Preventing medical malpractice in mid-20th-century Canada: CMPA and its approach to concerns about varicose vein treatments

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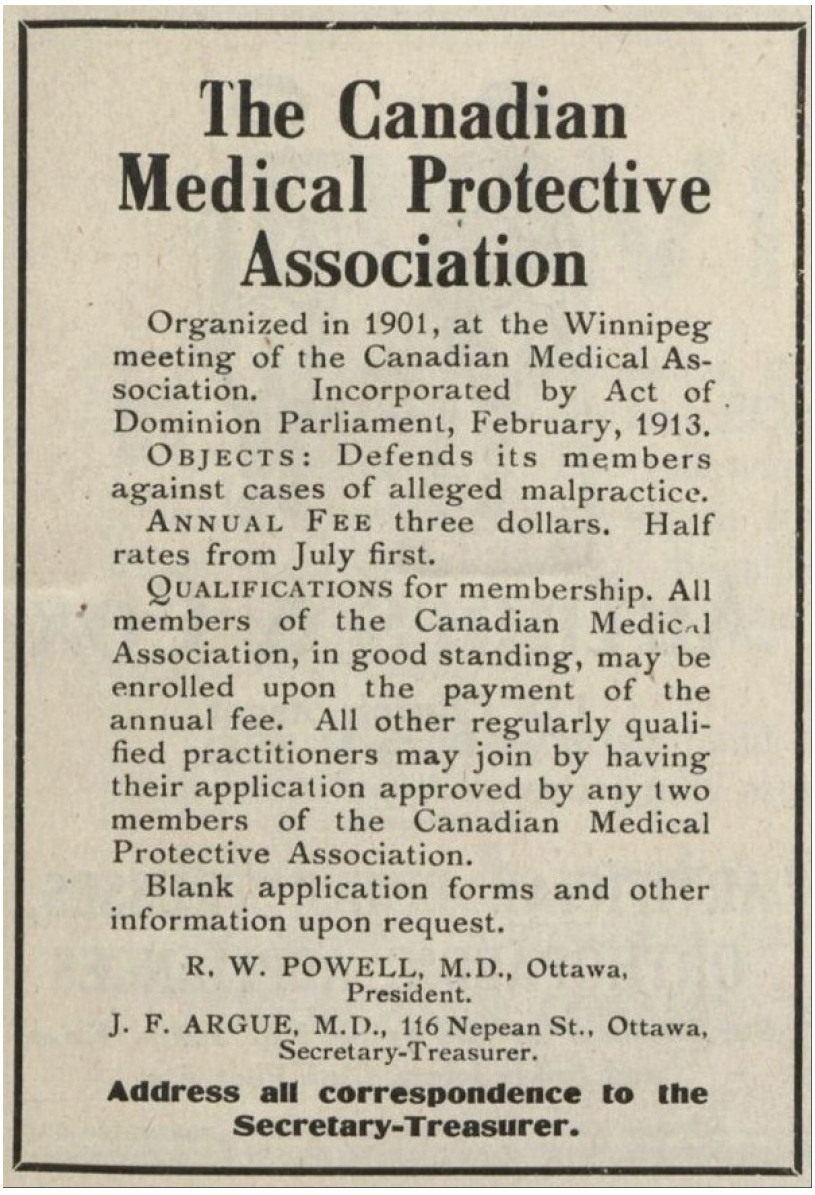
The founding of the Canadian Medical Protective Association (CMPA) in 1901 was pivotal to Canadian medical malpractice law. At first, the CMPA was a small mutual defence organization that pooled membership fees to cover the costs of physicians facing malpractice litigation. In its early days, the association fiercely protected its members, framing patient-plaintiffs as "unscrupulous charlatans" and refusing to settle any case brought against its members. But by the late 1920s, it took on responsibility for paying damages awarded in lost court cases, and it began settling cases it deemed legally indefensible.[1] At the same time, the organization asked its members to report threats of malpractice litigation (before any litigation had commenced) while also keeping track of trends in successful litigation. With this information, the association was well positioned to warn doctors about interventions that put the public at risk, and that also generated a risk to the association's bottom line. An example of the CMPA's risk-management strategy was its effort from the 1940s to the 1960s to warn practitioners about the dangers of varicose vein treatments.

Varicose veins had long been treated with compression, but by the mid-20th century, aggressive interventions were on the rise. Various practitioners experimented with treatments that included "ligation" (tying off the greater saphenous vein) or "stripping" — removing the vein through incisions in the groin area or behind the knee. Some used injections, often of sodium morrhuate, to stop the flow of blood through troublesome veins.



The Canadian Medical Protective Association

Organized in 1901, at the Winnipeg meeting of the Canadian Medical Association. Incorporated by Act of Dominion Parliament, February, 1913.

OBJECTS: Defends its members against cases of alleged malpractice.

ANNUAL FEE three dollars. Half rates from July first.

QUALIFICATIONS for membership. All members of the Canadian Medical Association, in good standing, may be enrolled upon the payment of the annual fee. All other regularly qualified practitioners may join by having their application approved by any two members of the Canadian Medical Protective Association.

Blank application forms and other information upon request.

R. W. POWELL, M.D., Ottawa,
President.

J. F. ARGUE, M.D., 116 Nepean St., Ottawa,
Secretary-Treasurer.

Address all correspondence to the Secretary-Treasurer.

The Canadian Lancet, Vol. LI, No. 9, 1918

A 1918 advertisement from the Canadian Medical Protective Association appealing for new members, noting that for an annual fee of $3, the organization "defends its members against cases of alleged malpractice."

Aggressive treatment of varicosities, however, sometimes left patients with serious injuries, and the procedures were controversial.[2] In 1948, 2 Montréal surgeons issued an early warning about these poor outcomes, complaining that it "appears to be the belief of the occasional operator that this is a simple, easily carried out procedure, free from hazard," with the result that the operation was "widely practised by inexperienced surgeons and hospital internes."[2]

In its 1948 annual report, the CMPA described a female patient who had suffered from gangrene and the amputation of her leg after a varicose vein procedure, resulting in a settlement of $7800 (about $87 000 in 2021 dollars). The association and its lawyers had debated whether to settle or fight the case, but decided on settlement. "One fact was clear," lamented CMPA president Dr. J.F. Argue: the "patient had had two functionally useful legs before the injection and had one afterward."[3] The association asked that only doctors with adequate training and experience undertake such procedures.[3] Dr. Argue returned to the subject in the 1954 annual report. He noted that malpractice complaints in the previous year had been of the "usual variety," stemming from problems with broken surgical needles and sponges left in bodies.[4] However, he went on to say that "one group of cases needs special mention": the complaints resulting from the treatment of varicose veins. The current medical literature, he said, "does not stress unfortunate results" and the treatments "may be difficult and the complications exceedingly grave."[4]

Through the 1960s, the CMPA continued to draw attention to the adverse effects of varicose vein treatments in its annual reports. For instance, in 1960, the CMPA told its members: "This year, as in previous years, surgical treatment of varicosities has produced trouble. The trouble is monotonously the same though the reasons or excuses given for it by the doctors are less uniform: patients were obese, anomalous vessels were present, vessels were not found in their usual positions, sometimes a doctor simply says he does not know what happened. Whatever the ostensible reason, femoral arteries and their branches are damaged; they may have been cut inadvertently, tied off or even stripped out of the leg. The results are always serious, amputation is the commonest and most serious."[5]

Although the CMPA lacked the legal authority to control medical practice, it used its public commentary to discourage underqualified practitioners from undertaking risky procedures

Dr. T.L. Fisher, secretary-treasurer of the CMPA from 1935 to 1972, was a key figure in the organization's campaign to prevent poor outcomes in varicose vein procedures. Fisher was a regular speaker on the topic of malpractice at medical, nursing and dental association meetings, and he published dozens of articles in medical journals in which he offered advice on medicolegal issues. Of these papers, 3 appeared in *CMAJ* between 1955 and 1968 that dealt with the serious medical and legal repercussions of failed varicose vein procedures. In 1955, he described 2 cases in which patients had threatened lawsuits. For one, the CMPA decided there was "no reasonable possibility of a successful defence" and negotiated a settlement for $10 000. In the second, a stripping operation resulting in a below-knee amputation in a 33-year-old woman led to a settlement of $9750 (plus legal fees).[6] These were substantial sums, given that the CMPA's annual membership fee was only $10 (fees today depend on the member's type of work and region, but can cost thousands of dollars per year). The total of all awards paid by the association from November 1954 to November 1955 was just $54 864 ($564 000 in 2021 dollars).[7] In his 1960 *CMAJ* article, Fisher estimated that 10 of 11 recent complaints about poor outcomes after varicose vein procedures were "legitimate," including 2 cases in which doctors had ligated the femoral artery instead of the saphenous vein, resulting in amputations.[8] Eight years later, he wrote about the role of the CMPA's surveillance of medical risks, arguing that the association was best positioned to become aware "more quickly" and to remain more aware than "other organizations of forms of treatment commonly productive of complaints by and claims from patients."[9]

The CMPA's early educational efforts were somewhat haphazard, but reflected the association's desire to mitigate patient risk by sharing data and insights on practices that led to poor outcomes and lawsuits. The CMPA still fulfills this role, albeit in a more sustained and organized way. In its most recent annual report, the CMPA claimed it "has the largest collection of physician medicolegal data in the country," and that its "research team analyzes the data, identifying challenges and opportunities to improve the safety of medical care."[10] In recent years, the CMPA has also provided information for peer-reviewed articles addressing medical safety.

Although the CMPA lacked the legal authority to control medical practice, it used its public commentary to discourage underqualified practitioners from undertaking risky procedures. Dr. Fisher noted in 1968 that the "men who get into

trouble with varicose vein surgery obviously are not competent to do it; they do not have the knowledge, the experience, the awareness of the gravity of complications from the surgery."[9] Such condemnations were efforts to use moral suasion to prevent patient harm and to limit financial repercussions for the CMPA, although the association did not publicly name doctors involved in lawsuits.

The CMPA's proactive approach to managing medical risks likely contributed to its success in limiting the growth of malpractice claims in Canada, at least in comparison with the United States, which would experience a severe medical malpractice crisis in the 1970s.[11,12]

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References

1. Brown RB. Canada's first malpractice crisis: medical negligence in the late nineteenth century. *Osgoode Hall Law J* 2017;54:777-803.
2. Luke JC, Miller GG. Disasters following the operation of ligation and retrograde injection of varicose veins. *Ann Surg* 1948;127:426-31.
3. 1948 annual report. Ottawa: Canadian Medical Protective Association; 1948.
4. 1954 annual report. Ottawa: Canadian Medical Protective Association; 1954.
5. 1960 annual report. Ottawa: Canadian Medical Protective Association; 1960.
6. Fisher TL. Varicose veins. *Can Med Assoc J* 1955; 72:784.
7. 1956 annual report. Ottawa: Canadian Medical Protective Association; 1956.
8. Fisher TL. Surgery on varicose veins. *Can Med Assoc J* 1960;83:35-6.
9. Fisher TL. Surgery of varicose veins. *Can Med Assoc J* 1968;99:667-8.
10. 2020 annual report. Ottawa: Canadian Medical Protective Association. Available: https://www.cmpa-acpm.ca/en/about/annual-report#research-and-insights (accessed 2021 Nov. 12).
11. Hogan NC. Unhealed wounds: medical malpractice in the twentieth century. New York: LFB Scholarly; 2003:1-257.
12. Robinson GO. The medical malpractice crisis of the 1970's: a retrospective. *Law Contemp Probl* 1986;49:5-35.

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