

VIEWPOINTS

Does the CMPA serve the interests of patients?

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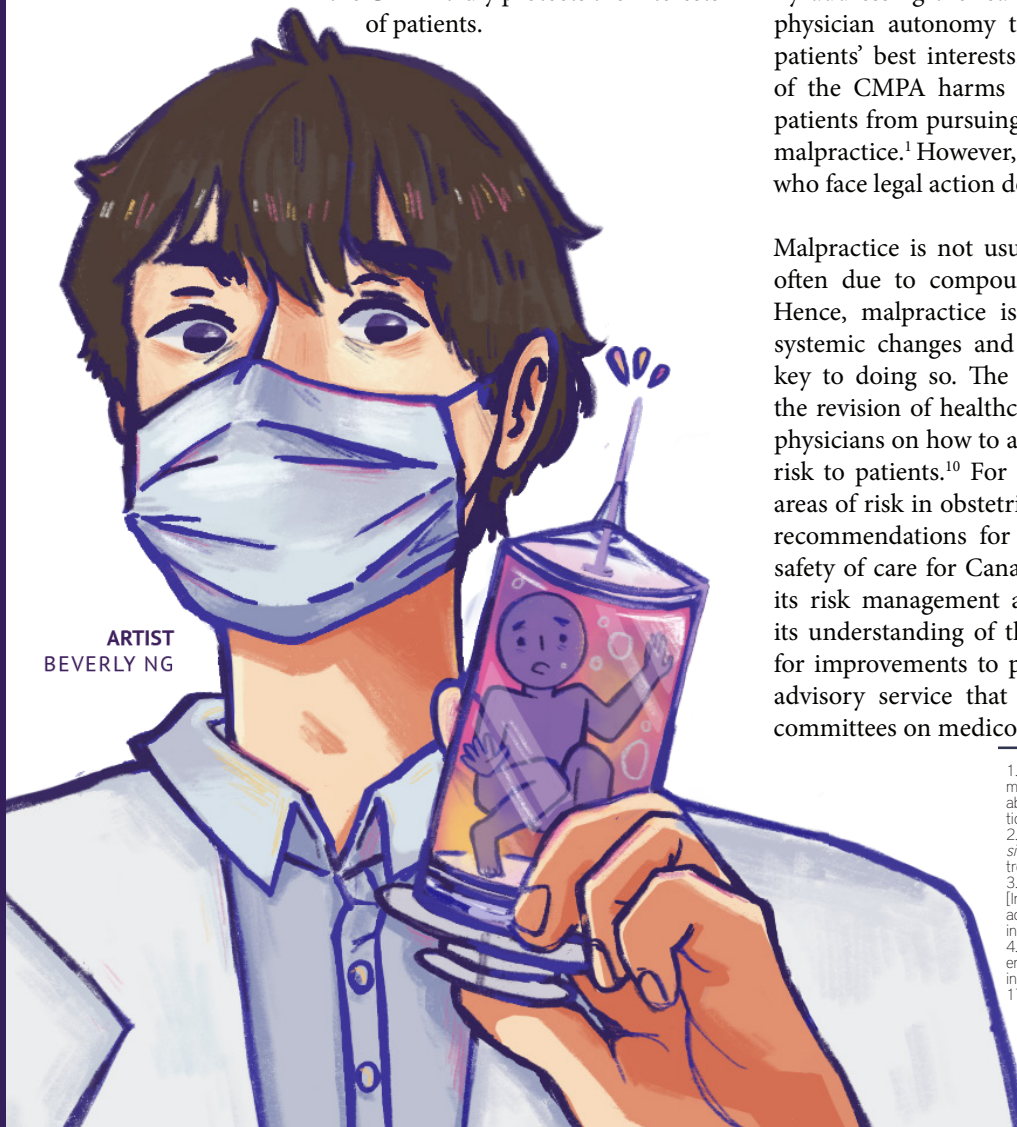
INTRODUCTION

Medical malpractice consists of taking legal action against a healthcare professional when the professional deviates from the standard of care, creating harm or injury to patients. In Canada, the majority of physicians receive medical malpractice insurance and legal representation from the Canadian Medical Protective Association (CMPA). The CMPA claims that effective medical liability protection enables Canadian physicians to practise medicine with confidence and focus on providing the best quality of care for their patients. However, whether the CMPA improves and maintains quality of patient care remains a debated topic. Critics say that the power and vast financial resources of the CMPA allow it to put on an aggressive legal defence with which patients cannot compete. Since the 1970s, the number of lawsuits in Canada has decreased.¹ This ViewPoints piece will examine whether the CMPA truly protects the interests of patients.

THE CMPA IS BENEFICIAL FOR PATIENTS

The legal support and liability coverage from the CMPA provides physicians with greater autonomy and reduced fear of litigation. The fear of litigation can make doctors question their clinical judgement and order unnecessary tests. By discouraging defensive medicine —the practice of making treatment decisions to avoid litigation —the CMPA ultimately improves patient care.² In the United States, physicians do not receive legal protection from a central body like the CMPA; therefore defensive medicine is highly prevalent.³ For example, in 2005, a study reported that 92% of Pennsylvanian physicians (n = 842) had ordered an unnecessary medical test at least once to cover for liabilities.⁴ Such measures to deter lawsuits may be justified if they were to truly benefit the health of patients, but research shows that the practice of defensive medicine does not necessarily lead to improvements in health outcomes.⁵ By addressing the fears of legal disputes, the CMPA protects physician autonomy to exercise clinical judgement in their patients' best interests.^{6,7} Some may argue that the existence of the CMPA harms patients, as their legal prowess deters patients from pursuing legal action, and consequently enables malpractice.¹ However, there is evidence to show that physicians who face legal action do not actually become less negligent.⁸

Malpractice is not usually the fault of one individual —it is often due to compounding issues inherent in the system.⁹ Hence, malpractice is best resolved through implementing systemic changes and the CMPA's power and influence are key to doing so. The CMPA ensures patient safety through the revision of healthcare delivery guidelines while educating physicians on how to avoid procedures that would pose a high risk to patients.¹⁰ For instance, the CMPA has identified key areas of risk in obstetrical care and created 18 action-oriented recommendations for physicians focused on improving the safety of care for Canadian mothers and babies.¹¹ Along with its risk management and education efforts, the CMPA uses its understanding of the medical liability system to advocate for improvements to patient safety. One such example is the advisory service that the CMPA provides to governmental committees on medico-legal matters.¹² Notably, the CMPA has



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consulted on the Canadian federal government's "Special Joint Committee on Physician-Assisted Dying," where it advocated for equal legal protection for patients and their physicians regarding Medical Assistance in Dying.¹³

Although the media recurrently portrays the CMPA as providing legal defence to negligent doctors, physicians whose cases lack merit are not actually supported by the CMPA.¹⁴ Moreover, the CMPA directly provides compensation to patients proven to have been harmed by negligent physician care.¹⁵ An evaluation of the CMPA's entire body of work would therefore demonstrate conclusively that its interests do not clash with those of the patients —rather, both of their interests are aligned.

THE CMPA ADVERSELY AFFECTS PATIENTS

In 2012, when Anne received a spinal injection intended to treat her chronic back pain, little did she know that it would cripple her for the rest of her life. Unknowingly using a contaminated needle, Anne's doctor injected harmful bacteria into her spinal cord, infecting it and causing permanent nerve damage. Five years later, Anne remains burdened by the repercussions of her doctor's negligence —she can barely climb up the stairs of her own home and struggles to pay for the medication needed to relieve complications resulting from the infection. Furthermore, Anne is unable to receive the financial compensation she rightfully deserves. She wonders why the medical malpractice lawsuit she filed against her physician years earlier has dragged on, given there is no dispute that her doctor is responsible for her injury. She realizes that the slow pace of legal proceedings is due to the aggressive and unethical legal defence advanced by her doctor's insuring body, the CMPA. Exhausted by an unwinnable legal battle, and running out of money to pay her lawyer, Anne wonders if she should simply abandon her case.¹⁶

Such a scenario is not uncommon in Canadian medical malpractice litigation. Although the CMPA claims to help maltreated individuals receive compensation, the actions of the CMPA reflect poor accountability to patients and translates to worsened quality of care.¹⁵ The CMPA's mandate is to defend doctors accused of medical malpractice.¹⁷ However, the length to which the CMPA will go to legally protect its physicians is problematic. The CMPA's lawyers litigate on behalf of physicians regardless of the defensibility of their actions.¹

Patients, on the other hand, are often not able to afford legal assistance, much less endure the financial burden of paying lawyers to represent them.^{1,16} More often than not, the CMPA exploits its financial advantage to tip the scales of justice in

the physician's favour.^{1,16} Paul Harte, a Canadian medical malpractice lawyer, says that, "it is in the CMPA's best interest to drag out some of these cases because it acts as a deterrent for suing other doctors."²¹ These hurdles imposed by the CMPA often result in victims of medical malpractice not pursuing legitimate claims.^{1,16} In fact, between 2013 and 2017, 55.2% of malpractice cases in Canada were ultimately dismissed, discontinued, or abandoned.¹ In doing so, the CMPA buries malpractice cases that would otherwise help inform systemic changes to physician practice guidelines.¹⁸

An analysis of the past 40 years of the CMPA's annual records reveals that, although the number of doctors has exponentially increased, the rate of patients suing has decreased.¹ This might indicate that the CMPA is so effective at protecting doctors that it harms patients. Through discussing missteps and searching for root causes of failures, the medical field might see improvements in quality of care and patient safety. By defending doctors and silencing the patient voice, the CMPA prevents this reflective process necessary for the improvement of healthcare. An obvious risk of this practice is that negligent behaviours will never come to light, will never be corrected, and thus will continue to hurt patients.

Although the CMPA claims to be beneficial for both physicians and patients, it is clear that the CMPA prioritizes the protection of its physicians over improving patient care. Thus, it jeopardizes the safety of patients and the future of our healthcare system.¹⁵ Ultimately, the CMPA makes the process of achieving justice and compensation more difficult for patients victimized by medical malpractice. The association should shift its mandate to better protect the interests of patients.

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