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**Medicine in Kansas,  
1850-1900  
(Part II)**

by

**Larry Jochims**

*The Emporia State Research Studies*

EMPORIA STATE UNIVERSITY  
EMPORIA, KANSAS

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## Medicine in Kansas, 1850-1900 (Part II)

by  
Larry Jochims\*

### Introduction

Regular medical physicians, called allopaths by their critics, comprised sixty-four percent of the 2,060 state practitioners reported in the registration by the Kansas Board of Health for 1893. Those known as eclectics numbered 296 (fourteen percent), homoeopaths\*\* 198 (ten percent), and the other twelve percent were "irregulars," mainly from Thomsonian and other botanico-medical groups, and concentrated mainly in rural areas. Evidence seems to support the contention that there were many more botanic practitioners than those who registered. Many of the old botanic practitioners had little or no formal education and were wary of government registration for any reason.

As reported in the earlier issue of *The Emporia State Research Studies* (Fall, 1979), Kansas offered fertile soil for the growth of the three major nineteenth-century medical sects, the Thomsonians, Homoeopaths, and Eclectics. The Thomsonian movement was the first of the organized botanico-medical groups in the United States to challenge orthodox nineteenth-century medical practice. Thomsonianism, beginning as a social-medical movement, by 1840 had been transformed into a botanic cult. The inability to grasp the implications of new scientific developments and the lack of decent education by its practitioners doomed Neo-Thomsonianism, although numerous representatives still existed in 1900.

Homoeopathy, founded in 1870 by S.C.F. Hahnemann, was based on the theory that certain diseases could be cured by giving very small doses of drugs which in a healthy person and in very large doses produced symptoms similar to those of the disease. It was

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\*This study originated as a Master of Arts thesis in history at Emporia State University under the direction of the editor. The author is Research Historian, Kansas State Historical Society, Topeka. The author wishes to especially acknowledge with appreciation the assistance of the Kansas State Historical Society; the William Allen White Library, Emporia State University; Dr. Charles Hopper and the Flint Hills Medical Association for their work in locating and making available records of the Lyon County Medical Society; and the Newman Memorial Hospital Medical Records Department, Emporia, Kansas.

\*\*This spelling, the usual one in the nineteenth century, is used in the text of this issue.

Larry Jochims's "Medicine in Kansas, 1850-1900" was published in *The Emporia State Research Studies*, Vol. XXVIII, Number 2 (Fall, 1979). He described medical practice in Kansas during these fifty years as a combination of scientific medicine, old therapeutics, and new therapeutics. He wrote about those practicing regular therapeutics (called allopaths by their critics) and the great profusion of medical sects from 1850 to 1900 — eclectics, homoeopaths, and the botanico-medicals. This earlier study also looked at the several attempts by the various medical groups to reach agreement concerning their professional relationships and their ultimate failure to gain consensus.

Jochims concludes his study in this issue with attention to the need for medical legislation, response to this need, and the widespread use of proprietary therapeutics — people prescribing their own treatment through the use of "patent medicines."

W.H.S.

Hahnemann who gave regular physicians the title of allopath. Considered the opposite of homoeopathy, allopathy meant the treatment of disease by remedies that produce effects different from or opposite to those produced by the disease.

Wooster Beach, also critical of the heroic therapeutics of the regulars, formed the eclectic practice of medicine in the 1820's. Because of his acceptance of the botanical practice of Thomsonians, Indian doctors, and other sources, he called his practice eclectic.

Eclectics, largest of the three groups, and homoeopaths had strong medical associations. They frequently came into violent conflict with the regular school of medicine. It was one of these contests that forced the repeal of the 1879 act to regulate the practice of medicine in the state. Realizing that there was no effective legislation to regulate medical practice and that quackery was widespread, attempts were made toward reconciliation. Superficial shows of camaraderie hid an undercrust of prejudice and suspicion. The need for regulatory legislation was apparent to members of the various sects and in their best interest. In the drafting of such legislation, however, no one seemed to agree on the details. Yearly proposals were made to the legislature, but Populist opposition and sectarian disagreements doomed each to failure. It was 1901 before Kansas gained effective professional medical legislation.

The use of proprietary therapeutics — "patent medicines" — grew steadily throughout the late nineteenth century. Although the advertising was persistently misleading and ingredients often dangerous, their use continued. Again, regulation was deferred to the twentieth century.

## I. NEED FOR MEDICAL LEGISLATION

The latter half of the nineteenth century was the high water mark in unregulated medical quackery and empiricism. Although supported by most educated physicians, whatever their school of practice, effective medical legislation in Kansas was not enacted until 1901.

Quackery is a difficult concept to define in reference to nineteenth-century medicine. Many homoeopaths, eclectics, and regulars claimed, at times, to have knowledge or skill in a particular field that they simply did not possess, although they are not usually considered quacks. For the purpose of this study, a quack is defined as one who is a fraudulent or incompetent practitioner of medicine,

one who makes pretentious claims with little or no foundation or resorts to cheap and degrading methods in his work.

Physicians delineated many different types of quacks. The bold type, who eventually came to believe in his own skills, was a migrant. He may have obtained his start by reading the glaring advertisements of some "Chinese herb doctor" or some similar practitioner. Upon securing a second-hand manicure set, he might commence his professional career as an itinerant chiropodist. As the money started to come in, he found that the practice of medicine was his ticket to a comfortable living. The bold-type quack stayed only one night in a town, but was always able to gather a curious throng of willing listeners. After showing the value of his remedy, often with the aid of an advance man in the crowd, and the broad spectrum of diseases it was guaranteed to cure, the crowd pressed together eagerly trying to secure a package before they were all gone. He then could move on to the next unsuspecting town.

The second type of quack might act with a little more tact and dignity. He often had the benefit of a common school education and was able to circulate his promises via printed handbills. This second type of quack purports to come from one of the leading cities of the country where he had a large and lucrative practice. His private fees were much lower than those of his city practice, he claimed, because he was simply on an advertising trip. In fact, they were quite exorbitant compared to those of a resident physician. On the third or fourth day of his stay, testimonials were usually obtained from prominent citizens, attesting to the cures he had accomplished for them. Afterward, he rushed from call to call, at all hours of the day and night, and the money flowed in. It was not difficult to earn in two months the salary a regular physician earned in a whole year.

The third type was the resident quack. He sometimes claimed to be a great specialist, but more often announced himself able to perform cures for all diseases. Although eventually many lost faith in him, there were always more new patients who read his alluring promises in the daily papers and took up the slack.<sup>1</sup>

The smells of the garbage heap, cesspool, and privy vault warned of their dangers to public health. What could warn the unsuspecting victim of the quack? There were few guidelines. Dr. W. L. Schenck agreed that a quack could be found in any school, but did

<sup>1</sup>Kansas State Board of Health, "Report of the Delegates to the American Public Health Association Meeting," *Seventh Annual Report of the State Board of Health of the State of Kansas From January 1, 1891 to December 31, 1891* (Topeka: Hamilton Printing Company, 1892), pp. 70-71.

not feel comfortable in one which stood for education and whose members kept pace with progress. In the regular school, a quack was either a young man who felt he knew it all or else an old man who knowing it all in his youth never found anything else to learn. Schenck saw the second type as worse than the first. Naturally, he thought that the irregular schools had the majority of quacks.<sup>2</sup>

One of the most popular of the nineteenth-century medical shams was magnetic healing. Its developer, Elisha Perkins of Yale College, was a reputable physician who thought he was contributing something beneficial to medical science. Perkins noted that there was no pain when he applied metal to a patient's gums during a tooth extraction. From this, he reasoned that he was able to create an "animal magnetism" by stroking afflicted parts of the body with the metal rods. This stroking would cure many illnesses, especially rheumatism. Perkins patented his metallic rods in 1796. He went on to become quite successful, despite tests done by various other physicians proving the fallacy of his method.<sup>3</sup>

Doctor F. C. Dillings moved his practice from Iowa to Topeka in 1897. Dillings advertised himself, "America's most gifted magnopathic physician and founder of Dr. Dillings' famous healing institute of Hornellsville, New York." Dillings claimed to have the gift of healing for all diseases, weaknesses, and infirmities, and had thousands of testimonials on file in his office to prove it. He offered \$500 to anyone who could show that a single letter was not genuine.<sup>4</sup>

The American School of Magnetic Healing was proposed for Emporia by Mr. and Mrs. M. M. Pendroy, C. E. McCrery of Emporia, C. E. Fauble of Topeka, and J. M. McCrery of Illinois. Although we have no indication of Professor Pendroy actually offering classes to the general public, such classes were advertised to start November 27, 1899.<sup>5</sup> Pendroy and his associate, C. E. McCrery, did promise to treat and cure neuralgia, rheumatism, catarrh, paralysis, all female diseases, mental depression, deafness, varicose veins, fistula, constipation, stomach trouble, and diarrhea. If a cure was not forthcoming, all money was refunded. Pendroy and his associate were graduates of the Weltmer Institute and practiced the Weltmer method of magnetic healing. With the Weltmer method, "absent treatment" was possible. The patient could be thousands of miles

<sup>2</sup>W. L. Schenck, "Quacks and Quackery," *Kansas Medical Journal* 4 (October 1892): 736.

<sup>3</sup>Mike Moore, "Caveat Emptor," *Ohio State Medical Journal* 56 (1960-61): 1484.

<sup>4</sup>"Magnetic Treatment," *Topeka Daily Capital*, January 4, 1885, p. 6.

<sup>5</sup>"A Suggestion to the Sick," *Emporia Gazette*, November 22, 1899, p. 4.

away from the physician. This magnetic healing worked its miracle by creating new blood and healthy secretions throughout the body. With blood that was pure, perfect in quantity, quality, and circulation, one simply could not have a disease. As an added attraction, the Emporia Institute had a lady operator of "exceptional powers." She was also a graduate of the Weltmer Institute and worked only with female patients.<sup>6</sup>

One need only peruse the daily newspapers of the late nineteenth century to find many "specialists" using advertisements. The majority seemingly specialized in the "private diseases," such as venereal disease, female complaints, the spermatorrhoea. Quite popular in the Topeka area in 1890, was Dr. W. H. Early, who set up shop at 731 Kansas Avenue. Early was reportedly "the oldest and most successful specialist in the west . . . [and] has had thirty years experience in the treatment of nervous debility, spermatorrhoea, impotency etc." He was also quite competent to cure other blood and skin diseases, eye, ear, lung and throat troubles, urinary, kidney and bladder problems, female complaints, and was the agent for German Electric Goods. His spermatorrhoea specific and female regulator could easily be obtained through the mails at a price of three dollars per bottle.<sup>7</sup> Periodically Dr. Early would bring other specialists to Topeka for the benefit of his patients. On Friday and Saturday, January 17 and 18, 1890, for example, Dr. Early shared his office with Dr. F. R. Boyd of St. Joseph, Missouri. Dr. Boyd was a "rectal specialist" with sixteen years experience.<sup>8</sup>

Dr. William Gray and his wife, Dr. L. M. Gray, started practice at Wichita in 1875. Mrs. Gray was classed as an obstetrician, but her main income came from the variety store which she operated in their office. William Gray promised to cure clubfeet, hairlips, and cross-eyes, if called in time. If no cure was obtained, Dr. Gray simply told the patient that he should have been called sooner. The Grays eventually moved to St. Louis, where he became a partner in the Pullman company and gave up medicine.<sup>9</sup>

Roland Fillmore, who practiced for many years in Blue Rapids, was repeatedly called in on cases after the attendance of local quack physicians. One such quack, who called himself a homoeopath, had originally been a carpenter who concluded that he could make more

<sup>6</sup>"A Victory Over Disease," *Emporia Gazette*, October 3, 1899, p. 4.

<sup>7</sup>"Dr. W. H. Early's Private Dispensary," *Topeka Daily Capital*, January 4, 1890, p. 5.

<sup>8</sup>"At Dr. W. H. Early's Office," *Topeka Daily Capital*, January 9, 1890, p. 8.

<sup>9</sup>Howard C. Clark, *A History of the Sedgwick County Medical Society* (n.p., 1951), p. 21.

money in the practice of medicine. His total preparation consisted of the purchase of three medical books and the painting of a sign. This "homoeopath" was quite popular, for he would travel ten miles into the country and only charge one dollar. On one particular occasion, a different local quack had attended a woman in labor for twenty-four hours. The woman had given birth five previous times without complications, but in this instance the physician had pronounced the baby's head too large and had taken a paring knife, wrapped a string around part of the blade and opened the head of the child in order to facilitate an easier removal. Fillmore rightly questioned a legal system that had no penalty for such a deed.<sup>10</sup>

The lack of any substantial knowledge of human anatomy on the part of many physicians shocks today's reader. Albert Krug, while a medical student, was asked to accompany the local physician on a case. Krug remembered how enamored he had always been with the high silk hat and Prince Albert coat the physician always wore and the fine pair of black horses that pulled his polished buggy. He was greatly shocked when the doctor told him they were going to treat a woman with prostatic trouble.<sup>11</sup> Dr. W. T. Wiseman of Burlington was called to the bedside of a Welsh girl, where he met Dr. K. D., eclectic, and Dr. J. D., homoeopath. Doctor J. D. explained that it was a bad case where the girl's intestines were protruding through the vagina for more than six inches. As the other two scurried about in an attempt to locate instruments, Dr. Wiseman examined the alleged intestines, which had been covered with cloths soaked in warm water. After the examination, Dr. Wiseman delivered a dead foetus.<sup>12</sup> A Wichita physician undertook a goiter operation in the 1870's. The operation took place in a carpenter shop where the carpenter's workbench served as an operating table. The assistants were some of the other physicians of Wichita, and the spectators consisted of the neighbors and hangers-on about the nearby saloon. The physician arrived a little late and quite drunk, as was his habit. There were some that even felt he did his best work that way. As the operation progressed, the trachea was inadvertently opened and attempts at repair proved unsuccessful. In spite of the whistling sound of the air passing in and out of the accidental tracheotomy, the patient went on to a successful recovery.

<sup>10</sup>Roland Sherlock Fillmore, *Life and Experience of a Country Doctor in Kansas* (Long Beach, Calif.: By the Author, 1936), pp. 29-30.

<sup>11</sup>Albert Arthur Krug, *Facts and Fancies* (Coffeyville: C. C. Drake, 1944), pp. 21-22.

<sup>12</sup>W. T. Wiseman, "A Most Remarkable Case," *Leavenworth Medical Herald* 6 (December 1872): 73.

The surgeon is said to have remarked later that he had "opened the fallopian tube so he could breath better."<sup>13</sup>

Herb specialists were quite common on the plains. Coffeyville had Coosie Hayes, part Indian and part black, who peddled his "Indian Medicine" throughout the area. His largest clientele was located in Dodd City, a black settlement in the eastern part of Coffeyville.<sup>14</sup> Another with a more interesting history was Jason W. Gay of Winfield. Gay was born in a Miami Indian village on the Wabash River where his father practiced herbal medicine among the Miami and Delaware. His mother was half-Miami. Gay joined the Pawnees on the Missouri River in 1854 and fought many battles against the Sioux. It was with the Pawnees that Gay started his own practice of medicine, using the knowledge of herbal medicines obtained from his father. In 1859, he returned to Illinois in order to get an education, and later fought in the Civil War. After a short stint as a prisoner in Andersonville, he was exchanged and returned to the practice of medicine. He finally settled in the Winfield area where he sold his Indian remedies and practiced his particular brand of medicine.<sup>15</sup> A similar doctor practiced in the area around Caney. Whenever a bottle of his herbal concoctions lost a label, it was dumped into a larger bottle set aside for that purpose. When a patient had a disease that he could not diagnose, the doctor gave the patient medicine from this bottle. It was sure to cure anything.<sup>16</sup>

Hydrotherapeutics, or the water cure, was extremely popular in the nineteenth century. Medical experts were often at odds as to the therapeutic value of the treatment. Merrill springs was one of the largest mineral springs. It was located fourteen miles south of Topeka and one mile north of Carbondale. The owner of the spring, M. D. Merrill, had a sample of the water analyzed by chemist Albert Merrell, who reported:

	Grains per gallon		Grains per gallon
Calcium Carbonate	8.00	Silica	1.50
Iron (Ferrous) Carbonate	0.70	Organic and Volatile Matter	0.89
Magnesium Sulphate	19.40	Traces of Lithium, Potassium, Amonia Magnesium	
Calcium Sulphate	5.16	Carbonate	4.52
Sodium Sulphate	102.60	Total Solids	77.26
Sodium Chloride	132.44		
Alumina	2.00		

<sup>13</sup>Clark, *History of Sedgwick County Medical Society*, p. 45.

<sup>14</sup>Woman's Kansas Day Club, "Pioneer Medicine in Kansas," n.p., 1956 (Typewritten).

<sup>15</sup>"Dr. Jason W. Gay: Indian Herb Specialist of Winfield, Kansas." in *Kansas Scrapbook: Biography*, vol. 2, p. 110, located at Kansas State Historical Society.

<sup>16</sup>Lloyd W. Graves, *The Unfolding of the Scroll* (Caney: Caney Chronicle, 1971), p. 53.

Chemist Merrell stated he "would include the water under the head of saline purgative springs, but the composition is so peculiar that it is difficult to use a single term that will cover its properties." Evidently the purgative salts were present only in such amounts as would produce a gentle cathartic effect unless the person was very susceptible to them. This mild cathartic action of the water was heralded as an "invaluable agent" in the treatment of all diseases of the digestive tract. Dr. J. D. Wood of Waveland, according to testimonial letters, had great success with his patients who used the spring. One such patient, Mrs. Burton of Auburn, prior to treatment had been confined to her bed thirteen months on account of spinal disease. She had frequent convulsions, lasting from a few minutes to ten hours. Her limbs were so paralyzed that she could not move in bed alone. Her bladder and bowels were paralyzed to the extent that a catheter and purgatives were indispensable. Her tongue was paralyzed for days at a time so that no one could understand her. After initial treatment, the pills, syringe, and catheter were laid aside as no longer necessary. In five to six months, Mrs. Burton reportedly recovered the use of her right side, fanned herself, walked without assistance, and visited friends whenever the opportunity presented itself. The spring also boasted of the Hawley House, a finely furnished hotel, for the comfort of its patients.<sup>17</sup>

The Eastern Kansas District Medical Society, meeting in Carbondale on April 9, 1889, passed a resolution "commending the efforts of the proprietors of the Merrill Mineral Springs in developing the virtues of the water and establishing a pleasant sanitarium for invalids." Advertisements on behalf of the spring announced that the vote had been unanimous, when in fact support for the resolution was a heavily debated topic. Dr. Schenck, in discussing the issue, felt that the value of the spring lay more in the fact that the resort provided an opportunity for rest than any therapeutic value of the water. Dr. Burdick, on the other hand, saw no value in sending patients to Europe for water cures when Carbondale's mineral water cured many that European spas did not.<sup>18</sup>

In order to survive in a competitive business, the operator of a mineral spring had to convince people that his particular water had more and better health-giving minerals than the competitors. Sulpho Saline Sanitarium in Fort Scott guaranteed that their sulpho-

<sup>17</sup>"Advertisement," *Kansas Medical Journal* 1 (May 1889): 32.

<sup>18</sup>"Society Proceedings," *Kansas Medical Journal* 1 (May 1889): 30.

saline water acted immediately upon the blood when taken into the stomach and completely purged the blood of all impurities. It permanently cured nasal catarrh, rheumatism, scrofula, cancer, old sores, syphilis, gonorrhoea, granulated eye-lids, piles, salt rheum, exzema, all skin diseases, indigestion, lost manhood, and all female disorders. More than 3,000 patients reportedly received permanent cures in a twelve-year period 1886-1898. Many of these patients had formerly been treated at Hot Springs, but found themselves little better upon returning than when they went. Manager of the Sulpho Saline Sanitarium, F. W. Herweg, attributed this to the fact that Hot Springs water had only heat for a therapeutic value. He also claimed that Hot Springs physicians saturated their patients with mercury and "the various salts of potash," which left the patient a "hopeless wreck." Invalids contemplating a trip to Hot Springs were advised to test the sulpho-saline water of Fort Scott. An analysis of the Fort Scott water, which Herweg supplied, made by Kansas University at Lawrence, listed the following ingredients:<sup>19</sup>

	Grains per gallon		Grains per gallon
Hydro-Sulphide of Sodium	0.188	Bicarbonate of Magnesia	.305
Chloride of Soda	79.471	Bicarbonate of Iron	30.006
Biborate of Soda (Borax)	2.264	Silica	.951
Chloride of Potassium	trace	Organic Matter	1.166
Chloride of Magnesia	7.987	Chloride of Lithium	trace
Chloride of Calcium	.780		109.132
Sulphate of Lime	.820	Sulphurated Hydrogen Gas	quantity
Sulphate of Soda	trace	Carbonic Acid Gas	quantity
Bicarbonate of Lime	14.238	Temperature of Well	67¼

Many ordinary citizens could not afford the rates charged by the sanitariums and mineral springs. The government, in order to help out, provided a bath house at Hot Springs free to the poor. The *Kansas Medical Journal*, in discussing the issue, felt that the government had a duty to also provide a resident physician for the poor. From 200 to 400 "creatures" bathed every day in a pool twelve-by-eighteen feet. There was high danger of contracting a worse disease than the one requiring treatment.<sup>20</sup>

Passage of the Kansas prohibition law of 1881 gave rise to a large increase in the number of people precribing and dispensing

<sup>19</sup>*Chittenden's 1898 Emporia City Directory* (St. Louis: Chittenden Directory Company, 1898), p. 86. This information was in an advertisement.

<sup>20</sup>"The Government Bath House," *Kansas Medical Journal* 6 (December 1894): 627-28.



alcohol. Druggists could obtain permits to sell "intoxicating liquors for medical, scientific and mechanical purposes." In the first decade after passage of the law, over twenty such permits were issued in the Hays City area alone. This number might not be alarming unless one noted that only three druggists had set up a business in that area in the whole period of 1867-1881.<sup>21</sup>

Doctor Clover lived west of Caney and developed a large practice after the passage of the 1881 law. Clover had a meager education and could neither read nor write. To fill out a prescription blank he would draw a picture of a bottle with a line across it, indicating the amount of alcohol the patient was to be given. The patient, if he could write, would sign the doctor's name and the doctor would make his "X" next to it. Clover reportedly wrote a barrel of these prescriptions in a brief time.<sup>22</sup>

The state sanitary convention, held in 1887, reviewed the *Record of Liquors Sold* belonging to one of the five drugstores in a town of 4,000 inhabitants. The ledger covered the period March 1 to December 1, 1887. Many of the prescriptions recorded in the book were written for the physician himself. So much alcohol was prescribed in so short a time, by so many new physicians, that these new physicians became known as "prohibitory-law doctors" or "Kansas-made doctors." While there was usually much more sickness among women and children than men in most communities, the sanitary convention noted that out of 1,260 prescriptions written for this drugstore, all but 78 were for men. The amount prescribed in each case was from one to eight quarts of beer, and from a pint or less of other alcoholic beverages. Doctor (A) commenced patronizing the store in question on March 22, when he prescribed for himself a half-pint of whisky for cold; on the twenty-fourth, two quarts of beer for malaria; on the twenty-fifth, one-fourth of a pint of alcohol for cold; April second, a half-pint of whisky for cold; eighth, a half-pint of whisky for asthma; ninth, two quarts of beer for malaria; thirteenth, a half-pint of whisky for cold; eighteenth, one pint of alcohol for chills; and twenty-eighth, two quarts of beer for malaria. The prescriptions continued by adding to the list of maladies: indigestion, colic, bronchitis, sprain, sore throat, cramps, and diseases of the lungs, all of which required three quarts of alcohol, five quarts of whisky, and twenty-five bottles of beer.

<sup>21</sup>Annie Chadwick Gilkerson, "Druggist James O'Brien: One of the Good Guys," *Hays Daily News*, February 6, 1972, in Blain E. Burkley's *Historical Clippings About Hays*, p. 13, located at Kansas State Historical Society.

<sup>22</sup>Graves, *Unfolding of the Scroll*, p. 53.

Another physician had prescribed for himself, in a three-month period, 100 bottles of beer and two and one-half quarts of whisky. In reviewing the tabulation of diseases in which alcohol was prescribed, it seems that "debility" heads the list. It required a prescription of alcohol 5 times, beer 176 times, brandy 23 times, whisky 74 times, wine 25 times, and gin 1 time.<sup>23</sup>

Legislation requiring the registration of vital statistics pointed out more than anything else the low quality of some Kansas practitioners. An unnamed county health officer reported to J. J. Redden, secretary of the State Board of Health, that he had on file a death report which it stated that the cause of death was "heredity of lungs," complicated by "light blue eyes, sandy hair, clear skin, and fourty-four years old." Another found a twelve-day old baby dead of "presence of bile on the Circulating Fluids of the system,"<sup>24</sup> One distraught physician wrote the following letter to the secretary asking for information:

To the Secretary of State Board of Health

\_\_\_\_\_, Kansas, April 19, 1888

Dear Sir: Having receivet your circular about death, xx, but no Formulars. Who having them? from whom can I having it? The time as I was in the State of Mo. every county-clerk have them and give it to the Dr: by the time of Registering. I having asket the clerk, but he says he dont know nothing. Please let me know.

I am sir yours xx \_\_\_\_\_M.D.

P.S. Here is a great many old womans figuring as midwifs, which will never report. How enforce the law, and send the Sherif behind them.<sup>25</sup>

The Pension Department also received many certificates of treatment. The *Western Medical Journal* published sample letters as evidence of need for more stringent legislation. Two of the shorter letters read as follows:

Snakey Mills. —Feb. 30, 1897

Sur: I surtify I treted the sed sojor fum 18888 to Date—foarmerly his stumik tube was jined to his nervous system but now it are rotting off cosing grate expectoring and hard breth—Your obedt servt—

Dr. J. Haskins, M.D.

<sup>23</sup>W. L. Schenck, "Prevention and State Medicine," *Proceedings and Addresses at the Second Annual State Sanitary Convention*, pp. 348-60, in *Third Annual Report of the State Board of Health of the State of Kansas from January 1, 1887, and Ending December 31, 1887* (Topeka: Kansas Publishing House, 1888), pp. 359-60.

<sup>24</sup>Kansas State Board of Health, "Secretary's Quarterly Reports," *Third Annual Report of the State Board of Health of the State of Kansas From January 1, 1887, and Ending December 31, 1887* (Topeka: Kansas Publishing House, 1888), pp. 44-45.

<sup>25</sup>Kansas State Board of Health, "Secretary's Quarterly Reports," *Fourth Annual Report of the State Board of Health of the State of Kansas From January 1, 1888, and Ending December 31, 1888* (Topeka: Kansas Publishing House, 1889), p. 54.

Amblers—June 8, 1896

Dear Sirs: Your received i treated Wm Akens after he cum Hoam from the surfis for polypup in his noze and Running scar in his pastur joint-The polypup cum from the nite are and esposur- The wounde cum from the cick of a hoars-

James Weaver M.D.<sup>26</sup>

Quacks offered people easy medicine that was often cheaper than that of regular medicine. In many cases they promised a cure, which was something the conscientious nineteenth-century physician could not. As one young man learned from a traveling practitioner, all one needed to be a physician was to look the part. When the young man explained to the traveling man that he had no knowledge of medicine, the doctor answered, "That make no difference. You look pretty wise; all you need to humbug the people, is a silk hat and a pair of spectacles."<sup>27</sup>

By 1880, the battle lines were clearly drawn, but it would be a long and frustrating road before passage of the needed legislation. With a hint of optimism, the *Kansas Medical Journal* could write in 1894, "Our state has been infested long enough with these long-haired, long-fingered jackels, and we hope the war will continue till they have to hunt for their holes."<sup>28</sup>

## II. MEDICAL LEGISLATION

The colony of Massachusetts passed a law in 1649 designed "to regulate the activities of 'Chirurgeons, Midwives, Physitians or others . . . employed at any time about the bodye of men, women or children . . .'" Although it proved ineffective, the law started a trend for governmental control of medical practice. As the country grew, medical societies took over an ever-increasing share of governmental licensing functions. The societies, in turn, forfeited control to medical colleges. Although the possibility of regulating medicine in the United States looked promising in the early 1800's, it was clear that by mid-century the practice of medicine itself seemed to be deteriorating. With degrees from medical colleges accepted as superior licenses to certificates issued by medical societies, bogus medical colleges flourished.<sup>1</sup>

During the meeting of the territorial legislature in 1859, Kansas physicians attempted to obtain a law regulating the practice of medicine. They also wanted a charter for a territorial medical society, support for a medical college at Leavenworth, and legalization of dissection. With Dr. W. W. Updegraff as president of the Senate and four other physicians as senators and representatives, hopes ran high. Of the proposed legislation, only the medical college bill passed, and even this was declared illegal when Governor Medary and the legislature came to blows about the removal of the session from Lecompton to Lawrence. Patience and money had been exhausted by that time and the physicians settled down to simply organize what was shortly to become the state medical society. A special charter was granted to the society in February 1859.<sup>2</sup>

In 1867, the Kansas Medical Society attempted to obtain passage of a law allowing the registration of marriages, births, and deaths. The Senate passed the bill in 1868, but it never reached a vote in the House.<sup>3</sup> In his presidential address in 1867 Cornelius Logan stressed the elimination of quacks and the encouragement of professional ethics as the fundamental work of the state medical society,<sup>4</sup> which was not alone in the battle. The Atchison County Medical Association unanimously passed a resolution in 1868 peti-

<sup>1</sup>Richard H. Shryock, *Medical Licensing in America: 1650-1965* (Baltimore: Johns Hopkins University Press, 1967), pp. vii, 26-28.

<sup>2</sup>"State Medical Legislation," *Leavenworth Medical Herald* 2 (January 1869): 381.

<sup>3</sup>Committee on History, "History of the Kansas Medical Society," *Journal of the Kansas Medical Society* 25 (1925): 82.

<sup>4</sup>Thomas N. Bonner, *The Kansas Doctor: A Century of Pioneering* (Lawrence: University Press of Kansas, 1959), p. 46.

<sup>26</sup>"Two Peculiar Letters," *Western Medical Journal* 10 (March 1898): 52.

<sup>27</sup>Kansas State Board of Health, *Seventh Annual Report*, p. 69.

<sup>28</sup>"The Quack Exodus," *Kansas Medical Journal* 6 (May 1894): 246.

tioning the legislature to enact a law protecting the citizens of Kansas from empiricism. Although all pledged to use whatever influence they had upon the legislators, no such law was forthcoming from the 1868 legislature.<sup>5</sup>

The American Medical Association in May 1869 passed a series of resolutions requesting each state society to act as a licensing board for physicians. Each state medical society was requested to annually appoint one or more boards of examiners, composed of five members, with the duty to examine all persons, whether graduates or not, who proposed to practice medicine in their particular state. A fee was to be charged for the license and the board was to receive an annual salary. The AMA stipulated, however, that this annual salary was in no way to depend on the amount of fees collected. The old salary system, which operated on a commission basis, lent itself to charges of corruption. Each applicant had to prove that he had a "proper general education," was twenty-one years of age, and had pursued the study of medicine for three full years, "one-half of which time shall have been in some regularly organized Medical College, whose curriculum embraces adequate facilities for didactic, demonstrative, and hospital clinical instruction." By so doing, the AMA hoped to force the medical colleges to raise their standards of graduation and to regain its control of the medical licensing procedure. A diploma from medical college would be valid only if it was accepted by the respective state medical society.<sup>6</sup>

In accordance with the AMA stand, resolutions were proposed at the 1870 annual session of the Kansas Medical Society. A Board of Examiners was to be organized consisting of five members of good professional standing. The only stipulation was that a person could not, at the same time, be a member of the Board of Censors of the society. An applicant was to be examined as to his competence in the following branches of medicine: anatomy, physiology, chemistry, materia medica, surgery, theory and practice of medicine, obstetrics, and the diseases of women and children. In order to pass, the applicant needed only a simple majority of the votes cast; and, if rejected, was permitted to re-apply at the end of a three-month waiting period. Payment to the board members was by the society at a fixed daily rate while they were in session plus mileage to and from each session. No member was to receive or accept any fee whatever

<sup>5</sup>William J. Burge, "Proceedings of the Atchison County Medical Association," *Leavenworth Medical Herald* 2 (January 1869): 356.

<sup>6</sup>Kansas Medical Society, *Proceedings of the Annual Meeting of the Kansas State Medical Society*. Reprinted in *Leavenworth Medical Herald* 4 (June 1870): 33-34.

from any applicant. If a question of bribery or impropriety arose, it was to be decided by the regular Board of Censors, subject to appeal at a regular or special session of the society.

All persons who were members of the Kansas Medical Society, and who had paid their annual dues at the time these resolutions went into effect, received the license without having to take an examination. They did have to pay the stipulated fee, however, and the Board of Examiners had to be satisfied as to their qualifications. Without examination or license, a practitioner was to be treated as an "irregular" under the code of ethics.

When an informal ballot was taken, fifteen members voted in favor of the resolutions and five against. After further discussion, it was ordered that the resolutions be made a special order for the next meeting.<sup>7</sup> At that next meeting, the resolutions lost by a decided majority, the feeling being that the whole process would prove to be expensive and useless. What was needed was regulation and control of irregular practitioners, something these resolutions could not accomplish.<sup>8</sup> Also certain to have influenced the decision was the passage by the legislature of a bill entitled, "A Bill to Protect the People of Kansas from Empiricism, and to Elevate the Standing of the Medical Profession." Approved March 3, 1870, this law was the first piece of legislation in Kansas attempting to set guidelines for the practice of medicine.

This medical practice act was the only regulatory device passed, with the exception of the short-lived 1879 law, until 1901. The 1870 law read:

Section 1. That it should be unlawful for any person within the limits of the state of Kansas, who has not attended two full courses of instruction and graduated in some respectable school of medicine, either of the United States or some foreign country, or who cannot produce a certificate of qualification from some state or county medical society, and is not a person of good moral character, to practice medicine in any of its departments for reward or compensation, for any sick person within the state of Kansas: Provided, that in all cases, when any person has been continuously engaged in the practice of medicine for a period of 10 years or more, he shall be considered to have complied with the provisions of this act, and that where persons have been in continuous practice of medicine for five years or more, shall be allowed two years in which to comply with such provisions.

<sup>7</sup>*Ibid.*, pp. 34-37.

<sup>8</sup>Committee on History, "History of the Kansas Medical Society," p. 108.

Violation of the law would subject the physician to a fine of not less than \$50 nor more than \$100 for the first offense. The second offense, in addition to the fine, required a 30-day jail sentence. No physician in violation of the law could receive compensation for services he had rendered.<sup>9</sup>

It is easy to discern many of the weaknesses of the law, although two in particular are rather obvious. The diploma from a "reputable school of medicine" or "certificate of qualification from some state or county medical society" did not have to be registered with any state or county official. One simply had to produce one if legal proceedings were instigated. Medical society certificates were quite easy to obtain. As county societies usually charged a fee for these certificates, they were reluctant to reject someone. If they did, the neighboring county was usually willing to supply one for a fee. One could also simply form his own medical society. Evidence of this doubtful procedure shows up as late as 1898, when a registration affidavit for a non-graduate reached the State Board of Health and gave as a legal qualification a certificate from the Union State Medical Society. Upon further examination, it was found that such an organization was indeed incorporated as was a medical college on the same date. Five of the graduates of the college signed the articles of incorporation. The medical society and college were founded and graduated five students on the same day. Eventually the articles of incorporation were withdrawn and the registration affidavits refused. The second major flaw was the ten-year clause, exempting anyone from compliance if they had been in continuous practice for ten years prior to enactment. It was extremely hard to prove that someone had not been in continuous practice for the necessary number of years.<sup>10</sup>

Dr. William C. Burge could write in 1872 that the state law was "good in itself," but "entirely inoperative and a perfect dead letter." Neither the public nor the profession was willing to take the first step towards enforcement. Professionals were not willing to make people think that they were persecuting others from self-interested motives. Quacks were well aware of this and reacted more boldly than ever. Burge suggested a law compelling the registration of diplomas from regularly chartered medical schools before people

<sup>9</sup>Kansas State Board of Health, "Proceedings of the Board," *Thirteenth Annual Report of the State Board of Health of the State of Kansas From January 1, to December 31, 1897* (Topeka: State Printer, 1898), pp. 45-46.

<sup>10</sup>Kansas State Board of Health, "Proceedings of the Board," *Fourteenth Annual Report of the State Board of Health of the State of Kansas From January 1 to December 31, 1898* (Topeka: State Printer, 1899), p. 47.

could publish themselves as physicians. The registration should be done under oath in the county clerk's office and be open to public inspection. If a "discouraging penalty" for non-compliance was added, he felt that all physicians would unhesitatingly present the name of a delinquent. Subsequent events were to prove him wrong.<sup>11</sup>

By 1873 many physicians had lost all hope for effective legislation. Any legislation seemed impossible to enforce and the only hope was in improving the knowledge of the general populace.<sup>12</sup> There were those, however, who continued to draw up amendments to the 1870 law and propose them to the legislature. One proposal in 1873 would have had the governor, with the advice and consent of the Senate, appointing three doctors to act as a State Board of Medical Censors for a term of two years. This State Board of Censors would appoint and supervise the action of a Board of County Medical Examiners of like numbers of qualifications to themselves. The county boards would serve for two years and would determine the professional qualifications of all persons in the county who applied to them for Certificates of Qualification to practice medicine in that county. Certificates would be granted only with presentation of a diploma from a "respectable" medical school or college or when the person passed an examination given by the county board. A three-dollar fee would be charged for a certificate granted with diploma and ten dollars if an examination was required. Each county would also pay ten dollars to the state board for organizing the county board and if a person appealed the decision of the county board to the state, the individual in question paid a ten-dollar fee to the state. Section two of the 1870 law would have remained in effect. It is interesting to note, however, that section three of the proposed amendment stipulated that any person:

Being subjected to prosecution for damages arising from malpractice or any indictment for any criminal offense whatever, occurring in consequence of or through the prescription or administration of any medicine or course of treatment pursued by such person, it shall be presumptive evidence of the guilt or liability of such persons to establish the fact that they had not previously complied with the provisions of this act.

Had the amendment passed, section three alone would have been an extremely effective weapon against quackery. By not complying with the law, any physician, if brought up on charges of malpractice, would have been presumed guilty.<sup>13</sup>

<sup>11</sup>William J. Burge, "The Suppression of Quackery," *Leavenworth Medical Herald* 6 (August 1872): 17.

<sup>12</sup>"Legislation for the Suppression of Quackery," *Leavenworth Medical Herald* 6 (March 1873): 122.

<sup>13</sup>"Correspondence," *Leavenworth Medical Herald* 6 (April 1873): 133-34.

Late in February 1879, the Kansas legislature approved "An Act to Regulate the Practice of Medicine in the State of Kansas." Under provisions of this law, the Kansas Medical Society, Eclectic Medical Association, and Homoeopathic Medical Society, would each have their own board of examiners. Every person wanting to practice medicine in the state had to appear before his respective school's board and obtain a certificate.

A certificate was to be granted if the person furnished satisfactory proof of having a diploma or license from a "legally chartered medical institution in good standing." Failing this, the applicant was required to undergo examination by the board as to his qualifications. Whichever method was used, the certificate from the board of examiners was to be conclusive as to the rights of the person to practice medicine. The certificate, in turn, was to be recorded in the office of the county clerk of the county in which the physician resided. If a person was turned down by a board, there was supposedly a one-year waiting period before the application was reviewed. A fraudulent diploma, if detected, would cost the applicant \$20. Failure to comply with the provisions of the act, however, subjected the physician to a fine of not less than \$50 nor more than \$100, or imprisonment in the county jail for a period of not less than 30 days nor more than a year, or both penalties. Anyone attempting to file as his own the diploma or certificate of another would be charged with fourth-degree forgery, a felony. Perjury laws were also in effect for testifying and falsely swearing before the boards. Although seemingly strict, old certificates granted by the three medical societies exempted the member from procuring the new ones, and upon proof of five years prior continuous practice, a certificate was automatically awarded.<sup>14</sup>

Examination boards were quickly set up by all three of the major medical societies. The homoeopathic board consisted of Drs. H. F. Klemp, Edic, Davis, Johnson, Heacock, Anderson, and Miller.<sup>15</sup> Allopaths selected for their board, Drs. D. W. Stormont, C. C. Furley, S. F. Neely, W. W. Cochrane, R. Morris, C. H. Guibor, and G. W. Halderman.<sup>16</sup> The eclectic board was made up of Drs. Henry Owens, J. M. Welch, N. Simmons, William McMullen, R. P. Douglas, A. M. Eidson and P. I. Mulvane.<sup>17</sup>

<sup>14</sup>Committee on History, "History of the Kansas Medical Society," pp. 150-52.

<sup>15</sup>Homeopathic Medical Society, *Condensed History of the Homeopathic Medical Society and Proceedings of the Fifteenth Annual Meeting in Emporia, May 2-3, 1883* (Topeka: Kansas Publishing House, 1884), p. 14.

<sup>16</sup>Committee on History, "History of the Kansas Medical Society," p. 152.

<sup>17</sup>N. Simmons, "A Concise History of the Kansas Eclectic Medical Society," *Transactions of the Meeting of the Kansas Eclectic Medical Association, Held on February 14 and 15, 1882, at Topeka, Kansas* (Topeka: Daily Capital Publishing Company, 1882), p. 59.

Few established guidelines existed upon which the various boards could base their procedures, resulting in many conflicts. The Kansas Medical Society, for example, taking section twelve of the law providing "that no person who holds a certificate heretofore granted by either of the societies mentioned in the second section of this act, shall be compelled to procure a new certificate. . .," passed a resolution instructing the board to issue certificates to all members of the society without regard to diplomas or fees. The board questioned the propriety of such a resolution and suggested that it might have been better for the society to have directed the secretary "to prepare and issue certificates of the Kansas Medical Society to its members." The original resolution conflicted with section four of the law ordering the board to examine all diplomas as to their authenticity, and, if genuine, to collect five dollars for a certificate. As such, the board could not comply with the society's resolution. There were other questions. Section twelve of the law seemed to imply that a separate certificate was to be given to physicians qualifying to practice on the basis of the five-year clause. Section three, however, only mentioned two types of certificate, one for diploma holders and one for those taking an examination. On July 1, 1879, the board ruled that all undergraduates, even if in practice for over five years, would be required to undergo an examination. In the board's opinion, reputable physicians would comply. If the ruling drove allopaths to the eclectics, it was good riddance.<sup>18</sup>

It was a busy year for all three examining boards, because the law specified that no examination could be given after April 1, 1880. The allopathic board had visited 63 counties by May 1880 and reviewed 969 applications. A total of 663 certificates were issued to diploma holders and 148 physicians without diplomas passed examinations. Those physicians examined and found "ignorant of the first principles of medicine" numbered 119, and 39 applicants failed to comply with all of the regulations.<sup>19</sup> Of the 663 certificates granted to graduates, 68 percent went to physicians who had practiced fewer than fifteen years; 27 percent were given to physicians with less than 5 years experience.

In its evaluation of diplomas, the good character and standing of the applicant were often considered valid substitutions for the lack of credentials associated with a college. When a diploma was

<sup>18</sup>Kansas Medical Society, "Report of Examining Board," *Transactions of the State Medical Society of Kansas at its Fourteenth Annual Session, Held in Leavenworth, Kansas, May 11, 12, and 13, 1880* (Lawrence: Journal Steam Book and Job Printing Establishment, 1880), pp. 105-7.

<sup>19</sup>*Ibid.*, p. 100.

issued by a respectable school, the law gave the board no discretion and moral character could not be considered. Kansas physicians were found to have graduated from eighty-six different colleges. Thirty-one percent graduated from the "big five" colleges: Rush Medical, Jefferson (Pa.) Medical, Ohio Medical, St. Louis Medical, and University of Pennsylvania. Rush Medical College itself could claim nine percent of all graduated regular physicians in Kansas.<sup>20</sup>

Homoeopaths, although rejecting only six applicants, reportedly required evidence of qualification in all cases and only issued certificates to members of their own school. It was the eclectic examining board that drew the ire of most allopathic physicians. Eclectics accepted applications from those previously rejected by the allopathic board and awarded them certificates. Many former rejects of the eclectic board had their positions reviewed and the earlier judgments overturned.<sup>21</sup> Each member of the eclectic board was to keep four dollars for himself of the five-dollar certificate fee. The extra dollar was to go to the medical association. The state had been divided into districts and a member was assigned to each district. A. M. Eidson, secretary and member of the eclectic board, and his partner, P. I. Mulvane, were responsible for granting 56 percent (290) of all certificates awarded by the board. For their work Eidson and Mulvane received \$1,160 in fees. The remaining 5 members together only compiled a total of \$900. If one takes into account Eidson's report to the national convention in 1880 when he claimed the board had granted "over 750 certificates," he may have collected another \$940 that went unrecorded. No legal charges were ever filed against Eidson for impropriety. The Kansas Eclectic Medical Association was never able to get a complete explanation.<sup>22</sup>

As the year passed, editorials in medical journals became increasingly vindictive. Writing the *Kansas Medical Index*, F. F. Dickman said only a few licenses could be questioned for competency and those were limited to boards "conducted by men who pin their entire faith to the vegetable kingdom or infinitesimal doses." Nothing short of requiring the possession of a "regular" diploma gave any hope of improving the state of medicine, according to Dickman. He brought up the issue of a single board of examiners, consisting of representatives from all three schools of medicine. It

<sup>20</sup>*Ibid.*, pp. 95-97.

<sup>21</sup>*Ibid.*, p. 104.

<sup>22</sup>Simmons, *Transactions of the Kansas Eclectic Medical Association 1882*, pp. 58-59.

was hoped that a single board would allow allopaths a majority of votes when it came to judging the qualifications of applicants.<sup>23</sup>

County attorneys were reluctant to enforce the law and punish offenders. "Doctors cases" became a standing joke among the state's jurists. The Supreme Court had not made any decision, because defendants never had to carry their cases that far. There was even talk of the allopathic board of examiners setting up a test case to determine the validity of the law. The general feeling in allopathic circles was that the eclectic board, by licensing all who applied, reduced the moral effect of the law. If eclectic action had been as honorable as the two other boards, much good might have been accomplished. As it was, the law was a "dead letter."<sup>24</sup>

The issue came to a head in 1880. It was the Kansas Eclectic Medical Association that moved first. On March 25, after Attorney General Willard Davis expressed doubts as to the legality of the examining board of the Kansas Medical Society, a meeting was held in the offices of Drs. Eidson and Mulvane. At that meeting \$100 was appropriated to pay the law firm of Davis and Jetmore for a legal opinion. An additional \$50 was allowed to test the question in the Supreme Court.<sup>25</sup> P. I. Mulvane, president of the Eclectic Examining Board, asked the Davis and Jetmore firm for an opinion as to the Kansas Medical Society's right to appoint a board of examiners under the law of 1879, and questioning the validity of the corporate existence of that society. Davis answered that he did not find the corporate charter valid and that the Kansas Medical Society had no right to issue certificates.<sup>26</sup>

The Kansas Medical Society quickly engaged the firm of Guthrie and Brown. Their opinion stated that the Kansas Medical Society had been incorporated February 10, 1859, by a special act of the territorial legislature, and the 1879 law, by mentioning the Kansas Medical Society, granted the society legislative recognition. A corporation can be made to perform services for the public good and by passage of the 1879 law the legislature was requiring the Kansas Medical Society to perform for the public good. The attorneys added that there were some precedents indicating that if a corporation had operated for some time, with full knowledge of the government, a charter grant was presumed.<sup>27</sup>

<sup>23</sup>F. F. Dickman, "Editorial," *Kansas Medical Index* 1 (April 1880): 108.

<sup>24</sup>F. F. Dickman, "Editorial," *Kansas Medical Index* 1 (May 1880): 140.

<sup>25</sup>Simmons, *Transactions of the Kansas Eclectic Medical Association 1882*, p. 58.

<sup>26</sup>"The Board of Examiners of the Kansas Medical Society in the Supreme Court," *Topeka Daily Commonwealth*, May 30, 1880, p. 2.

<sup>27</sup>"Medical Society Question," *Topeka Daily Commonwealth*, March 20, 1880, p. 3.

The view was presented that Willard Davis's original option was offered as a professional attorney, not as attorney general of the state of Kansas. Although charges were made that he had overlapped his private and public practice, Davis successfully defended himself against them.<sup>28</sup>

In May 1880, the Kansas Medical Society met in annual session and the 1879 law was the main topic of discussion. C. C. Furley, in his presidential address, protested against a law that created more than one examining board. Furley related the legal opinion of Davis and Jetmore and presented evidence that it had been published at advertisement rates in different publications across the state and that it also was distributed as a circular by the eclectic board. In this circular the eclectic board noted that the certificates of the Kansas Medical Society Board of Examiners were invalid according to law, and that they, the eclectic board, would issue certificates to all physicians holding ones from the Kansas Medical Society. Payment of the five-dollar fee was the only requirement. Evidently it made little difference to the eclectics that the April first cut-off date had passed. Furley hoped none of the regular profession would be "gulled by the trick," and advised that "no further notice be taken of the matter."<sup>29</sup>

Further notice was taken, however, and the attorney general filed a petition against the Kansas Medical Society on May 27, 1880. The Committee on History of the Kansas Medical Society, writing in 1925, believed from certain statements made by members of the allopathic board that the action had been brought at the instance of the Kansas Medical Society in order to determine once and for all the status of the society and the law of 1879.<sup>30</sup> As noted earlier, the Kansas Eclectic Medical Association had appropriated \$50 to finance a test case. It is not known for sure which society was more influential in bringing the issue to court.

The state's case was contained in the following four points:

1. That the charter of the Kansas Medical Society has expired by statutory limitation;
2. That the power of the territorial legislature, being permissive and temporary only, could confer no vested right by contract or otherwise, which would bind the state against its consent;

<sup>28</sup>"The Board of Examiners," *Topeka Daily Commonwealth*, May 30, 1880, p. 2.

<sup>29</sup>Committee on History, "History of the Kansas Medical Society," p. 227.

<sup>30</sup>*Ibid.*

3. That the charter of the society was granted by a territorial act, not accepted or preserved by the state; and
4. That the legislature did not, and has not the power under the constitution, to recognize or validate the existence of the society, nor to grant it additional powers by the act of 1879.

In rendering its decision, the Supreme Court agreed that the Kansas Medical Society had been incorporated by a special act of the territorial legislature, February 10, 1859, and at that time was given "perpetual succession forever." A previous act of 1855, concerning corporations, stipulated in part "every corporation, as such has power, first to have succession by its corporate name for the period limited in its charter, and when no period is limited, for ten years." As the special act of February 10, 1859, creating the society, allowed the life of the corporation to the end of time, the 1855 law was not applicable. The legislature did not want the general corporation act of 1855 to apply to the Kansas Medical Society, repealing the law on February 11, 1859. As to the second point, the court simply stated that "if the state legislature has the power to suspend or repeal the charter (which we do not decide), it has never exercised or attempted to exercise the power." In the third charge, the state argued that section one article twelve of the constitution inhibited the state legislature from conferring corporate powers by special acts, and once the constitution was accepted, laws of the territorial legislature ceased to have validity. The court referred the plaintiff to section four of the schedule of the constitution which stated, "All laws and parts of laws in force in the territory at the time of the acceptance of this constitution by congress, not inconsistent with this constitution, shall continue and remain in full force until they expire, or shall be repealed." The charter was not inconsistent with the constitution, for section one article twelve limited the legislative power in the future and was not retroactive. The Kansas Medical Society was a lawfully-existing corporation.

The final and most serious objection, that the act of 1879 granted to the Kansas Medical Society additional authority, and thereby conferring corporate powers by a special act, was a difficult one for the court to answer. If the Kansas Medical Society was not a corporation but simply an association of individuals, or if they had not argued they were a corporation but simply an association of citizens, their defense would have been sufficient. The court would then have treated the words of the 1879 law, "corporations organized and existing," as simply "descriptio personarum." The state con-

stitution does not forbid the legislature from authorizing persons or associations to act as examiners, and it is clearly within the police powers of the state to designate medical examining boards. When any power, however, is given to a corporation, it becomes a corporate power. If the law had limited the conferred power to merely designating examiners whose duties were carried out separate and independent of the corporations, if the corporation had no further power over the examiners, and if the society had received no monetary rewards for the selection of examiners, the law might have received validation. The corporation would simply have been carrying out a public duty. As the law stood, the Kansas Medical Society, as well as the Homoeopathic Medical Society and Kansas Eclectic Medical Association, all received a five-dollar fee for each certificates granted. Revenue was levied and collected on certain individuals, for certain individuals. This gave the three medical societies special powers and privileges not conferred on similar corporations, hence the law of 1879 was unconstitutional.<sup>31</sup>

The court held many of the provisions of the law were in the interest of public health and did protect, although feebly, the public from empiricism and malpractice. The constitution was more important, however. At one time in their deliberations, they had hoped to so remove the invalid provisions that the law could still operate. The invalid provisions were so intertwined with the other portions, however, that to remove a part would so weaken it as to make it useless. It was better, they believed, to render their decision now, while the legislature was in session, than to postpone it to a future date. With Justice C. J. Horton delivering the opinion, and all justices concurring, the act of February 27, 1879 was declared unconstitutional and void on February 3, 1880.<sup>32</sup>

In February 1881, Willard Davis, now ex-attorney general, was the main speaker at the annual meeting of the Kansas Eclectic Medical Association. Davis, although he stated he was formerly inclined towards allopathy, felt that the eclectic school was to be "blessed" as they always endeavored to select the best for their patients, regardless of system. He condemned in emphatic language "certain rules of etiquette known as the code of medical ethics." Davis advised the eclectics to continue to improve medicine and to

<sup>31</sup>"Decision of the Supreme Court," *Topeka Daily Commonwealth*, February 8, 1881, p. 2; *Kansas Reports*, vol. 24, 686-699.

<sup>32</sup>*Ibid.*

attempt to perfect and present to the legislature a new law to regulate medicine in the state.<sup>33</sup>

Many physicians were alarmed at the absence of legislation protecting the citizenry from quackery. The 1870 law, now in effect, had been forgotten. Homoeopaths were told at their 1881 meeting that the homoeopathic board of examination had been "prematurely smothered." Somewhat bitterly it was stated, "The Supreme Court of the state in body corporate sat upon the tender infant whose delicate framework was unable to resist, and it succumbed to the pressure." The only protection left, as homoeopaths saw it, were three clauses in the temperance law which placed limits on the manner in which physicians dispensed liquors. One of these clauses, however, was the hated loyalty oath that the majority of physicians avoided out of principle.<sup>34</sup>

Eclectics were happy with the decision. Dr. Owen speaking at the thirteenth annual meeting, warned the association about the enemy on the alert and ready to crush them at any moment. He advised against tampering with the law as it now stood. The only suggestion Owen made was that maybe there should be one board of examiners set up consisting of two or three members from each school of medicine. These members could either be appointed or elected. Any new law, according to Owen, should compel consultation when required. After all, eclectics were civilized enough to consult with allopaths. For allopaths to agree to anything less would proclaim their ignorance. Later at that same meeting, Drs. Axelson, Simmons, Raymond, and Mulvane were appointed a committee to visit the legislature and see that the rights of eclectics were not jeopardized by passage of a bill now before the legislature.<sup>35</sup>

The Kansas Medical Society Board of Examiners in their supplemental report of 1881 asked itself whether the cost of the validation of the charter was too great. A joint committee of allopaths, homoeopaths, and eclectics had met in 1881 and agreed to submit the old 1879 law, shorn of its unconstitutional features, but due to the lateness of the introduction, it failed to pass. The president of the allopathic board was somewhat relieved, as he was opposed to any legislation which would have recognized a separate eclectic board. It seemed to be a rather pragmatic decision on his part for he stated,

<sup>33</sup>"Kansas State Eclectic Medical Association," *Topeka Daily Capital*, February 12, 1881, in *Kansas Medical Societies Clippings Part 2*, vol. 1, pp. 9-10, located at Kansas State Historical Society.

<sup>34</sup>"The Homeopaths in Session," *Topeka Daily Capital*, May 5, 1881, in *Homeopathic Medical Society Clippings*, pp. 12-13, located at Kansas State Historical Society.

<sup>35</sup>"Meeting of the Kansas State Medical Association," *Topeka Daily Commonwealth*, February 9, 1881, p. 1.



"I do not believe there is enough decent material in their school of practice in Kansas to constitute the board."<sup>36</sup> The same bill was reintroduced in 1882 and referred to a special committee. According to eclectics, "the allopaths, finding that they could not smuggle through a partisan bill, strangled the compromise bill of the committee at its birth."<sup>37</sup>

Members of the Kansas Eclectic Medical Association were warned in February 1882 of the probability that the 1879 law would appear again in the legislature. All who had received certificates from the board of examiners were to attend the annual meeting for the purpose of taking some action towards securing the recognition of these certificates in future legislation.<sup>38</sup> Dr. N. Simmons, in his presidential address, rather smugly remarked that possibly the golden rule might make a good code of ethics for all physicians to follow and again warned fellow eclectics of the necessity of posting sentinels to warn of the despotic movements of the regulars.<sup>39</sup>

Allopaths continued to decry the condition to which medical practice had fallen in Kansas. Kansas, it was feared, would eventually sink as low as Missouri, where over thirty-eight percent of the physicians were considered incompetent. Dr. Willis King was shocked:

People actually pay men who stand by and see them bleed to death from accidents, the attendant being too ignorant to tie an artery, or poor mothers are permitted to bleed to death without help, while stupid asses who attend them stand by and do nothing, because they know not what to do.<sup>40</sup>

If progress was slow, allopaths believed the reason was that the proposed laws did not go far enough. Writing in 1882, F. F. Dickman observed, "Anything short of the Staats Examen of the Germans will not accomplish the object." The central power should be placed in a single examining board, including the superintendent of public instruction and attorney general as members. The

<sup>36</sup>Kansas Medical Society, "Supplemental Report of the Examining Board," *Transactions of the State Medical Society of Kansas at Its Fifteenth Annual Session, Held in Topeka, Kansas, May 10 and 11, 1881* (Atchison: E. W. Beall, 1881), p. 123.

<sup>37</sup>J. A. Munk, "Eclecticism in Kansas," *The Kansas Medical Journal* 1 (October 1883): 154.

<sup>38</sup>"To the Members of the Kansas Eclectic Medical Association," *Topeka Daily Capital*, February 8, 1882, in *Kansas Medical Societies Clippings Part 2*, vol. 1, p. 13, located at Kansas State Historical Society.

<sup>39</sup>N. Simmons, "President's Address," *Transactions of the Meeting of the Kansas Eclectic Medical Association, Held on February 14 and 15, 1882, at Topeka, Kansas* (Topeka: Daily Capital Publishing Company, 1882), pp. 16-19.

<sup>40</sup>F. F. Dickman, "The Proposed New Law to Regulate the Practice of Medicine," *Kansas Medical Index* 3 (October 1882): 268.

secretary should hold a permanent position paid by the state and the other members receive per diem allowances. Once established, all wishing to practice medicine would have to get a certificate from this board, after actual examination, no matter how many diplomas they had accumulated. In order to qualify for a certificate, the applicant would have to be at least twenty-one years of age, have a good moral character, use the English language in a manner satisfactory to the state superintendent, and pass an examination on several branches of medicine. Once passing the examination and after paying an "ample" fee, the certificate could be awarded. Although certainly a progressive piece of legislation, allopaths entertained little hope of its passage.<sup>41</sup>

Eclectics in 1883 were basking in the pleasure of what they accepted as a victory over the "monopolistic oppressors." Dr. J. A. Munk, Topeka, praised the 1870 law for its clear and concise wording. Dr. T. A. Wright of Americus reported a case in Emporia where the plaintiff "imposter" sued for payment of his bill before a justice of the peace. The defendant took the case to the circuit court where it was postponed from time to time by the plaintiff and finally withdrawn because of the fear the 1870 law caused in the heart of the "imposter."<sup>42</sup>

If a new law was passed, the many eclectics feared that the certificates from the old board would be worthless. Any new legislation would contain in all probability a combined medical board of all three sects and this was considered "sheer lunacy."<sup>43</sup> All factors combined in the overriding fear of eclectics that allopaths would control or limit their activities. Nothing shows this clearer than the following resolutions passed at their annual session in 1883:

*Whereas* there is an effort made by partisans to legislate in the interests of the medical profession, and *whereas* the citizens of Kansas have not asked for such legislation, be it therefore

*Resolved* It is the expression of the Kansas Eclectic Medical Association that it is willing to submit the merits of eclecticism to the intelligence of our grand commonwealth.

*Resolved* In our judgement class legislation in the interest of medicine will be timely when the masses demand it.

<sup>41</sup>F. F. Dickman, "Efforts to Regulate the Practice of Medicine," *Kansas Medical Index* 3 (March 1882): 60-61.

<sup>42</sup>Munk, "Eclecticism in Kansas," p. 154.

<sup>43</sup>N. Simmons, "President's Address," *Transactions of the Fifteenth Annual Meeting of the Kansas Eclectic Medical Association, Held at Topeka, Kansas, February 6 and 7, 1883* (Topeka: Daily Capital Publishing Company, 1883), pp. 27-28.

*Resolved* If the wisdom of the present legislature think it practical, or for the best interest of the state to establish a Board of Health, or enact any phase of medical legislation, that as a school of medicine we demand an equal recognition with all others.<sup>44</sup>

As the above resolutions indicate, the trend in medical legislation was shifting towards the creation of a State Board of Health. Many states had already created such boards and endowed them with the power of granting certificates or licenses to practice medicine. As a bill providing for a board had been written by the Kansas Medical Society, Governor John A. Martin was urged to appeal to the legislature for its passage. The state society even held a special meeting in January 1885 to discuss the issue, and invited physician members of the legislature for a special evening session. There, members of the Kansas Medical Society used all of the pressure at their command in favor of the Board of Health bill, containing a section regulating the practice of medicine. A special meeting was also arranged with representatives from the eclectic and homoeopathic societies to consider the bill and solicit support. Immediate opposition developed on the part of the eclectics and homoeopaths when they received no guarantee of equal representation on the board. The meeting broke up in rancor. Most newspapers seemed to oppose all regulation of medicine, but saved their strongest attacks for the Kansas Medical Society, and saw the bill only as an attempt to bar competition. One Grand Lodge stated the bill was designed solely "to create a monopoly in the practice of medicine that would be adverse to the best interests of this state." When the Kansas Medical Society drew back, the bill was passed in 1885, shorn of all reference to regulation.<sup>45</sup>

The governor, with the advice and consent of the Senate, was to select nine physicians to constitute the Kansas State Board of Health. The only major qualifications for membership were seven years continuous prior practice and graduation from a respectable medical college. Three appointments were to be made for one year, three for two years, and three for three years. Annually thereafter, the governor would appoint three members to fill vacancies. It was strictly forbidden for any of the three major groups to hold a majority of positions. A secretary, not a member of the board, was to be elected and was to serve as the board's executive officer. Board

<sup>44</sup>"The Eclectics," *Topeka Daily Capital*, February 8, 1883, in *Kansas Medical Societies Clippings Part 2*. Vol. 1, p. 24, located at Kansas State Historical Society.

<sup>45</sup>Bonner, *The Kansas Doctor*, pp. 78-79.

membership was an unsalaried position with only traveling and other necessary expenses paid for by the state.

The board was charged with making "careful inquiry in respect to the causes of disease, and especially epidemics, and investigate the sources of mortality, and the effects of localities, employments, conditions, ingestia, habits and surroundings on the health of the people." They were to advise government officers or other state boards about all areas of sanitary science and supervise the registration of vital statistics, including marriages, births, deaths, and listing of physicians' names and educational background.<sup>46</sup>

To provide help in accomplishing its tasks, each county commission in the state was ordered to act as a local board of health. Each local board was to elect a physician, adept in sanitary science, to act as a county health officer. It was the duty of the county health officer to distribute all necessary forms to the rightful persons and report all required statistics to the state society after they had been collected. He was further ordered to "perform such other duties as this act, his local board or the State Board of Health may require of him." Upon conviction of any failure or neglect of his duties, the health officer was to be fined ten dollars for each offense. It was the duty of every physician practicing in the state to keep a record of deaths occurring in his practice and to report them to the county health officer, with a similar ten-dollar fine for failure to do so. Personal property assessors in the townships and city wards were also to aid the local boards of health by collecting and reporting birth, death, and marriage statistics. The state board was to publish annually all the vital statistics for the current year and to make suggestions for further legislative action deemed proper to protect public health and welfare. Any prosecution undertaken under the law was to be conducted by the county attorney for the county in which the offense was committed and all fines were to be paid to the county school fund.<sup>47</sup>

It would take years for all counties to organize boards of health and to elect county health officers. In many cases the health officer was so poorly paid that he claimed that reports were not sent to the state for want of money to purchase stamps. Physicians themselves often refused to fill out the required forms and the board found legal action against offenders a lengthy process. The board found it had many duties to perform on an annual budget that fluctuated from

<sup>46</sup>"Kansas State Board of Health," *Thirteenth Annual Report*, pp. 42-44.

<sup>47</sup>*Ibid.*, pp. 44-45.

\$2,000 to \$5,000, and could not prosecute every offense brought to its attention. If one adds the fact that every two years after 1887 bills were introduced to abolish it, the State Board of Health's positive achievements take on even more significance.<sup>48</sup>

In August 1885, J. W. Redden, the first secretary of the State Board of Health, discovered the unrepealed law of 1870 and wrote to Attorney General S. B. Bradford, asking his opinion on whether the law was still in force. The attorney general returned Redden's letter with a reply that the law was "still in full force and unrepealed."<sup>49</sup>

The law was quickly published and distributed. Numerous cases were eventually brought to court. In 1890, the Supreme Court upheld the law and an even more vigorous campaign was instigated. The law was not very strict, but at least the most flagrant quacks could be brought into court.<sup>50</sup> No physician could now apply or qualify to practice without a diploma, unless they could prove that they had been in continuous practice since 1860.<sup>51</sup>

Proposals for new legislation continued. At the 1888 annual convention of the Kansas Medical Society, Dr. J. J. Wright announced that "members of the three schools of the Lyon County Medical Society" had formed the Kansas Medical Law Association of Emporia. Although Dr. Wright praised the harmonious meetings of the Lyon County Medical Society, his implication that the Lyon County Medical Society consisted of representatives of all three schools is misleading. No irregulars were ever admitted into membership of the Lyon County Medical Society. It is easier to accept the fact that the three schools might have gotten together for joint meetings under the auspices of the Lyon county society. At any rate, this association had drafted a bill for presentation to the legislature and proposed it to the state society for its approval. The Emporia bill was similar to other proposals in that all practitioners would be required to have a diploma; if not, they would be subject to examination by the State Board of Health. An applicant could be refused a certificate if he was shown to have a bad moral character or if he had ever been convicted of a crime of gross immorality. A license costing \$100 could be required of "any itinerant vendor of

<sup>48</sup>Bonner, *The Kansas Doctor*, p. 82.

<sup>49</sup>Kansas State Board of Health, "Proceedings of the Board," *First Annual Report of the State Board of Health of the State of Kansas From its Organization April 10, 1885, and Ending December 31, 1885* (Topeka: Kansas Publishing House, 1886), pp. 34-35.

<sup>50</sup>Bonner, *The Kansas Doctor*, p. 80.

<sup>51</sup>"Legal Light," *Kansas Medical Journal* 2 (January 1884): 39.

any drug, nostrum, ointment, or appliances of any kind intended for treatment of disease or injury, or who shall by writing, or printing or any other method profess to cure or treat disease or deformity by any drug nostrum or manipulation." Failure to purchase this license from the State Board of Health would result in a fine ranging from \$100 to \$300. Failure to obtain a certificate would subject the physician to a fine of \$100 for the first offense and \$200 for each subsequent offense. All fees were to be paid to the state treasurer and assigned to for the school fund. This licensing section was clearly added in the attempt to silence the patent medicine lobby and help insure passage of the bill. Even to suggest such a tacit recognition of proprietary therapeutics 20 years earlier would have been a severe breach of medical ethics. To do so in 1888 indicates an extreme compromise on the part of allopaths. Nevertheless, a committee of three members was created by the Kansas Medical Society to act in concert with the State Board of Health in an attempt to secure passage of the legislation. Committee selections were Drs. Wright, Jacobs, and Page, all of Emporia. The committee and the State Board of Health were unable to secure passage.<sup>52</sup>

In 1889 another medical practice act was proposed to the legislature after careful preparation by a conference committee representing the three state medical societies and a committee from the State Board of Health. This time the law had been thoroughly examined and modified by the attorney general to assure its constitutionality. The House amended several sections, including especially the replacement of examination control in the State Board of Health by the creation of a new and separate examining board. The Senate, however, defeated the bill in a committee of the whole. Many members of the Senate were determined not to establish any type of new board and in fact attempted to repeal the acts creating some of the existing state boards.<sup>53</sup>

The committee on legislation for the Kansas Medical Society fared no better with the 1891 legislature. Along with at least two bills to abolish the State Board of Health, legislators voted on a bill proposing to regulate medical practice, a bill providing for the formation of a new State Board of Health and regulation of medicine, and a bill to amend the present State Board of Health law. Even the

<sup>52</sup>"Doctors Convene," *Topeka Daily Capital*, May 3, 1888, p. 4.

<sup>53</sup>Kansas State Board of Health, "Secretary's Quarterly Reports," *Fifth Annual Report of the State Board of Health of the State of Kansas From January 1, 1889 and Ending December 31, 1889* (Topeka: Kansas Publishing House, 1890), p. 18.

last proposal, which antagonized few interests, failed to pass. It seemed to observers on the committee that political hostilities between the two houses were "all-absorbing." With this duel for political supremacy going on, the committee abandoned as hopeless all attempts at procuring legislation.<sup>54</sup>

Failing any new effective legislation, attention again turned to the law of 1870. Attorney General Bradford had given the opinion that in prosecution the state did not have to prove that the defendant had not attended a full course of instruction and graduated from some medical school. As a legal question of negative averment, the defense had to disprove the state's contention. In actual practice, however, while this held in civil cases, the criminal courts held otherwise. It became quite impossible to prove that a person was not a graduate or held not certificate or had not practiced ten years prior to 1870. The law provided that a certificate of a medical society was good evidence of qualification. Anyone could form a medical society, and many did just that. There was no guarantee as to the character or qualifications of the men making up a medical society.<sup>55</sup>

Three pieces of legislation, approved by the State Board of Health, were introduced into the Senate in 1893 and cleared committee with recommendation for their passage. Optimistically, the secretary for the State Board of Health reported that due to lack of time the only act passing both the Senate and the House was the amended act "for the Preservation of Public Health Against Epidemic Cholera and other Infectious Diseases." Had there been more time, he assured, both the "Act to Provide for the Registration of Medical Practitioners and Prescribing Penalties for the Violation Thereof" and an "Act for the Preservation of the Public Health and Registration of Vital Statistics" would have easily become laws.<sup>56</sup>

The State Board of Health, interested in determining the Kansas relationship with other areas of the country in regard to regulatory legislation, compiled in 1894 a survey of fifty-two states and territories. Examinations were required, as a diploma conferred no right to practice, in the states of Alabama, Arkansas, Florida,

<sup>54</sup>Kansas State Board of Health, "Abstract of the Proceedings of the Board," *Seventh Annual Report of the State Board of Health of the State of Kansas From January 1, 1891, to December 31, 1891* (Topeka: Hamilton Printing Company, 1892), p. 3.

<sup>55</sup>"A Lame Law," *Kansas Medical Journal* 2 (June 1890): 521.

<sup>56</sup>Kansas State Board of Health, "Proceedings of the Board," *Ninth Annual Report of the State Board of Health of the State of Kansas From January 1, 1893, to December 31, 1893* (Topeka: Hamilton Printing Company, 1894), pp. 40-48.

Maryland, Minnesota, Mississippi, New Jersey, New York, North Carolina, Pennsylvania, South Dakota, Texas, Virginia, the territory of Utah, and the Cherokee Nation. There were no legal requirements to be met in Maine, Massachusetts, New Hampshire, and Rhode Island. The Creek Nation only charged an annual fee of twenty-five dollars for the right to practice and Montana still had its ten-year practice rule. Kansas and the remaining states or territories required either a diploma from a "respectable, recognized, or reputable" medical college or an examination from the State Board of Medical Examiners or a State of Board of Health. In some instances, an examination from a county board sufficed. The fact that they were in a similar dilemma with several other states gave Kansas physicians little comfort.<sup>57</sup>

On May 15, 1894, the three schools met together with the expressed purpose of drawing up legislation to propose to the state legislature. In contrast to the 1889 attempt at burying the hatchet, this meeting was simply an armed truce to accomplish a single task beneficial to all. After choosing Dr. H. A. Dykes as chairman and W. E. McVey as secretary, the convention elected a committee of six, whose job would be to notify every physician in the state of the convention's actions. Two members were chosen from each of the three groups. Another committee, selected to draft the bill, consisted of the following nine physicians: Ryder, Swallow, Minney, Steward, Furber, Menninger, Hamilton, Felty, and Hall. With some alterations, the committee recommended the Illinois law for approval by the convention. The proposal also bore striking resemblance to that of the Kansas Medical Law Association of Emporia. Drs. Guibor, Stewart, Wall, Swallow, Menninger, Ryder, Long Hatfield, and Martin were appointed to act with the legislative committees of the three state societies in the management of legislation. A later motion added all the "lady physicians" in the state to the committee. It was also this committee's job to act as a central committee, and to appoint local committees in every county to interview the various members of the legislature living in that area in reference to the bill. A lawyer was to be chosen by this committee on legislation to determine the constitutionality of the proposal. The appointment of a committee on finance was referred to the secretary of the State Board of Health.<sup>58</sup>

<sup>57</sup>Kansas State Board of Health, "Proceedings of the Board," *Tenth Annual Report of the State Board of Health of the State of Kansas From January 1, 1894, to December 31, 1894* (Topeka: Hamilton Printing Company, 1895), pp. 134-36.

<sup>58</sup>*Ibid.*, p. 149.

According to the proposed law, granting of certificates would apply to physicians who either graduate from a respectable college or who passed an examination given by the State Board of Health. A one-dollar fee would be charged for certificates granted to graduates of medicine and a two-dollar fee charged for certificates granted to graduates in midwifery. An examination in medicine and surgery would require a \$20 fee and one in midwifery, \$10. All fees were payable to the State Board of Health. The law was applicable to all "Who shall treat, operate on, or prescribe for any physical ailment of another." It also included the "itinerant vendor" clause of the Emporia proposal. Physicians who had been practicing medicine continuously, "as a means of livelihood," for ten years prior to the taking effect of the law were to receive a certificate upon proper application, unless they could be shown to be of immoral character or guilty of unprofessional or dishonorable conduct. Although it was questioned whether this ten-year clause would weaken the law, it was unanimously passed by the convention. The stipulation, "as a means of livelihood," was added, however, to the first proviso of the section in order to eliminate part-time physicians. Any person trying to evade the law by practicing without a certificate was subject to a fine of \$100 for the first offense and \$200 for each subsequent offense. If one attempted to file a forged affidavit of identification or a diploma other than his own, he would be charged with the crime of forgery. In either case, the defendant if convicted, would be held in the county jail until the fine and costs were paid.<sup>59</sup>

Copies of the law and requests for financial aid were sent to all members of the various medical societies and physicians in Kansas. Little more than \$100 in financial aid was returned to the committee by state physicians, over one-half of which went for postage.

In November, a subcommittee of three was chosen from the nine-member committee, as the original number was found too cumbersome. This subcommittee consisted of C. F. Menninger, representing homoeopaths; G. H. Wall, representing allopaths; and J. L. Furber, representing eclectics. When the bill was submitted to an attorney for legal advice, he said it was unconstitutional. Changes were made and the bill approved by Dr. Menninger. It was not approved by Dr. Furber; indeed, it had not been presented to him. Furber, originally in favor of stringent legislation, had changed his mind and was strongly advocating retention of the 1870 law.

<sup>59</sup>Read it: An Act to Regulate the Practice of Medicine in the State of Kansas," *Western Medical Journal* 5 (September 1894): 195-97.

In spite of Furber's foot-dragging, Wall and Guibor spent a lot of time getting acquainted with the legislators. House Speaker Lobdell even permitted them to suggest legislators agreeable to Kansas physicians to sit on the committee of hygiene and public health. Once selected, the committee consisted of J. A. Campbell of Doniphan county (Republican) as chairman; George W. Hallenbeak of Gray county (Republican); Dr. J. S. Halliday of Comanche county (Republican); Dr. Frank H. Smith of Sherman county (Democrat-Populist); George W. McKinney of Mitchell county (Populist); Alfred Pratt of Hamilton county (Republican); and G. G. Cornell of Waubunsee county (Republican). Strongest opposition appeared in the Senate committee. This committee was a standing one and consisted of Dr. E. T. Metcalf of Anderson county (Republican) as chairman; D. McTaggart of Montgomery county (Republican); Levi Dumbald of Lyon county (Populist); A. E. True of Waubunsee county (Populist); and John Armstrong of Barton county (Populist). The *Kansas Medical Journal* reported the Senate committee members "would not listen to any argument, but insisted on saying, 'just put me down against the bill.'" The senators claimed that the proposed bill was class legislation.<sup>60</sup>

Proponents felt the House committee would recommend passage of the bill. The Senate, or at least the Populist portion, opposed any legislation of this type and the general feeling was that results would be unfavorable. Physicians were urged to use whatever pressure they could muster on the Senate.<sup>61</sup>

On February 4, 1895, a joint meeting of the Senate and House committees was held in the office of the lieutenant governor. The medical profession at large was represented by Drs. C. H. Guibor and G. A. Wall. Opposition to the law was led by F. P. Baker and T. E. Bowman. Dr. Eva Harding represented the homoeopathic viewpoint and Dr. Furber the eclectic. Furber now argued for an amendment to the old 1870 law. Although no one quite understood the connection, or his reasoning, Furber proposed that anyone found guilty of removing the ovaries of a female under the age of 40 should be fined \$500 and sent to the state prison for 50 years. Also, anyone removing the testicles of a male under the age of 45, "or any time before the menopause," was to be fined \$1,000 and sent to prison for 50 years. T. E. Bowman spoke only to denounce the regulars as "drunkards, opium eaters and instigators of the liquor habit." The

<sup>60</sup>G. A. Wall, "Medical Legislation A.D. 1895," *Kansas Medical Journal* 7 (June 1895): 295-296.

<sup>61</sup>"Will the Bill Pass?" *Kansas Medical Journal* 7 (February 1895): 66-67.

bill, according to Bowman, was only an attempt to form a monopoly by which to rob people. The joint committee of the House and Senate was not persuaded by either Bowman or Dr. Furber, for all members voted in favor of the proposed new law that evening. Dr. Wall noted that the most amusing part of the meeting was "the forced union of the various 'pathies' in their endeavor not to tread on one another's toes and still remain united in their villification of the regular school."<sup>62</sup>

Opposition in the House came generally from Populists and Mr. Rohrbaugh in particular, although Rohrbaugh later voted in favor of the bill. Representative Winters expressed the general Populist attitude when he stated, "We western people can't support your plug hat doctors. We've got a lot of old women who are better than any of them."<sup>63</sup> Populists were united in their opposition to section ten of the proposed bill, which would have charged "itinerant vendors" in the state a monthly license fee of \$100. In order to counter Populist pressure and encourage passage, physicians lent support to a change in the wording of the section in question. It now read, "Any itinerant doctor who shall open up a transient office, etc., shall pay \$100.00 per month, etc." All legislators seemed to be against itinerant doctors and would be willing to fine them, as long as the vendors were left alone. The compromise appeared successful at first, as the House eventually passed the bill and sent it on to the Senate.<sup>64</sup>

Under the rules of the Senate, in order for a bill to go on third reading without taking its regular course, unanimous vote was required. When Dr. E. T. Metcalf asked for such a vote, Senator Cook objected, and it was feared that the bill would die on the calendar.<sup>65</sup> According to an article in the *Topeka State Journal*, later used as advertising material by the W. W. Gavitt Medical Company of Topeka, a "prominent doctor" succeeded in getting Cook out into the hallway with the expressed purpose of discussing ways in which the bill could be changed to suit him. While Senator Cook was out in the hallway, the bill was advanced in the Senate calendar to a third reading. Upon Cook's return, and discovering the decoy maneuver, he threw all of the influence he could muster in favor of Senator Householder's motion that the bill be stricken from the calendar.

<sup>62</sup>Wall, "Medical Legislation," pp. 296-98.

<sup>63</sup>"Medical Bill Fails: Populists Defeat the Bill Regulating the Practice of Medicine," *Kansas Medical Journal* 7 (March 1895): 119.

<sup>64</sup>Wall, "Medical Legislation," p. 298.

<sup>65</sup>"Medical Bill Fails," p. 119.

Householder's motion passed, and the bill died.<sup>66</sup> The Senate had not even read the new revised bill. All of the Populists, with the exception of Senator True, voted against the bill; Republicans and Democrats favored the legislation.<sup>67</sup>

The *Journal* claimed that the bill had been especially prepared and aimed at the W. W. Gavitt Medical Company of Topeka, who had over 500 agents in Kansas. These agents, "principally widows and old soldiers," were selling a medicine called "Our Native Herbs." Supposedly, the doctors, having becoming jealous of Gavitt's cure rate, and their loss of patients, decided to kill the company once and for all. In praising the Senate's decision, the *Journal* remarked:

The mortality by disease in Topeka was reduced fifty percent in two years by these Native Herbs, and the doctors say that it has to be stopped. The lower House appeared to be willing to restore the death rate but the Senate objected. Why should the doctors be protected? It is the people who need protection.<sup>68</sup>

Evidence was later presented, but never proved, that the Baker Medical Company of Keokuk, Iowa, was also instrumental in the defeat of the bill. The Baker company supposedly had over forty wagons in Kansas selling patent medicines. They strongly objected to section ten of the proposed bill, which required the itinerant vendors to pay a monthly license fee of \$100. The company was reportedly willing to pay \$75 per annum for each wagon, but argued that the \$100 monthly fee per wagon was impossible. A representative of the company secured a room at the Copeland Hotel in Topeka where interviews with legislators and those interested in the bill were planned. Other reports circulated about the extortion of money from the representative of this company by those who claimed to be able to influence the legislation in question, although no legislators were mentioned. Dr. Wall was informed that Mr. Baker himself was in Topeka at one time and was talking with legislators. At any rate, whenever any legislator was approached regarding the bill, the first question was, "Does the bill shut out these medicine vendors who sell medicine from wagons throughout the state? If it does I am opposed to it." It appears that they were

<sup>66</sup>Advertising Circulars, "Topeka State Journal, March 4, 1895 Reprint," W. W. Gavitt Medical Company Papers, Manuscript Department, Kansas State Historical Society, Topeka, Kansas.

<sup>67</sup>"Medical Bill Fails," p. 119.

<sup>68</sup>Advertising Circulars, "Topeka State Journal Reprint."

aware of the plight of the Baker Medicine Company. It is also interesting to note that the itinerant vendor clause was eventually removed from the original bill in order to secure passage. It is ironic that many of the senators did not know that section ten had been revised, because the bill never made it out of committee.<sup>69</sup>

In December 1898, J. J. Kackley read his proposed law to the Southeast Kansas Medical Society at Parsons. Kackley's proposal shows a shift away from the idea of using the State Board of Health as a medical licensing board. A State Board of Medical Examiners, composed of nine practicing physicians, all of whom were graduates of an AMA-recognized school, was to be given state licensing power. The governor was to choose the board, with each of the three schools of medicine having this representation: six physicians, regular; two, homoeopathic; and one, eclectic. A ten-year clause was included in the proposal, allowing a certificate to all persons continuously practicing medicine for that length of time prior to enactment of the bill. The bill further stipulated that "all persons entitled to practice under the ten years provision, and all persons hereafter commencing the practice of medicine and surgery. . . shall submit to an examination. . . ." Only after examination and payment of a \$15 fee could the ten-year people receive their certificates. Even then, the board could refuse or revoke a certificate for "unprofessional, dishonorable, or immoral conduct." Defined for the first time in any medical legislation, such conduct consisted of "chronic and persistent inebriety, the practice of criminal abortions, the conviction of crime involving moral turpitude, or for publicly advertising special ability to treat or cure diseases that in the opinion of the board it is impossible to cure. . . ." Penalty for failure to comply with the law would be raised to a maximum of \$500 and one year in jail. The charge of fourth degree forgery, in earlier legislation, for attempting to file a diploma not one's own or for forgery of an affidavit, was increased to second degree forgery. Kackley's proposal considerably broadened the definition of what constituted a medical practitioner. Any person was to be regarded as practicing medicine:

Who shall profess publicly to be a physician, and to prescribe, or who shall append to his name the letters "M. D.," or to suggest, recommend or direct for use of any person any drug, medicine, appliance, apparatus or other agency, whether material or non material, for the cure, relief or palliation of any ailment of the mind or body, or for the cure of relief of any wound, fracture or bodily injury or other deformity.

<sup>69</sup>Wall, "Medical Legislation," p. 297.

The act also applied to any apothecary or pharmacist who prescribed for the sick. The itinerant vendor clause of earlier legislation was included. The only change was an increase in the maximum fine to \$500. Oddly enough, midwives were exempted from compliance with the law, as were students prescribing under directions of a preceptor, and nurses working in their legitimate occupations. Also, it was not to apply to pharmacists selling patent or proprietary medicines or water from mineral springs. We are left with little information as to what eventually happened with Kackley's proposal other than the fact that it was never enacted.<sup>70</sup>

The three schools met with the House and Senate medical legislation committees again in 1899. The committees drew up amendments to the old 1870 law for presentation to the legislature. The outlook seemed bright, as many legislators had pledged support. The bill as presented, however, was changed again and previously rejected parts in conference were added. This bill containing sections suggested by the secretary of the State Board of Health, irregulars, and patent medicine vendors was quickly killed. Even the eclectics began to question the value of legislation developed by joint meetings of the three sects. The eclectic medical legislation committee was now suggesting that each school should meet and draft their own law, present it, and stick by it.<sup>71</sup>

Although claiming that a "larger purse" knocked them out of the last session of the legislature, medical men vowed a fight to the finish in 1900. In spite of having been governed by Republicans, Democrats, Prohibitionists, and Populists, and living in a state advertised across the country as noted for droughts, floods, grasshoppers, hot winds, blizzards, and cyclones, Kansas physicians were still going strong. They even printed their own advertisement describing Kansas as:

The headquarters for Quacks, Fakirs, Osteopaths, Christian Scientists, Cheropodists, and Spook Eradicators. Anyone wishing to engage in the medical profession in any way, shape, form or manner we invite to come to Kansas where our Medical laws are as broad as our prairies. Come and swing your shingle to the zephyrs of the Sunflower State where everything is as peaceful and serene as the backwater current of Buck Run.<sup>72</sup>

<sup>70</sup>J. J. Kackley, "Needed Medical Legislation," *Western Medical Journal* 10 (December 1898): 447-56.

<sup>71</sup>Kansas Eclectic Medical Association, "Proceedings of the Kansas Eclectic Medical Association," *Proceedings and Papers of the Kansas Eclectic Medical Association, Topeka, Kansas, May 3, 4, and 5, 1899* (Topeka: Mail Printing House, 1899), pp. 50-51.

<sup>72</sup>"NIT," *Western Medical Journal* 11 (March 1899): 91.

Persistence did eventually pay off, for in 1901 the state did pass a new law regulating the practice of medicine. A State Board of Medical Registration and Examination was created. Representation was given to the different schools of practice in proportion to their numerical strength in the state. Protests from groups such as the "Physician's and Surgeon's Society of the State of Kansas" had been strong. Using the anti-monopoly argument, this society, which consisted of "independent" non-graduates, attempted to gain enough popular support to defeat the bill. The argument was not as strong by 1901 as it had been in the 1880's and 1890's, and they found themselves unable to halt the measure.<sup>73</sup>

Effective medical legislation was indeed long in coming for Kansas, as it was in many other states. An equalitarian people thought they could decide for themselves what type of physician was most effective. Lack of knowledge on the part of their physician was either considered irrelevant or else they were unaware of it. Any attempt at regulation was seen as the imposition of a monopoly against the poor. Many could only afford irregular physicians. Any attempt at prosecution was seen as persecution, and because most penalties were light, legal action was rarely taken. There was a view that more doctors were needed due to the country's phenomenal growth. Regulation and strict licensing requirements would severely restrict the number of people entering the profession. America has always contained a certain amount of anti-intellectualism. Medical regulation was seen by the populace as only beneficial for intellectuals. Schools had educated people well enough by the nineteenth century to be able to read the attacks on medicine and medical men, but not sufficiently advanced to make discriminating judgments about what they had read.<sup>74</sup> George Hogeboom, at the 1898 joint session of the three schools, pleaded with the group to educate the public to accept the fact that regulatory laws are best for them and that the reduction of their private rights were small in comparison to the resulting good. No prohibitory law would be possible without the support of public opinion and that would take time.<sup>75</sup> Analogies were drawn by opponents of legislation equating the freedom of religion with the freedom of medical sects. "What would happen," homoeopaths questioned, "if religious views and affairs were determined by a

<sup>73</sup>Physician's and Surgeon's Society of the State of Kansas, *The Physician's and Surgeon's Protest* (n.p., [1901]), p. 1.

<sup>74</sup>Shryock, *Medical Licensing*, pp. 28-37.

<sup>75</sup>George W. Hogeboom, "Medical Legislation," *Proceedings and Papers of the Kansas Eclectic Medical Association, Topeka, Kansas, May 4, 5, and 6, 1898* (Topeka: Mail Printing House, 1898), pp. 105-7.

State Board of Theology?" If Catholics got one member out of seven, they would certainly feel discriminated against.<sup>76</sup>

Regulation could only be secured with the aid and cooperation of eclectics and homoeopaths. This in itself required a radical change in nineteenth century medical ethics. Effective medical regulation was only possible after the medical profession, and more importantly the general populace, realized the need for it.<sup>77</sup>

<sup>76</sup>"Medical Legislation," Reprint from *Medical Arena*, February, 1899, in *Kansas State Legislative Documents 1862-1899*, vol. 4, p. 4, located at Kansas State Historical Society.

<sup>77</sup>Shryock, *Medical Licensing*, p. 52.



### III. PROPRIETARY THERAPEUTICS

Quarreling and factionalism among medical sects added to the confusion of the ordinary citizen. Choosing a physician was not an easy decision. Many found it much simpler and cheaper to try and treat themselves with the abundance of "patent medicines" offered for sale.

A report by the Commissioner of Patents stated that eighty-six patents for medicines had been granted prior to 1849. This number slowly increased, and then 540 new patents were granted in the decade 1880-1890. It was not an easy matter to obtain patents, however, and four were usually rejected for every one granted. The patent required disclosure of the recipe and method of production on any proposed prescription. The Commissioner of Patents could even request a sufficient quantity for an experiment, although this was rarely done. Nostrum developers found it easier, and much less costly, to simply register trade marks and label designs for bottles and packages and to copyright the printed matter. One added benefit of this was that the ingredients of the proposed panacea could remain a secret.<sup>1</sup>

According to patent office regulations, a patent could be granted for a "new and useful article, machine, manufacture, or composition of matter." As the patent office came to define it, "useful" meant "not pernicious or prejudicial to public interest, or capable of being used." An article was useful when it was harmless. The difficulty in obtaining a medical patent, however, came from the requirement that an article to be patentable had to be a composition of matter as a special article of manufacture. The patent office did not consider a medical prescription an invention, or that a mere combination of well-known remedies to obtain a cumulative effect was a patentable composition. As a consequence, a number of claims were made for patents or trade-marks under false pretenses. For example, a new remedy was proclaimed a cure for rheumatism or dyspepsia with warnings given against its use under certain conditions. The real intention was the use of the remedy specifically for those "certain conditions," such as to obtain an abortion, etc.<sup>2</sup>

The Antiseptic Safe Capsule Company of Topeka produced just

<sup>1</sup>John S. Billings, "American Inventions and Discoveries in Medicine, Surgery, and Practical Sanitation," *Annual Report of the Board of Regents of the Smithsonian Institution. Showing the Operations, Expenditures, and Conditions of the Institution to July 1892* (Washington: U.S. Government Printing Office, 1893), pp. 613-19.

<sup>2</sup>*Ibid.*, p. 617.

such a product. It was reportedly developed after a lifetime search by one of the country's greatest physicians. One thousand dollars in American gold was offered for any failure if used as directed. Upon investigation of the general headquarters, the proprietor was identified as Dr. Booge. Prior to his medical manufacturing, Booge had been proprietor of a paper real estate addition to Topeka called Chicago Heights, and reportedly had a large sum of money hidden away in Old Mexico. At any rate, the use of Booge's capsules was intended for "female disorder and weakness." They could even be used by a woman not suffering from weakness, for a mildly exhilarating influence and "for other purposes as often as anyone desires." Patients were advised to:

Take one of the large and one of the small capsules; when necessary, insert high up in the vagina. In eight or ten minutes they will disintegrate and a gas be formed which will be noticeable by little globules passing down and escaping and an increase of warmth. From that time for thirty minutes anyone is perfectly safe in performing *any duties* they please. Follow the directions as often between the menstrual periods as the necessities of the case demand, and there need be no anxieties about irregularities.

Out of a sense of public consciousness, however, a warning was added calling the patron's attention to the evils of misusing the capsules:

Beware! No little feet will run, no tender arms will out-stretch if the capsules are used injudiciously; that is, if used as directed for leucorrhoea [sic], for a period of thirty to forty minutes; afterward they absolutely kill the life-giving principle precipitated at that time. We call attention to this so that the evil may be avoided by abstaining at that time.

Booge was marketing a vaginal contraceptive under the guise of a "female regulator." He even included, in circulars, unauthorized testimonials of local physicians, knowing full well that patrons using the product as a contraceptive would never consult their family physician regarding the product and his reported advocacy of it.<sup>3</sup>

Patent medicine companies and quackery grew because of improved means for attracting victims. They expansively promoted their wares via national advertising after cheap newspapers became available. It was big business.<sup>4</sup>

A hydropathic physician compiled a list, based on newspaper advertising in 1858, and found 1,500 different patents advertised

<sup>3</sup>W. L. Schenck, "Quacks and Quackery," *Kansas Medical Journal* 4 (October 1892): 740.

<sup>4</sup>Richard H. Shryock, *Medical Licensing in America: 1650-1965* (Baltimore: Johns Hopkins University Press, 1961), p. 70.

that year alone. With better education, improvement in newspaper circulation, and postal service, advertisements were easily obtained and read by the citizenry.<sup>5</sup> Some muckrakers attempted to debunk the advertising, and some newspapers refused to print it, but such refusals did not pay the newspapers' bills. Besides, many of the testimonials that editors were asked to print were from doctors and clergymen. Physicians themselves made and vended the secret remedies. Any attempt at condemnation was used as an excuse for the manufacturers to cry persecution.<sup>6</sup>

The manufacturing itself became big business. The 1880 census showed 592 drug manufacturing firms with a total of \$28, 598,458 in capital investments with \$38,173,658 of annual product value. The patent medicine firms, on the other hand, had a capital investment total of \$10,620,880 and an annual value of product of \$14,682,494.<sup>7</sup> By 1900, there were 1,000,000 patents on the market. The only problems seemed to be to get people to pay 25¢ for pills that any druggist could compound for 3¢.<sup>8</sup>

The antebellum period was the formative age for patent medicines. Improved newspaper circulation, a booming population surging west, and diversification within the patent medicine industry itself, all added to the fertile growing soil. Basic gimmicks were retained, however, such as the testimonial letter, extravagant guarantees, an air of mystery about a product with a foreign-sounding name, constant repetition of the remedy's virtues, and eye-catching headlines. People did not seem to care whether the product worked or not.<sup>9</sup>

Examples of each type are easy to detect in any late nineteenth century newspaper. By far, the most popular means of advertisement was the testimonial letter. The more important the person writing the letter, the larger the advertisement. An advertisement featuring reform editor J. H. Livingston included a large photograph and a two-column story of his experience with La Grippe and his subsequent cure by the use of Paine's Celery Compound.<sup>10</sup> The advertisement featuring ten-year-old D. M. of Nocaturn, extolling the virtues of Ayer's Sarsaparilla in his case of in-

herited consumption, was less than one-fourth the size.<sup>11</sup> The testimonial of the ordinary citizen, however, was the bread and butter of any proprietary medical firm. Without such people as D.B. Owens of the Santa Fe R. R. Shops in Topeka<sup>12</sup> and G.W. Coffin of Emporia, elixers such as Warner's Safe Kidney and Liver Cure and Kraum's New Blood would likely have gathered dust on shelves of many druggists.<sup>13</sup>

Guarantees were often extravagant. Professor W. Peek proclaimed, "I cure fits."<sup>14</sup> Dr. D. M. Bye promised a cancer cure with his Combination Oil Cure,<sup>15</sup> and Prickly Ash Bitters was able to cure all cases of dyspepsia, general debility, jaundice, habitual constipation, liver complaints, sick headache, and diseased kidneys.<sup>16</sup> Many of the ads were surrounded with an air of foreign intrigue or given an exotic name. Indapo, the "Great Hindoo Remedy," cured all nervous diseases, failing memory, paresis, insomnia, nightly emissions, and gave vigor and size to shrunken organs with a restoration of lost manhood.<sup>17</sup> Gun Wa, a Chinese graduate of medicine, was prevented by American laws from practicing medicine here, so he prepared a complete line of "Chinese Vegetable Specifics" for the cure of all diseases. Although new to America, his cures were old to China, and would reportedly quickly cure consumption, asthma, rheumatism, scrofula, female weakness, cancer, piles, seminal weakness, catarrh, loss of manhood, all sexual, nervous, blood or chronic diseases, paralysis, tapeworms, and "all other diseases and afflictions."<sup>18</sup> Advertisements often had an eye catching title that would draw a curious newspaper reader's attention. Dr. King's New Discovery for Consumption ads began with a variety of titles: "A Night of Terror";<sup>19</sup> "Millions Given Away";<sup>20</sup> "Prevented a Tragedy";<sup>21</sup> "A Live and Death Fight";<sup>22</sup> and "His Life Was Saved."<sup>23</sup> Offered by Hall's Catarrh Cure was "\$100 Reward \$100" for any case that it failed to cure.<sup>24</sup> Bucklen's Arnica Salve was

<sup>5</sup>James H. Young, "American Medical Quackery in the Age of the Common Man," *Mississippi Valley Historical Review* 47 (1961): 584.

<sup>6</sup>Mike Moore, "Caveat Emptor," *Ohio State Medical Journal* 56 (November 1960): 1482.

<sup>7</sup>Billings, *Annual Report of the Board of Regents*, Smithsonian Institution, pp. 614-15.

<sup>8</sup>Kay Devner, *Patent Medicine Picture* (Tucson: By the Author, 1968), p. 4.

<sup>9</sup>Moore, "Caveat Emptor," p. 1482.

<sup>10</sup>"For La Grippe Sufferers," *Topeka Daily Capital*, February 10, 1894, p. 5.

<sup>11</sup>"A Bright Lad," *Topeka Daily Capital*, February 7, 1894, p. 6.

<sup>12</sup>"Truth Attested," *Topeka Daily Capital*, April 2, 1882, p. 9.

<sup>13</sup>"Kraum's New Blood," *Emporia Weekly Gazette*, January 18, 1900, p. 3.

<sup>14</sup>"I Cure Fits," *Topeka Daily Capital*, July 4, 1897, p. 7.

<sup>15</sup>"Cancer Cured," *Topeka Daily Capital*, January 3, 1894, p. 3.

<sup>16</sup>"Prickly Ash Bitters," *Topeka Daily Capital*, January 7, 1885, p. 3.

<sup>17</sup>"Indapo," *Topeka Daily Capital*, January 2, 1894, p. 6.

<sup>18</sup>"Gun Wa," *Topeka Daily Capital*, January 9, 1890, p. 8.

<sup>19</sup>"A Night of Terror," *Emporia Daily Gazette*, October 3, 1899, p. 3.

<sup>20</sup>"Millions Given Away," *Ibid.*

<sup>21</sup>"Prevented a Tragedy," *Ibid.*

<sup>22</sup>"A Live and Death Fight," *Ibid.*

<sup>23</sup>"His Life Was Saved," *Ibid.*

<sup>24</sup>"\$100 Reward \$100," *Emporia Daily Gazette*, September 21, 1899, p. 3.

Advertised under the heading of "Volcanic Eruptions." The ad went on to state that while volcanic eruptions were grand, skin eruptions were not and Arnica Salve was designed to cure them.<sup>25</sup>

The first phase of the sales of patent medicines started in the 1840's with the Indian herb remedies. By the time of the Civil War, the nature cure school or botanic folk lore preparations gained supremacy. Probably the two most widely known purveyors of these vegetable compounds were Dr. James C. Ayer and Mrs. Lydia E. Pinkham. Ayer, with a medical degree from the University of Pennsylvania, purchased a drugstore in 1841, and started manufacture of his line of family remedies. Ayer's Sarsaparilla and Cherry Pectoral Drops were given the credit for saving the lives of many Kansans.

Lydia Pinkham, the most widely known woman in America in the late 1800's, was a school teacher, temperance worker, and brewer of vegetable elixirs. She originally gave away her preparation, but with the panic of 1873, and the resulting poverty of the Pinkhams, she began accepting money for them.<sup>26</sup> Few women were without Lydia Pinkham's Vegetable Compound, which was considered a positive cure for all "female complaints, all ovarian troubles, inflammation and ulceration, falling and displacements and the consequent spinal weakness, and is particularly adapted to the change of life." It would also dissolve and expel uterine tumors, remove the tendency towards fainting, destroy the craving for stimulants, and cure bloating, headaches, insomnia, depression, and anything else that one could think of. Although women found it indispensable, men were also told that it would cure the kidney complaints of either sex.<sup>27</sup> Other extremely popular vegetable remedies were the various celery compounds, intended for nervousness and irritability. One in particular, Extract of Celery and Chamomile was considered valuable "for school children who suffer from nervous headaches caused by an overworked brain in their studies, and for all classes of hard brain-workers whose overtaxed nervous centers need repair and sedation."<sup>28</sup>

Amidst advertising confusion and conflict, some better known products issued warnings to patrons. They were advised not to be misled by similar labels and claims offered by competing preparations. The *Topeka Daily Capital* carried the following advertisement:

<sup>25</sup>"Volcanic Eruptions," *Emporia Weekly Gazette*, January 18, 1900, p. 3.

<sup>26</sup>Robert F. Karolevitz, *Doctors of the Old West* (New York: Bonanza Books, 1967), pp. 144-45.

<sup>27</sup>"Woman's Triumph," *Topeka Daily Capital*, July 2, 1881, p. 3.

<sup>28</sup>"Celery and its Uses," *Ibid.*

#### Timely Caution

Genuine Hop Bitters are put in square paneled, amber-colored bottles, with white labels on one side printed in block letters, and green hop cluster, and on the other side yellow paper with red letters, revenue stamp over the cork. This is the only form in which genuine Hop Bitters are put up, and the sole right to make, sell and use them is granted to the Hop Bitters Manufacturing Company, of Rochester, N.Y., and Toronto, Ont., by patents, copyright and trademark. All others put in any other way or by anyone else, claiming to be like it or pretending to contain hops, by whatever names they may be called are bogus and unfit for use, and only put up to sell and cheat the people on the credit and popularity of Hop Bitters.<sup>29</sup>

Advertising reached the extent of no criteria by which to judge medicines. Even professional journals carried patent advertisements. In 1868, the *Leavenworth Medical Herald*, a journal endorsed by the Kansas Medical Society, carried a seven-page catalog of the pharmaceutical preparations of Tilden and Company of New Lebanon, New York, containing such items as Ferrated Wine of Wild Cherry, Elixir of Valerinate of Ammonia, Elixir Calisaya, Elixir Calisaya Iron and Strychnia, Elixir Pepsine, Strychnia and Bismuth and Aromatic Syrup Blackberry.<sup>30</sup> Similarly, the *Kansas Medical Index*, in 1882, in addition to several cod liver oil firms, carried advertisements for such preparations as S. H. Kennedy's Concentrated Aqueous Extract of Pinus Canadensis,<sup>31</sup> and Celerina: The Nerve Tonic, complete with testimonial letters.<sup>32</sup> The combined effect made it hard for the regular profession to lobby for more stringent legislation regarding quackery. Homoeopaths questioned the sincerity of the regular physicians when:

Their journals are filled with advertisements of the elixis malts, iodias from idias and tongas, which last wonderful remedy after being a state secret for many generations was discovered by a European gentleman who had married the daughter of the chief of the Fiji Islands. This gentleman discovered the secret from his father-in-law and imparted the information to another gentleman, for which crime he was no doubt duly cooked and eaten by his mother-in-law.<sup>33</sup>

<sup>29</sup>"Timely Caution," *Topeka Daily Capital*, May 11, 1880, p. 2.

<sup>30</sup>"Pharmaceutical Preparations by Tilden and Company," *Leavenworth Medical Herald* 2 (July 1868): 1-7.

<sup>31</sup>"Advertisements," *Kansas Medical Index* 3 (December 1882).

<sup>32</sup>"Advertisements," *Kansas Medical Index* 3 (October 1882).

<sup>33</sup>"The Homeopaths is Session," *Topeka Daily Capital*, May 5, 1881, in *Homeopathic Medical Society Clippings*, p. 14, located at Kansas State Historical Society.

The most popular site for patent medicine advertisement was the medicine show. In areas starved for entertainment, the medicine huckster brought music, dancing, magic, and possibly a play production. The medicine show became a real social event, and the whole countryside turned out for them. An Emporia woman felt that the Wizard Oil concerts were the best.<sup>34</sup> One of these Wizard Oil showmen was Cornelius Mountblossom, probably an alias, as he also was identified by several other names, and was known to everyone as "Dr. Corn." Dr. Corn provided cornet solos, banjo playing, buck and wing dancers, Pleasant Purgative Pellets, Ginseng Root, Mexican Mustang Liniment, Corn Remover, Female Tonic, and Wizard Oil for Rheumatism. Everyone welcomed the Doc, as he provided the only decent entertainment between the spring revival and the county fair. He may have been a quack doctor, but he was no quack showman. Doc was the first to introduce the people to motion pictures. It mattered little if the movie was a simple shadowgraph shown on a sheet by a smelly and smoking carbide projector. The grateful public quickly bought him out of Wizard Oil and Mexican Mustang. It was all too fantastic to last. Doc's decline and fall came about when he hired himself a partner named Ish Rock. Ish had at one time been quite a good magician, but his fame had declined in proportion to the alcohol that he continued to consume. He had been chased out of a Kansas City theater for trying to saw a woman in half when the lady was not ready. As it turns out, it was not even the right woman! The partners held their premier in connection with the Rice county Fourth of July celebration. The two assured their audiences that within their tent they had on display a "genuine horn-hided pollimazuke," which had been captured "at a cost of eleven lives in a mountain cave in the wilderness of Sanguilado." The people were gullible, although none could find any information about this pollimazuke in the city library, and quarters flowed into Doc and Ish's hands. Everyone wanted a look. At regular intervals, Ish would turn the front end business over to Doc and would retire to the tent to lecture his audience on the characteristics of pollimazukes. At the proper moment, Ish would step on a concealed bellows and simulate the animal's breathing. Things continued to go along quite well for several days and then Ish showed up roaring drunk. Before Doc could throw him from the platform, Ish managed to shout at the top of his lungs, "Covered with hogs hide, stuffed with straw; the biggest fake that you ever

<sup>34</sup>Laura M. French, *History of Emporia and Lyon County* (Emporia: Emporia Gazette Print, 1929), p. 203.

saw! Come on suckers! See the pollimazuke!" The damage was done. A couple of young men, upon hearing the drunken pitchman's revelation, reached inside the bars and pulled the unfortunate pollimazuke apart. From then on, Doc found it increasingly impossible to sell his Wizard Oil and Purgative Pills. The people no longer trusted him.<sup>35</sup>

In a slightly different vein was Comanche Bill, who showed up on the streets of Onaga in August of 1898. The *Onaga Courier*, with a hint of frontier admiration, credited him with "the smoothest graft that has been seen in Onaga for some time." Bill's technique required him to impress the people with the fact that he was a bad man. This was not hard to do for someone who claimed that he was a companion of Sitting Bull and with Custer at the Little Big Horn. With impressions made, he went on to the selling of his elixir. After several sales, as an inducement he returned double the customer's money. Not surprisingly, sales did increase. Bill then stated that the citizens of Onaga would see an exhibition of liberality the likes of which they had never seen before. He would take a bottle, write his initials on it, and offer it for sale for one dollar. After the customer had paid and received his bottle, Bill took the dollar and wrapped it with one of his own. Both were then placed in plain view of the audience. The process was continued until thirty to forty bottles were sold, with each purchaser of an initialed bottle expecting to be given the money. Comanche Bill had other plans, however, and after forty or so sales had been made, he dropped the money into his wallet and picked up a tomahawk. After explaining that he was an expert in its use and could defend himself against a dozen or so men armed with bayonets, he gave a signal for the driver to leave. Bill continued on to Havensville, but we find no mention of whether Onaga citizens followed him or sent any word of warning to their eastern neighbors.<sup>36</sup>

Physicians became increasingly concerned with the contents of the overwhelming variety of proprietary preparations. Dr. H. W. Spangler reported at the Third Annual State Sanitary Convention on his investigations of drugs and proprietary medicines. He found that there were problems not only with proprietaries, but also with products of regular pharmaceutical firms. Of eleven morphine bottles tested, each labeled one-quarter grain, only one contained one-

<sup>35</sup>Ernest B. Dewey, "TV Has Nothing on Old Doc's Medicine Show," *Hutchinson News-Herald*, December 30, 1951, in *Legends of the Wheat Country Clippings*, pp. 86-88, located at Kansas State Historical Society.

<sup>36</sup>"A Smooth Fakir," *Onaga Courier*, August 25, 1898, p. 8.

quarter grain. One bottle labeled one-quarter grain only contained 23/100 grain. The same thing existed with salicylic acid tablets labeled at twenty grains. The dosage varied from twenty-four grains in one bottle to six and one-half in another. Spangler ordered eleven pounds of veratrum veride root, which, when it came, was labeled "WHITE HELLBORNE" in small caps and in small letters "veratrum veride." Upon investigation, he found it to be veratrum alba. Similar adulterations were found in proprietaries. Proprietary Pinus Canadensis (hemlock spruce), which sold for four times the price of the standard extract, was available in two kinds, white and dark. The medical properties of the preparation were due to the tannin it contained. Upon investigation of the dark proprietary, it was found thicker than normal and because of overheating during processing contained a slight taste of wood tar. The addition of a gelatin solution produced a precipitate of tannin that had undergone some change during preparation. The white was found, by the addition of a gelatin solution, to contain absolutely no tannin. Addition of lead acetate indicated the presence of potassium or ammonium. The preparation had a strong zinc taste, and the label stated a certain amount of sulphate of zinc and alum had been added. Further tests, however, indicated the presence of ferrous iron salts, which meant that the alum was impure. White Pinus Canadensis was simply a solution of zinc and alum.<sup>37</sup>

Much more dangerous were the "Soothing Syrup" or "Teething Cordial" preparations sold to mothers whose babies were suffering from teething pains or restlessness. All contained a dangerously high level of alcohol or, more commonly, opium or morphine. Physicians tried to keep people from using the preparations, but many parents stubbornly continued to praise and use their particular favorite. The most popular during the period was Mrs. Winslow's Soothing Syrup containing one-half grain sulphate of morphine to a two-ounce bottle. Godfrey's Cordial and Bateman's Drops printed their opium content and supplied sufficient warnings, but people avoided their use. There was a fear of anything that contained opium and such preparations were usually shunned. It was perfectly all right, however, to use one in which the opium content was not identified. It would not be an exaggeration to state that many babies were killed by "Soothing Syrups." Spangler summed up the feelings of many

<sup>37</sup>H. W. Spangler, "Adulteration of Drugs and Dangerous Proprietary Medicines," *Proceedings and Addresses at the Third Annual State Sanitary Convention*. Reprinted in *Fourth Annual Report of the State Board of Health of the State of Kansas From January 1, 1888 and Ending December 31, 1888* (Topeka: Kansas Publishing House, 1899), pp. 294-96.

concerned investigators when he remarked, "If someone gave or sold a bouquet of flowers with a viper in it he would be prosecuted for murder but a medicine, with a deadly poison is given, which slowly and surely injures and kills is eagerly sought after."<sup>38</sup>

Many other preparations contained narcotic drugs. Dr. Buckland's Scotch Oats Essence was advertised as a "permanent tonic to cure inebriety and opium habit. Dose fifteen to twenty drops to a teaspoon, three or four times daily increased as needed." Actually it was itself thirty-five percent alcohol and contained one-fourth grain per ounce of morphine.<sup>39</sup> When a Doctor Eccles of New York exposed this fact, a new wrapper was added which guaranteed no morphine. Those using the newly wrapped medicine now complained that it did no good. A Leavenworth physician even claimed to have a patient addicted to something in an "exclusively advertised brand of cod liver oil."<sup>40</sup> Dr. Bull's Cough Syrup in three-ounce bottles contained over three-quarter grains sulphate of morphine. Ayer's Cherry Pectoral and Allen's Lung Balsam, used for bronchitis, coughs, colds etc., contained three grains of acetate of morphine and two ounces of tincture of opium respectively. Also having high narcotic contents were Jayne's Expectorant with two drams of tincture of opium, Perry Davis's Pain Killer with eight ounces of gum opium and Good Samaritan Liniment with one-quarter fluid ounce tincture of opium.<sup>41</sup> Consumption cures were notoriously high in narcotic content. Manufacturers followed the theory that one-half of a fatal dose of morphine and cannabis indica would not be fatal in the final preparation. A certain consumption cure had to be put up in small bottles, as it was found that the solution was not permanent in large bottles, the last dose often being a fatal one. It made little difference, for such incurable groups clung to any straw, and the consumption cures did give the illusion that their temporary relief was permanent.<sup>42</sup> The two main ingredients which made up the base of all the major consumption cures were chloroform and morphine. The morphine did a good job of deadening the pain associated with consumption. Chloroform silenced the cough. A problem of the preparations was that they effectively prevented the beneficial discharge of mucus.

<sup>38</sup>*Ibid.*, p. 296.

<sup>39</sup>Edward Bumgardner, *Pro Bono Publico* (Denver: Reed Publishing Company, [1902]), p. 5.

<sup>40</sup>Spangler, *Proceedings of the Third Annual State Sanitary Convention*, p. 297.

<sup>41</sup>W. C. Fair, Alice G. Kirk, and T. J. Ritter, *The People's Home Library: A Library of Three Practical Books* (Minneapolis: R. C. Barnum Company, 1917), pp. 286-87, 291, 294, 298.

<sup>42</sup>*Ibid.*, pp. 294, 299-300.

Many of the proprietaries contained high alcoholic content, adding to their popularity among large sections of the population, especially in prohibition areas. A survey of some of the popular remedies discovered the following alcohol in them:<sup>43</sup>

Gene's Nervura	17.2%	Burdock Blood Bitters	25.2%
Hood's Sarsaparilla	18.8%	Ayer's Sarsaparilla	26.2%
Schenck's Sea-Weed Tonic	19.5%	Warner's Safe Tonic Bitters	35.7%
Brown's Iron Bitters	19.7%	Parker's Tonic	41.6%
Kaufman's Sulphur Bitters	20.5%	Hostetter's Stomach Bitters	44.3%
Paines Celery Compound	21.0%		

Liniments were the most popular vehicle for serving the alcohol, as it usually made up the base for the preparation. Magnetic Liniment contained one pint of alcohol to approximately two and one-third ounces of other ingredients. Cuticura Resolvent, a blood tonic, useful in the cure of pimples, ulcers, etc., contained a pint of whiskey to two drams thirty-six grains of other ingredients. Even Lydia Pinkham's Vegetable Compound contained one-half gallon of alcohol to approximately two and three-quarters gallons of other liquids. Probably the most intoxicating and potentially dangerous preparation this writer has found was Perry Davis's Pain Killer, whose ingredients included:

Capsicum	10 oz.	gum camphor	10 oz.
gum myrrh	2½ lb.	gum guaiac	3 oz.
gum benzoin	6 oz.	alcohol	5 gal.
gum opium	8 oz.		

Advertised as an excellent remedy for diarrhea, colic, wind in the bowels, and pain in the stomach, the adult dosage was set at fifteen to thirty drops. One can but imagine its efficacy when used to excess.<sup>44</sup>

The most advertised cosmetics and hair restorers contained high levels of mercury, lead, bismuth or zinc. All could be potentially dangerous poisons. As freckles and tan skin were considered embarrassing blemishes in the nineteenth century, many preparations were developed to remove them, such as Recamier Moth and Freckle Lotion, Mrs. Harriet Hubbard Ayer's Recamier Balm, Madam Rupert's Face Bleach, and Malvina Cream and Lotion. Madam Rupert's was found to contain one grain of corrosive sublimate along with seven grains of benzoin in fifty grains of water.<sup>45</sup>

<sup>43</sup>Bumgardner, *Pro Bono Publico*, p. 6.

<sup>44</sup>Fair, Kirk, and Ritter, *People's Home Library*, pp. 287, 289, 291, 293, 295-98, 301.

<sup>45</sup>*Ibid.*, p. 296.

Although most of the cosmetic action was imaginary, Laird's Bloom of Youth, Hagan's Magnolia Balm, and Bradford's Enamelene, all with high levels of zinc oxide became quite popular.<sup>46</sup> One skin preparation, advertised to create "Marvelous complexion when applied on the face, neck and bust," was simply epsom salts colored pink. Constipation can affect one's complexion, but the salts must be taken internally to do any good.<sup>47</sup>

Professor C.F. Chandler analyzed eight leading hair restorers and renewers and reported to the New York Board of Health that all contained lead, as much as seven grains per ounce. Two of the most popular hair renewers were Ayer's Hair Vigor and Hall's Hair Renewer. Both had lead acetate and precipitated sulphur as principal ingredients. Both advised the product be rubbed into the hair once a day till the hair darkened and then once a week.<sup>48</sup>

Anyone going into a pharmacy would have to run a gamut of patent medicine advertisements before finding the prescription counter. On the way, if a patient did not find something catching his eye, the druggist stood ready to recommend a substitute for the physician's prescription. A druggist could always prescribe something, if one but told him their symptoms. Although physicians were never able to get rid of druggists and shift the drug distribution system to themselves, there was good reason to be upset.

The pharmacist of the nineteenth century was rare who did not sell some proprietary of his own manufacture. One such example was the drugstore of A. E. Kraum in Emporia. Established in 1892, the store had the reputation of one that did not sell liquor or permit it on the premises.<sup>49</sup> Druggist Kraum did have the business sense, however, to form the Kraum Remedy Company and sell Kraum's New Blood: The System Regulator and True Dutch Cough and Cold Cure. It was Kraum's understanding that thousands of people died annually from overeating, caused by a disturbed stomach, constipation, and many other diseases. New Blood was specially compounded to cure constipation, liver complaint, stomach trouble, indigestion, kidney diseases, pains in the back, rheumatism, catarrh of the stomach, swelling of the limbs, headache, heart disease, impure blood, and yellow jaundice. Taking the place of the dollar preparations, New Blood and True Dutch Cough Cure cost only fifty cents and were considered two remedies that would cure a cold "quicker

<sup>46</sup>Bumgardner, *Pro Bono Publico*, p. 4.

<sup>47</sup>Samuel J. Crumbine, *Frontier Doctor* (Philadelphia: Dorrance and Company Inc., 1948), p. 118.

<sup>48</sup>Fair, Kirk, and Ritter, *People's Home Library*, pp. 286, 293.

<sup>49</sup>French, *History of Emporia*, p. 63.

than any medicine on earth." For eleven years, the wife of H. Adolph of Emporia had been in bed suffering from kidney and liver trouble and "all the aches and pains a human being could stand." Her husband purchased a bottle of New Blood and after the first few doses her husband reported, "She was able to sit up and for the past seven months has been doing her housework and feels well." I. N. Wells found it invaluable for that "languid tired feeling." S. H. Son-nedecker found the Dutch Cough and Cold Cure better than anything he had ever used for his asthma.<sup>50</sup>

Although the code of ethics of the American Medical Association and the Kansas State Medical Society clearly prohibited physicians using or manufacturing any "secret nostrum," the code proved difficult to enforce. One method of circumventing the ethical prohibitions, especially in the case of physician-druggists, who felt they had a valuable cure on their hands, was to go ahead and prepare and sell the preparation without mentioning it in the advertisement of their medical practice. Such was the case with Dr. C. L. Stocks of Bushong. Stocks, a member of the Lyon County Medical Society, was a 1896 graduate of University Medical College in Kansas City. Dr. Stocks operated a pharmacy in conjunction with his medical practice in Bushong. Discovered in his office, prior to demolition, were several empty displays boxes, suitable for countertop use, for a remedy "put up" by Dr. Stocks. The boxes were labeled as "One Day Cold Cure: A New and Positive Cure for Colds, Grippe, Acute Catarrh, Headache, Neuralgia, and Fevers." The inventor was "Dr. C. L. Stocks Druggist."<sup>51</sup> By selling such a "positive cure," and advertising his name with it, Dr. Stocks had more than just bent the code of ethics. No action was ever taken against him, and one can but surmise that his role as druggist was sufficiently autonomous to protect him from retribution.

The largest of the patent medicine manufacturing firms in Kansas was that of W. W. Gavitt Medical Company of Topeka. William Wellington Gavitt was born in Delaware county, Ohio, in 1840. He graduated from Ohio Wesleyan University in 1862, and for the next five years traveled across the country furnishing I.O.O.F. lodges with supplies. In 1867, he came to Topeka and organized a real estate and coal business. In 1869, he commenced his banking and loan career. From that date on, he became one of Topeka's

<sup>50</sup>"Kraum's New Blood," *Emporia Weekly Gazette*, p. 3.

<sup>51</sup>Lyon County Medical Society Papers. "Record Book," Volume 1, p. 13. Newman Memorial Hospital Medical Library, Emporia, Kansas.

wealthiest citizens.<sup>52</sup> Gavitt was lucky enough to have been a real estate promoter during the boom days of Topeka. Although some projects, such as his purchase of 100 acres of land for sale as building lots failed, others rewarded him quite handsomely. Gavitt was one of the stockholders of the company that built the office block at Fifth and Quincy, the first large office building in the city.<sup>53</sup>

The W. W. Gavitt Medical Company and its allied firm, the W. W. Gavitt Printing and Publishing Company, were reportedly formed in 1869. The printing company was established to print labels and advertising leaflets for the medical company. The medical company was reorganized by Harry E. Gavitt, W. W. Gavitt's son, in 1889.<sup>54</sup> It is this 1889 date that seems to be the real beginning of the companies' sales. No testimonial material exists prior to 1892, and no correspondence with Gavitt's supplier is available prior to 1893. The Gavitt operation as it existed prior to 1889 seems to have been quite small and to have operated in a relatively low-keyed manner.

In the formative years of his medical company, Gavitt was the general agent for the Dr. Perkins Medical Company of Washington, D.C. Perkins's major product, hence Gavitt's, was Our Native Herbs, a combination of twenty-one roots and herbs, such as sassafras, liverwort, balmony, magnolia, rhubarb, prickly ash, poplar, spearmint, elecampane, sarasaparilla, mandrake, juniper, burdock, canada balsam, boneset, wormwood, and yellow dock etc. it was guaranteed to cure:

Rheumatism, Dyspepsia, Sick and Nervous Headache, Nervousness, Constipation, Piles, Irregularity of the Bowels, Diarrhea, Catarrh, Fevers, General Debility, Sickness of the Stomach, Pain in the Side, Numbness of the Limbs, Cold Feet and Hands, Bad Taste in Mouth, Yellow Skin, Loss of Appetite, Worms, Stagnation of the Blood, Failure to Perspire Freely, Bad Circulation, Scrofula, Tetter, Erysipelas, Old Sores, Dropsy, Liver and Kidney Troubles, Heart Disease, Fits, all Female Complaints, Dark Circles Under the Eyes, Bearing Down Sensation, Pimples, Rough Skin, Poison in the Blood, etc. etc.

If the disease for which one purchased the remedy was not cured after taking the medicine for 200 days, the purchase price of one dollar would be refunded.<sup>55</sup>

<sup>52</sup>Woman's Kansas Day Club, "Pioneer Medicine in Kansas," n.p., 1956 (Typewritten)

<sup>53</sup>W. W. Gavitt, "Topeka Daily Capital, January 23, 1906, in *Kansas Scrapbook Biography*, Vol. 6, p. 108, located at Kansas State Historical Society.

<sup>54</sup>Alta Huff, "After a Century: He's Filling Final Orders," *Topeka Capital-Journal Midway Magazine*, April 2, 1967, in *Business Clippings*, Vol. 2, pp. 87-88, located at Kansas State Historical Society.

<sup>55</sup>Advertising Circulars, Gavitt Medical Company Papers, Manuscript Department, Kansas State Historical Society, Topeka, Kansas.

By 1895, there were over 5,000 users of the preparation in Topeka alone. Always considered the best advertising material, testimonial letters were frequently published, as were lists of prominent patrons. The letters came from such personages as Topeka Health Officer J. H. Ensiminger, Shawnee County Clerk John M. Brown, Ex-Mayor of Topeka Bradford Miller and the complete roster of the Topeka Police Department. The variety of cures bringing testimonials is nothing short of amazing. Charles White, of Topeka, was cured of a supposedly incurable case of Bright's disease. Our Native Herbs "entirely cured" Mrs. Millie White's case of scrofula from which she had suffered for seven years. The preparation cured Mrs. Fannie Pye's chronic case of milk leg and totally dissolved Mrs. T. J. Kelly's large "inward tumor," for which physicians had proposed an expensive operation with no assurance that it would not kill her. D. P. Robinson claimed his twenty-five-year case of consumption was cured with one dollar's worth of Our Native Herbs. The letters continue ad infinitum, but the general pattern of each follows that of Dennis Hope's:

W. W. Gavitt & Co.           Gentlemen:

I live at Thirteenth and Washington Streets. I am employed at the First National Bank. My wife has been an invalid for over two years from kidney and liver trouble, female weakness, sick and nervous headache, backache and nervous prostration, with a bad cough, the remnants of bad case of LaGrippe. My doctor bills was from \$10.00 to \$20.00 per month every month, besides the medicine. Her friends did not think that she could stand it for another year. I have heard of the wonderful satisfaction my friends were having with Our Native Herbs and I immediately sent for a box. She has used less than \$1.00 worth and such a miraculous change. I have not had a doctor in the house since she commenced taking the medicine. She has discharged all her help and is now doing her work herself. She now recommends Our Native Herbs to all her lady friends, no matter what their disease may be.

Dennis Hope<sup>56</sup>

Each case, although seemingly incurable by regular physicians, who had drained the patient's money supply, was cured by use of Our Native Herbs. In almost every instance, the case had been chronic, and the medicine used as a last resort upon advice of a neighbor.

As the remedy was not sold in drugstores, agents had to be solicited from the countryside. Qualifications for an agency to sell Our Native Herbs were not stringent. One only had to promise to

<sup>56</sup>Ibid.

sell the medicine as quickly as possible and send in to the company monthly reports giving the names, addresses, and occupations of patrons. An order of twelve one-dollar boxes and the payment of six dollars was required as a minimum order. All freight charges were to be paid by the agent, although these were refunded in medicine on the second order. If the enterprising agent was able to produce fifty sales, a rubber hand-stamp and self-inking pad would be presented to him. It was deemed extremely appropriate for stamping the various circulars agents were to distribute. For every additional agent that they could recruit, who eventually ordered twenty-five dollars worth of Our Native Herbs, the agent would be given three, free one-dollar boxes. As money was tight, people welcomed any opportunity which proposed an easy income. Gavitt's company recorded a steady influx of letters from people asking to become agents.<sup>57</sup> The majority of then followed in the same vein as James McNitt:

Dear Sirs: I see your add for agents to sell your Patten Medicine. As I am out of a job at present I would take an agency of that kind providing your commission will allow a man wages that he can live. . . .<sup>58</sup>

Early in 1896, Elonzo O. Bliss bought out the Dr. Perkins Medical Company, Gavitt's supplier, and reorganized the company under new management. The product was the same, except that the color of the box was changed from red to yellow. Disconcerting actions were now taken by the parent company towards its general agents. Agents, appointed by the new management, were sent to various areas of the country where they were usurping the business of the older, more established general agents. There were also representatives in the East who were advertising the Native Herbs, offering to send them to any area of the country by mail, postage paid, upon receipt of one dollar. Some agents even advertised the medicine at sixty-five cents per box instead of the one-dollar price asked by Gavitt's agents. If the trend continued, Gavitt's agents could not control the sale of the drug, and if forced to sell for sixty-five cents, the profit margin would have been drastically reduced.<sup>59</sup>

<sup>57</sup>A. B. Craig, Application and Order Blank, Gavitt Medical Company Papers, Manuscript Department, Kansas State Historical Society, Topeka, Kansas.

<sup>58</sup>James McNitt to W. W. Gavitt, August 4, 1894, Gavitt Medical Company Papers, Manuscript Department, Kansas State Historical Society, Topeka, Kansas.

<sup>59</sup>W. W. Gavitt Medical Company to G. W. Myrick, August 25, 1896, Gavitt Medical Company Papers, Manuscript Department, Kansas State Historical Society, Topeka, Kansas.



Gavitt's solution was to phase out the Elonzo Bliss Company and its Native Herbs. As early as June 22, 1892, he sent a circular letter to all agents offering to forward them a new product of his own manufacture called Gavitt's System Regulator.<sup>60</sup> Gavitt had been handling the preparation for several years in Illinois, Iowa, Missouri, and Nebraska, and found that it was every bit as effective as the Native Herbs. Agents could prove it by selling some to a patient who had never before used the old product and record their reaction. As an incentive, twelve boxes of System Regulator were available to agents at two dollars below the regular wholesale price of six dollars. Agents were advised to phase out the old product, although Gavitt would continue to sell it for a few months, in favor of one that they could more easily control.<sup>61</sup>

As 1896 was a poor year financially, many agents echoed the feelings of Wichita agent Joseph Murray when he wrote, "I think I am doing well considering hard time. I could sell more if money was more plenty. For as [a] class of people the poor class of people are the one that need medicine and they haven't got this mity dollar."<sup>62</sup>

Whatever the reason, Gavitt was disappointed with the number of replies to his offer. In a July 4, 1896, letter entitled "Our Second Offer," which agents were directed to read carefully twice, Gavitt repeated his wholesale price reduction and extended it to July 20, 1896. If agents did not have the full four dollars, it could be paid in two installments. As an added inducement, ten sample "give away" packages would be provided free of charge to help the agents get started. The company did want to know, however, whether the agents wished to remain with the Gavitt company and sell the System Regulator or stay with Our Native Herbs. A new agents' book was in preparation and one could no longer continue to sell both. If the agent in question opted for Our Native Herbs, a new System Regulator Agent would be appointed in his area.<sup>63</sup>

Application forms, along with rules and regulations used by the company while affiliated with Dr. Perkins, were generally retained. The price of one dollar per box, containing a two-hundred-day supply of eight twenty-five cent packages and dose glass, was the same as it has been for Our Native Herbs. Later, the powders were phased

<sup>60</sup>W. W. Gavitt Medical Company to Agents, July 4, 1896, Gavitt Medical Company Papers, Manuscript Department, Kansas State Historical Society, Topeka, Kansas.

<sup>61</sup>W. W. Gavitt Medical Company to G. W. Myrick.

<sup>62</sup>Joseph Murray to W. W. Gavitt, December 14, 1896, Gavitt Medical Company Papers, Manuscript Department, Kansas State Historical Society, Topeka, Kansas.

<sup>63</sup>W. W. Gavitt Medical Company to Agents, July 4, 1896.

out in favor of the easier-to-take tablets.<sup>64</sup> The new guarantee was essentially the same, except that after using the remedy for a month without beneficial result, the user was required to inform the company of same, along with a two-cent stamp, description of his case, how he had been using the medicine, and the effects that the medicine had been having on his system. The company would then make slight adjustments in the dosage. If after following their directions for the remainder of the package with no appreciable benefit, the money would be refunded.<sup>65</sup>

The ingredients and diseases against which it was effective were essentially the same. Advertised as a "Mild Laxative, A Good Tonic, Great Blood Purifier, A Powerful Kidney and Liver Regulator," it built up a "Broken Down System through the Pores of the Body, the Urine and the Bowels." Gavitt's System Regulator was found especially effective against blood, kidney, liver, and stomach troubles, which could show up as any of the following:

Rheumatism, Stiffness and Soreness of the Joints, Soreness of the Muscle, Dyspepsia, Sickness and Nervous Headache, Nervousness, Constipation, Piles, Irregularities of the Bowels, Diarrhea, Flux, Fevers, General Debility, Heartburn, Coated Tongue, Palpitation of the Heart, Sickness at the Stomach, Pain in the Side, Bad Taste in Mouth, Yellow Skin, Loss of Appetite, Sea Sickness, Worms, Throbbing of the Stomach, Bad Circulation, Scrofula, Tetter, Old Sores, Dropsy, Gravel, Highly Colored Urine, Acrid Humors in the Blood, Many Female Complaints, Dark Circles under the Eyes, Whites, Difficult Menstruation, Pimples, Poison in the Blood, Ague, Chills, LaGrippe, etc. etc.

It was every bit as universal as Our Native Herbs.<sup>66</sup>

In his last years of affiliation with Dr. Perkins, and later Elonzo Bliss, Gavitt had marketed four other preparations in Kansas: Gavitt's Cough Balsam, Gavitt's Herbal Ointment, Gavitt's Lightning Pain Extractor and Gavitt's Pile Driver. None gained the popularity or was advertised to the extent of the System Regulator. When used in conjunction with the System Regulator, the Cough Balsam was specific in the treatment of whooping cough, lagrippe, bronchitis, croup, tonsillitis, consumption, and basically any affliction of the lungs. Testimonials attested to its efficacy in the treatment of consumption. Gavitt's Herbal Ointment, also be used in conjunction with the System Regulator, was publicized as the best

<sup>64</sup>Agent Request Circulars, Gavitt Medical Company Papers, Manuscript Department, Kansas State Historical Society, Topeka, Kansas.

<sup>65</sup>"Guarantee," Gavitt Medical Company Papers, Manuscript Department, Kansas State Historical Society, Topeka, Kansas.

<sup>66</sup>Advertising Circulars, Gavitt Medical Company Papers.

general family ointment in use, especially for neuralgia, sprains, bruises, burns, scalds, frost bite, old sores, ulcers, salt rheum, tetter, fever sores, chapped hands and lips, chilblains, bee stings, dog bites and all poisonous wounds, sore throat, tonsilitis, hoarseness, and all skin diseases as well as itching piles. Public speakers and singer were advised that it was invaluable for all throat infections, especially if rubbed on the throat from ear to ear and a hot flannel cloth tied around the neck. Gavitt's Lightning Pain Extractor, "the superior of all liniments for internal and external uses," was sold for fifty cents per bottle. Taken internally, it was able to cure cramps, colic, pains in the back, sides and stomach, heartburn, palpitation of the heart, enlargement of the liver, diseases of the bladder and urinary organs, and chronic diarrhea. As a liniment applied externally, it gave immediate relief from sciatic rheumatism, neuralgia, lame back, headache, toothache, sprains, bruises, stiffness and soreness of joints and muscles. Testimonials were available from such personages and middleweight boxing champion Bob Fitzsimmons, as well as acrobats, gymnasts, bareback riders and trapeze performers of the Ringling Brothers Circus. Gavitt's Pile Driver, composed almost entirely of oils, was a local treatment, used as an injection, for chronic constipation, itching, bleeding and protruding piles.<sup>67</sup>

The quest to acquire more agents was a never-ending one for the Gavitt company. Many different techniques were used. The sale of Gavitt's System Regulator was advocated as fulfilling a purpose equally honorable as preaching the gospel; the salesman was saving the lives of people; the minister was preserving their souls. Great emphasis was placed on the theory that the sale of one box would automatically cause the sale of others to the original customer's friends and relatives. In that way, the agent would easily be laying a permanent foundation for an ever-increasing trade. Although many were sold as a part-time hobby, an equal number served to provide the agent with his total income. Records were on file to attest to the fact that some agents were able to sell as many as 30,000 boxes per year, which meant an annual income of \$15,000.<sup>68</sup> Letters were mailed to former patrons, obtaining addresses from monthly reports by agents, intimating that a large profit, as much as \$150 per month for part-time work, could be made from an agency in their respective town. If the particular patron in question was not interested, he was advised to give the letter and application blanks to friends, for

<sup>67</sup>*Ibid.*

<sup>68</sup>Agent Request Circulars, Gavitt Medical Company Papers.

"they may be looking for a business where they can make a big salary with a small amount of work."<sup>69</sup> For each agent convincing a friend to take an agency, and upon this new agent's first six-dollar order, he would receive six dollars in medicine at retail prices. Old agents were advised, "There is nothing that attracts the attention of the general public so much as something, at which they think some other person is making a fortune and then everybody is willing to take hold of it." So the agent need only play the part of a successful Gavitt agent to have friends clambering to get on the bankwagon.<sup>70</sup> There were dangers, as J. D. Hall of Burlingame found out in 1899. Hall had made an agreement to divide his territory with an unnamed "friend" and to share in the profits. He also expected his credit for six boxes of the medicine. As it turned out, his "friend" took over all of his territory, and by November 28, 1899, he had still not received the credit, only pressure from the company to up his sales.<sup>71</sup>

Ministers and veterans were especially recognized by the Gavitt company. In a letter of January 16, 1900, calling ministerial attention to the company, Gavitt offered to send ministers and their wives a one-dollar box upon receipt of sixty cents in postage stamps, for "a very large percentage of ministers and their wives are troubled more or less with indigestion, constipation, kidney, liver or other troubles and they have not found anything that cured them." Gavitt further claimed:

We have over 1,000 Ordained Ministers who are handling it in connection with their regular work for the reason that they can recommend it to their friends after they have used it themselves. A great many Churches have members who use all the money they can get paying doctor bills and have nothing left to pay their minister. A hint to the wise is sufficient. . . . Elderly Ministers who have retired from active work find this is a light and very remunerative business. . . . No doubt some of our letters will fall into the hands of young and single men who have no use for medicine. If you happen to be one of those lucky ones, please recollect that we all have very dear friends whom we would like to see cured. Go and see them, tell them that there is a chance yet. You may be the means of saving some of them doctor bills and funeral expenses.<sup>72</sup>

<sup>69</sup>W. W. Gavitt Medical Company to W. W. Haynes, February 3, 1899, Gavitt Medical Company Papers, Manuscript Department, Kansas State Historical Society, Topeka, Kansas.

<sup>70</sup>Agent Request Circulars, Gavitt Medical Company Papers.

<sup>71</sup>J. D. Hall to W. W. Gavitt Medical Company, November 28, 1899, Gavitt Medical Company Papers, Manuscript Department, Kansas State Historical Society, Topeka, Kansas.

<sup>72</sup>W. W. Gavitt Medical Company, Letter of January 16, 1900, Gavitt Medical Company Papers, Manuscript Department, Kansas State Historical Society, Topeka, Kansas.

Civil War veterans were equally revered by W. W. Gavitt. By September, 1899, the company could boast over 50,000 testimonial letters from veterans.<sup>73</sup> A form letter dated September 24, 1897, to "Comrade I. T. Earl of Eskridge," is indicative of Gavitt's technique. Reportedly at the request of Colonel O. H. Coulter, editor of the *Western Veteran* of Topeka, and Kansas City, Missouri, Earl was being sent a free twenty-five cent package of the System Regulator. As a large number of editor Coulter's personal friends were already using the remedy, Coulter did not want Earl left out. Earl was further advised to review the letters from other veterans published in the January testimonials. Comrades and widows of comrades, making the best agents, found they were quickly able to set themselves up in business and support their families in luxury by selling Gavitt's proprietaries. Luckily, an agency was scheduled for Earl's section of the state, and "would he know anyone that would be willing to take it?"<sup>74</sup> We have no indication of Earl's decision, but S. A. Robinson, Post Commander of Logan Post #177 of the G. A. R., upon receipt of the free medicine and letter, offered "if you have no agent in this locality, I will gladly distribute any printed matter you may send me for that purpose."<sup>75</sup>

The best form of advertising available for Gavitt was the testimonial letter. The fiercely independent people making up the Kansas frontier who might never take the advice of a scientist or "educated" physician would readily take that of their neighbors. The company advised that the most successful agents were the ones who solicited local testimonials. The technique involved obtaining a statement from a customer, as soon as he begins to feel better, giving a full case history. These testimonials, in turn, could be shown to other interested customers, and mailed to Topeka for possible publication in the monthly circulars. Nothing sold medicine more quickly than the sight of one's own or a neighbor's name in print. Agent Charles Park of Munden praised the company for its policy of printing testimonials in the circulars and stated that he had fifty-six good ones, but would wait a while in submitting them for he wanted some from more prominent persons.<sup>76</sup>

<sup>73</sup>Joseph A. Winston to W. W. Gavitt Medical Company, September 6, 1899, Gavitt Medical Company Papers, Manuscript Department, Kansas State Historical Society, Topeka, Kansas.

<sup>74</sup>W. W. Gavitt Medical Company to I. T. Earl, September 24, 1897, Gavitt Medical Company Papers, Manuscript Department, Kansas State Historical Society, Topeka, Kansas.

<sup>75</sup>S. A. Robinson to W. W. Gavitt Medical Company, October 4, 1899, Gavitt Medical Company Papers, Manuscript Department, Kansas State Historical Society, Topeka, Kansas.

<sup>76</sup>Charles Park to W. W. Gavitt Medical Company, December 10, 1896, Gavitt Medical Company Papers, Manuscript Department, Kansas State Historical Society, Topeka, Kansas.

To streamline the process, forms were prepared, which only required the customer to fill in a few blanks to provide a well-written testimonial letter.<sup>77</sup> By 1902, Gavitt could boast over one million testimonials and signatures from over forty important state personages, including Topeka Mayor Albert Parker, Publisher Arthur Capper and the editor of the *Topeka Daily Capital*, the editor of the *Daily Herald*, and the Topeka Chief of Police.<sup>78</sup>

Gavitt received many letters for sick people pleading for a cure. As we have seen, the wide variety of diseases the System Regulator was designed to cure gives us little surprise in learning that he was usually able to help them. This clutching at straws is no more poignantly depicted than in the letter of J. S. Long. Long, suffering from an especially severe case of Diabetes Mellitus, wrote, "The doctors say I can not live very long now if you have anything that you think would help my case please so inform me at once. I want to ask you one question and that is do you think you have a medicine that will cure me when my case is so far advanced?"<sup>79</sup>

Agents were cautioned, however, not to spend the majority of their time hunting a ministry to sick people. A preventive was always better than a cure. Although many prospective patrons stated they employed a physician after they became sick, Gavitt answered that "the grave yards were full of people who had family physicians called after they got sick." Gavitt's theory was a medicine designed to cure chronic diseases and preventing all classes of disease if taken early enough.<sup>80</sup>

The Spanish-American War even appeared as a boon for Gavitt. Reportedly, large amounts of the System Regulator were sent, by parents, to their sons in the army, with the result that there were no reports of malaria, typhoid, or yellow fever among those using it. As a preventive, no soldier was to be without it. Used as a tonic, Gavitt's System Regulator would give the soldiers strength "quicker than anything." Agents were advised that playing on the patriotic sympathies of the populace might be a valuable approach.<sup>81</sup>

<sup>77</sup>"Statement," March 19, 1899, Gavitt Medical Company Papers, Manuscript Department, Kansas State Historical Society, Topeka, Kansas.

<sup>78</sup>Advertising Circulars, Gavitt Medical Company Papers.

<sup>79</sup>J. S. Long to W. W. Gavitt Medical Company, December 23, 1896, Gavitt Medical Company Papers, Manuscript Department, Kansas State Historical Society, Topeka, Kansas.

<sup>80</sup>W. W. Gavitt Medical Company to Agents, November 25, 1899, Gavitt Medical Company Papers, Manuscript Department, Kansas State Historical Society, Topeka, Kansas.

<sup>81</sup>*Ibid.*

Not every user of System Regulator received the predicted happy response. P. B. Hamilton mailed in the twenty-five cents for the complimentary package with a request that he not be sent any more as it did no good, and further remarked, "I am disgusted with the whole medical fraternity. . . . If I need medical treatment I will employ a physician of my own choice."<sup>82</sup> Many customers claimed that the System Regulator did not work nearly as well as the old Native Herbs. They pleaded with Gavitt to start selling it again.<sup>83</sup> Other customers responded to Gavitt's guarantee and requested advice on obtaining their refund. One such patron was R. E. Draffeu of Carlton, who was suffering from constipation for one and one-half years, stomach trouble of six months, occasional chest pains, and kidney troubles. He had tried numerous remedies, including Hood's Sarsaparilla, Warner's Safe Cure, Dr. Williams Pink Pills for Pale People, and the System Regulator. His diet consisted of oat meal, graham bread and butter, and hot water. It is interesting to note that when his stomach was empty he experienced a burning sensation, but after meals, a sense of weight and fullness. We are left to speculate as to the success to Mr. Draffeu's final cure.<sup>84</sup> Agent Edward Trow of Minneapolis concluded that the medicine's low success rate at times was due to a saboteur in the company. Trow informed the company that there was a "screw luse" somewhere in the compounding of the medicine. He had known for some time that his sales were declining. Friends had reported to him that it did not do any good any more. It did not act on the stomach, liver, kidneys, and blood as it once did. Trow advised Gavitt to think back four or five months and see if he could remember hiring some man that might want to harm his business, and to have a box analyzed to see if the root contained "some powerful herb put in that kills the medical properties of the whole compound." We are left with no indication of Gavitt's action on the letter.<sup>85</sup>

Gavitt, however, had other problems. Dr. Perkins by 1898 had formed a new company in Washington, D.C., called the National Herb Company. Except for the addition of Brazilian root, the new product was an exact duplicate of Our Native Herbs, now sold by

<sup>82</sup>P. B. Hamilton to W. W. Gavitt Medical Company, October 14, 1899, Gavitt Medical Company Papers, Manuscript Department, Kansas State Historical Society, Topeka, Kansas.

<sup>83</sup>T. N. Powell to W. W. Gavitt Medical Company, December 2, 1896, Gavitt Medical Company Papers, Manuscript Department, Kansas State Historical Society, Topeka, Kansas.

<sup>84</sup>R. E. Draffeu to W. W. Gavitt Medical Company, January 6, 1897, Gavitt Medical Company Papers, Manuscript Department, Kansas State Historical Society, Topeka, Kansas.

<sup>85</sup>Edward Trow to W. W. Gavitt Medical Company, September 25, 1897, Gavitt Medical Company Papers, Manuscript Department, Kansas State Historical Society, Topeka, Kansas.

Elonzo Bliss. Bliss's product, Perkins agreed, was good; after all, it was his formula. But his new product, with the addition of Brazil root, was far superior. When Perkins first sold his company to Bliss in the early 1890's, he retained the right to use the familiar red box, and so packaged his new product. This Bliss product appeared in the yellow box. The general agency for the new Perkins company was granted to the Iowa Herb Company of Des Moines. They, in turn, solicited sub-agents for the state of Kansas. Drugstores did not sell Perkins American Herbs. The new product was sold only by traveling agents of the Gavitt type. In fact the whole agent system in use by Gavitt had originally been developed by Perkins. Men such as agent A. Brasier of Stark gave Gavitt's agents a run for their money. Many people had been brought up on the old Native Herbs, and, even though the System Regulator formula was no doubt similar, had never resigned themselves totally to its substitution. Even Gavitt's retention of the familiar red box did little to cover up the fact that his was somehow "different." Would the supposed better therapeutic quality of the Perkins Herbs outweigh the good will that the W. W. Gavitt Company built up over the years?<sup>86</sup>

Gavitt was able to surmount most of the difficulties, including the potential threat reported by agent Mrs. S. A. Ninderhill of Wilson. She wrote, "There is a new M.D. of the Osteopath belief, who is taking the practice from the other physicians and hurting the sale of patent medicines."<sup>87</sup> By 1902, Gavitt could boast over one million testimonials, three buildings in Topeka, and agencies in four foreign countries.<sup>88</sup> The company was incorporated in 1919.<sup>89</sup> It eventually marketed over 200 different types of flavorings, household articles, spices, soaps, toilet articles, perfumes, baking products, and parlor games. Corrington Gavitt, W. W. Gavitt's youngest son, sold the business in 1967.<sup>90</sup>

The first general food and drug bill regulating the operations of the patent medicine kings was enacted by the United States Senate in 1892. The bill simply required that makers of a product could not claim ingredients to be present when they were not, and could not

<sup>86</sup>Perkins American Herb Booklet, Gavitt Medical Company Papers, Manuscript Department, Kansas State Historical Society, Topeka, Kansas.

<sup>87</sup>Mrs. S. A. Ninderhill to W. W. Gavitt Medical Company, November 1, 1899, Gavitt Medical Company Papers, Manuscript Department, Kansas State Historical Society, Topeka, Kansas.

<sup>88</sup>Advertising Circulars, Gavitt Medical Company Papers.

<sup>89</sup>Kansas Secretary of State, Corporation Records, vol. 95, pp. 331-32, Manuscript Department, Kansas State Historical Society, Topeka, Kansas.

<sup>90</sup>Huff, "After a Century," p. 87.

deny that certain ingredients were present when they were. Patent medicine firms detested the bill. As a show of solidarity, most agreed with Charles Fletcher, the Castoria King, when he stated, "If the business were an underhanded one, or if in the preparation of these articles injurious substances were used, or if there were anything in the nature of fraud in respect to a large proportion of the well-known proprietary articles, there might be some excuse for special legislation against the manufacturers. No such excuse now exists."<sup>91</sup>

The bill did not pass the House, and men such as Fletcher and the Proprietary Association, a powerful pro-proprietary lobby formed in 1881, were successful in seeing to it that no effective legislation came before Congress during the remaining years of the nineteenth century. The Proprietary Association also thwarted attempts by states to enact proprietary-regulating legislation. A strong ally in these battles was the local press. Frank J. Cheney, manufacturer of Halls Catarrh Cure, had devised something called a "red clause," which was placed in his advertising contracts with newspapers. This clause stipulated that the contract would be canceled should the state enact legislation restricting proprietary medicine sales. When such legislation was pending, it could be argued, newspapers had more than an enlightened disinterest.<sup>92</sup> The *Topeka State Journal* wrote a scathing attack on physicians who had tried, unsuccessfully, to obtain enactment of a law regulating the practice of medicine and the charging of a fee to itinerant nostrum vendors in 1895. This article was reprinted by the W. W. Gavitt Company for circulation as advertising material.<sup>93</sup> In 1897, the *Topeka Daily Capital* requested the defeat of the Patent Medicine Bill of that year. The *Capital* declared druggists were competent enough to determine whether a proprietary was harmful or not. If it was harmful, they would not be selling it. The *Capital* stated:

. . . the Legislature should show its common sense by amputating the tail of the patent medicine bill just back of the ears. . . . In requesting the prompt defeat of this bill the newspapers of the state of every county and all parties are asking only what is sensible and wise, as well as in the interest of the public.<sup>94</sup>

<sup>91</sup>James H. Young, *American Self-Dosage Medicine: An Historical Perspective* (Lawrence: Coronado Press, 1974), p. 8.

<sup>92</sup>*Ibid.*

<sup>93</sup>Advertising Circulars, "Topeka State Journal, March 4, 1895. Reprint," Gavitt Medical Company Papers, Manuscript Department, Kansas State Historical Society, Topeka, Kansas.

<sup>94</sup>"The Patent Medicine Bill," *Topeka Daily Capital*, February 24, 1897, p. 4.

Effective control of patent medicines was deferred to the twentieth century. Incentives for success of the movement were a reformed AMA and its anti-nostrum crusade, writings of muckraking journalists, and a rise in educational standards. Improvement in medical science, allowing physicians to better diagnose and treat a wider range of problems, became the determining influence.