in the first place.

Stafford, referring to state law, said those elements should have included:

- That the board was likely to prevail when the court finally disposed of the matter.

- Without relief, the doctor would suffer irreparable injury.

- The stay, allowing Hildyard to practice, would not substantially harm other parties.

- The threat to the public health, safety, welfare relied on by the board is not sufficiently serious to justify the agency's action in this circumstance.

"Those elements have not been met by the court and, therefore, the stay of revocation could not be prevailed on by the court," Stafford said.

"It is our understanding that the irreparable injury element is not economical, but again the court did

not base its decision on those elements in statute."

O'Neal charged that the board will "stop at nothing" to continue what he called its harassment of the doctor.

"Judge Burr made a specific finding that there was no basis to believe Dr. Hildyard was a danger to patients," O'Neal said. "Not once during the prolonged Board of Healing Arts complaint process was there any suggestion that Dr. Hildyard wasn't competent to practice medicine."

He said the board could have tried to limit or suspend the doctor's practice during the complaint process, but didn't use that procedure.

"The board's actions are desperate," he said, "and I'm not sure why they are pursuing this so aggressively when the Legislative Post Audit report that recently came out said they should be putting their re-

sources to better use."

Judge Burr said Monday that in his 28 years on the bench, this is the first case he has handled involving the Board of Healing Arts. He said the petition to the Supreme Court asks for an "extraordinary order" and unless the high court intervenes, a hearing set Tuesday, Nov. 28, involving Dr. Hildyard and the board will go forward.

Stafford said this is a "rare" petition and one that he has never forwarded to the Supreme Court, adding that he did so to protect the board and the letter of the law.

The Supreme Court can either throw out the petition, ask O'Neal to respond to the board's petition, rule on the technicality, or any other number of options, Stafford said.

As for how long it will take the Supreme Court rule, he said he had no idea.

Getting into wet fields can compact the soil

With the rain we had this past week and crops still in the fields, it is tempting to get into the field when the soil may still be on the wet side, but this can cause soil compaction problems.

Compaction can be compounded by large combines and loaded grain carts moving across the fields.

Compaction occurs when soil particles are pressed together, limiting the space for air and water. Water in the soil acts as a lubricant between the particles, making soil easier to compact. This causes ruts, leaving the soil surface rough and severe compaction below.

This can cause problems for next



**jeanne
falk**

• **agron notes**

year's crop and can increase runoff because of reduced infiltration. If the combines and grain carts aren't leaving ruts, the risk for compaction isn't as great.

Prevention is the best cure. Staying off wet fields is a good prevention tool. Another way of controlling compaction is to control the traffic pattern.

Eighty to 85 percent of the com-

paction is done with the first pass of traffic. Choosing larger tires, adding additional tires or choosing a tracked vehicle can reduce com-

paction.

Research has also shown that reducing ground pressure to a minimal (less than 12 pounds per square inch) can reduce both shallow and deep compaction. Though these results may be disputed, it is a good idea to minimize both axle loads and ground pressure.

Tillage can alleviate soil compac-

tion. The important thing to remember is the soil should be dry. If the soil is too wet, tilling might make things worse.

For best results, the soil has to be dry enough to easily shatter. The depth of the compaction needs to be determined, and the tillage taken below the compaction layer.

Normal freezing and thawing during the winter can sometimes break up compaction, particularly if the layer is near the surface.

Jeanne Falk is an area crop production and economics specialist for Sherman, Cheyenne and Wallace counties with Kansas State University Research and Extension.

matters of record

Goodland Police

The following crimes have been reported to the Goodland Police Department:

Oct. 15 — 6:45 p.m., 1104 E. 13 Apt. Village 1-10, unlawful hosting minors consuming alcohol and endangering a child. Juveniles involved, and case referred to county attorney to determine charges.

Oct. 16 — 4:12 p.m., 316 E. Second, arrested Justin Tesmer on three warrants. Case referred to city attorney.

Oct. 17 — 9:43 a.m., 1222 Syracuse, arrested Jermaine Tyrone Murray on a warrant. Case referred to city attorney.

10:26 p.m., 825 W. business U.S. 24, Apt. C4, Timothy Frecks reported at theft.

Oct. 18 — 3:36 p.m., 910 W. 17, a juvenile was taken into protective custody. Case referred to county attorney.

Oct. 20 — 8:43 a.m., 1417 Cherry, Melissa Mae Johnson reported burglary and rape.

9:52 a.m., 722 W. business U.S.

24, Motortown reported theft of an automobile.

1:11 p.m., 403 E. 19, Advance Auto Body reported criminal damage to property and theft.

11:30 p.m., 517 W. 9, arrested Cacha Hernandez for criminal threat against Sara Ayers. Case referred to county attorney.

11:45 p.m., 513 Walnut, Denise Archer reported criminal damage to property.

11:48 p.m., 215 Broadway, Andrea Wolak reported criminal damage to property.

Oct. 21 — 11:58 p.m., 615 W. 16, Sarah Pitcher reported criminal damage to property.

Oct. 22 — 2:49 a.m., 717 W. 10, report of battery and disorderly conduct. Victims included Angela Gano, Daron Hovis and Brady Neal. Case referred to city attorney.

Oct. 23 — 7:32 a.m., 210 E. 6, Ronald Lander reported criminal damage to property.

Real Estate

The following real estate transac-

tions were reported by the Sherman County Register of Deeds:

Carol A. Jaworski, successor trustee of Bernard Borgmann revocable trust to Virginia A. Warakomski trust, N20' of Lot 20, all of Lot 21 and S15' Lot 22, Block 3, Third Addition to the City of Goodland.

Monument Street Funding, LLC to Anthony S. Duraso and Katrina J. Duraso, Lot 20, Block 1, Eastridge subdivision of Academy Addition to the City of Goodland.

Davis Cattle Co., Inc. to Jeff Henderson and Anita Henderson, SW/4 Sec. 4, T10S R42W.

Debra L. Miller, Secretary of Transportation of State of Kansas to James L. Hayden and Judith A. Hayden, a tract of land in E/2 SE/4 Sec. 1, T9S R40W containing .06 acre more or less.

Debra L. Miller, Secretary of Transportation of State of Kansas to David R. Leonard and Lori A. Leonard, a tract of land in SW/4 Sec. 29, T7S R39W containing 2.01 acres more or less.

Debra L. Miller, Secretary of

Transportation of State of Kansas to Oscar Ihrig, trustee of Leola Ihrig trust, a tract of land in SE/4 Sec. 18, T7S R39W containing 1.3 acres more or less.

Debra L. Miller, Secretary of Transportation of State of Kansas to Homestead Heritage, L.P., a tract of land in SE/4 Sec. 6, T7S R39W containing 2.39 acres more or less.

Debra L. Miller, Secretary of Transportation of State of Kansas to Kenneth E. Davis and Janet L. Davis, a tract of land in SE/4 Sec. 7, T7S R39W containing 2.07 acres more or less.

Debra L. Miller, Secretary of Transportation of State of Kansas to Lowell A. and Thelma L. Chatfield, a tract of land in NE/4 Sec. 18, T7S R39W containing 3.91 acres more or less.

Debra L. Miller, Secretary of Transportation of State of Kansas to Robert L. Kinderknecht, a tract of land in S/2NW/4 Sec. 29, T7SR39W containing .27 acre more or less.

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Pol. adv. pd for by Janet Craft, Sherman Co. Republican Treas.

New Listing...

1116 Cherry St. Lots of living for a small price, this 1 1/2 story 4 bedroom 2 bath home offers new carpet, linoleum and paint throughout. Bathrooms have been redone as well. This home also has a new front porch, exterior paint and a large yard, located close to schools. Priced to sell quickly at \$35,000. Call listing agent, Cynthia Butts for your showing 800-974-2426 or visit www.cynthiabutts.com

Offers Wanted....1533 Clark

No reasonable offer refused on this 3 bedroom 1920's traditional style home. Offers hard wood floors and original woodwork throughout, formal living and dining areas, newer oak cabinetry in kitchen and large utility room. Also offers unfinished basement and large 2nd floor den/office. Outside you'll find plenty of yard, alley parking and mature landscaping. Priced at \$69,000. Contact Cynthia for your showing or visit www.cynthiabutts.com

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