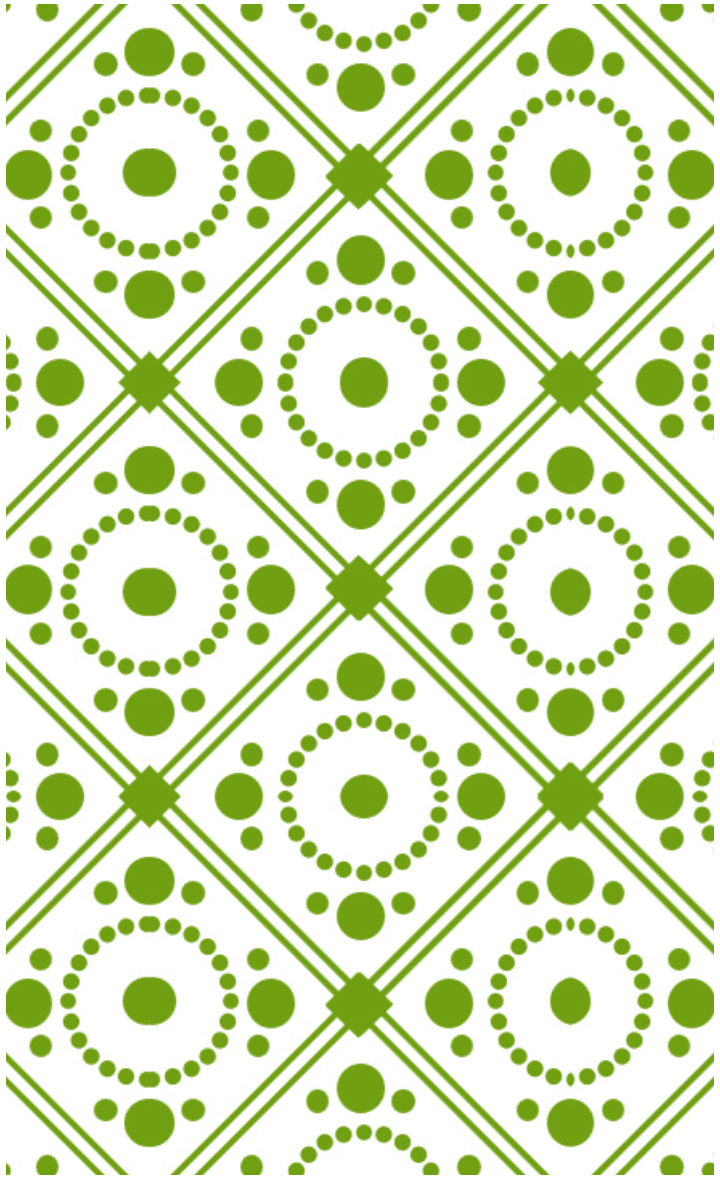


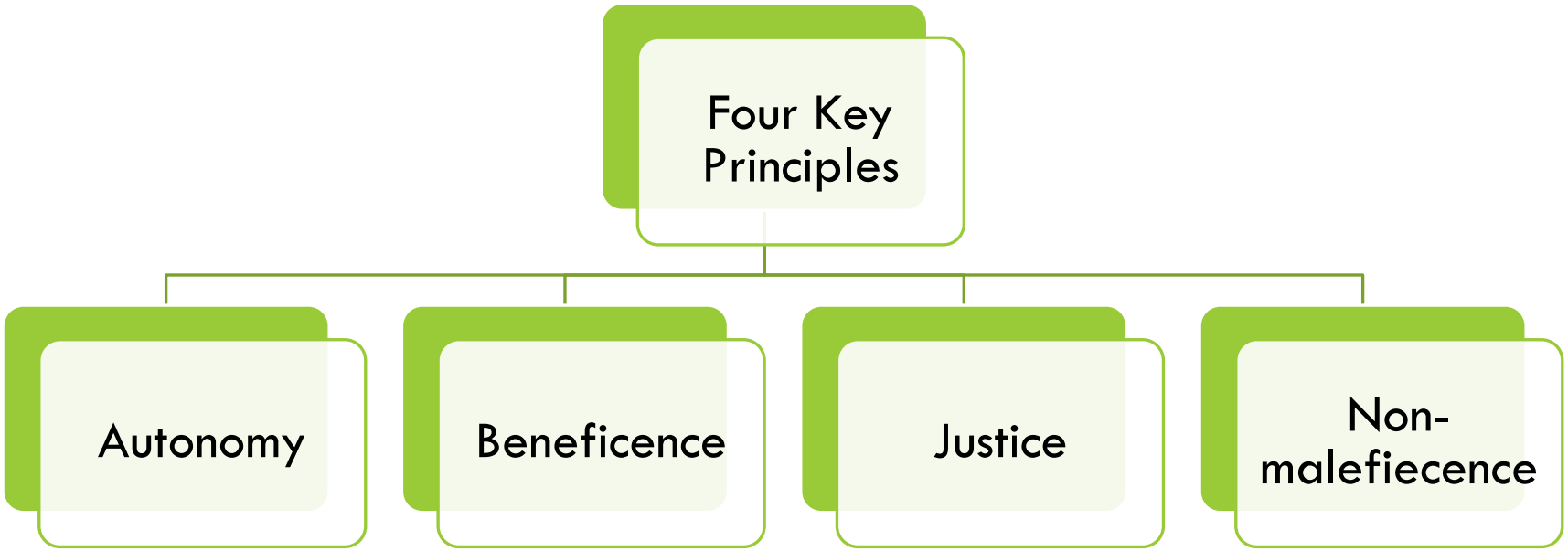
COMMON ETHICAL DILEMMAS IN THE HOSPITAL

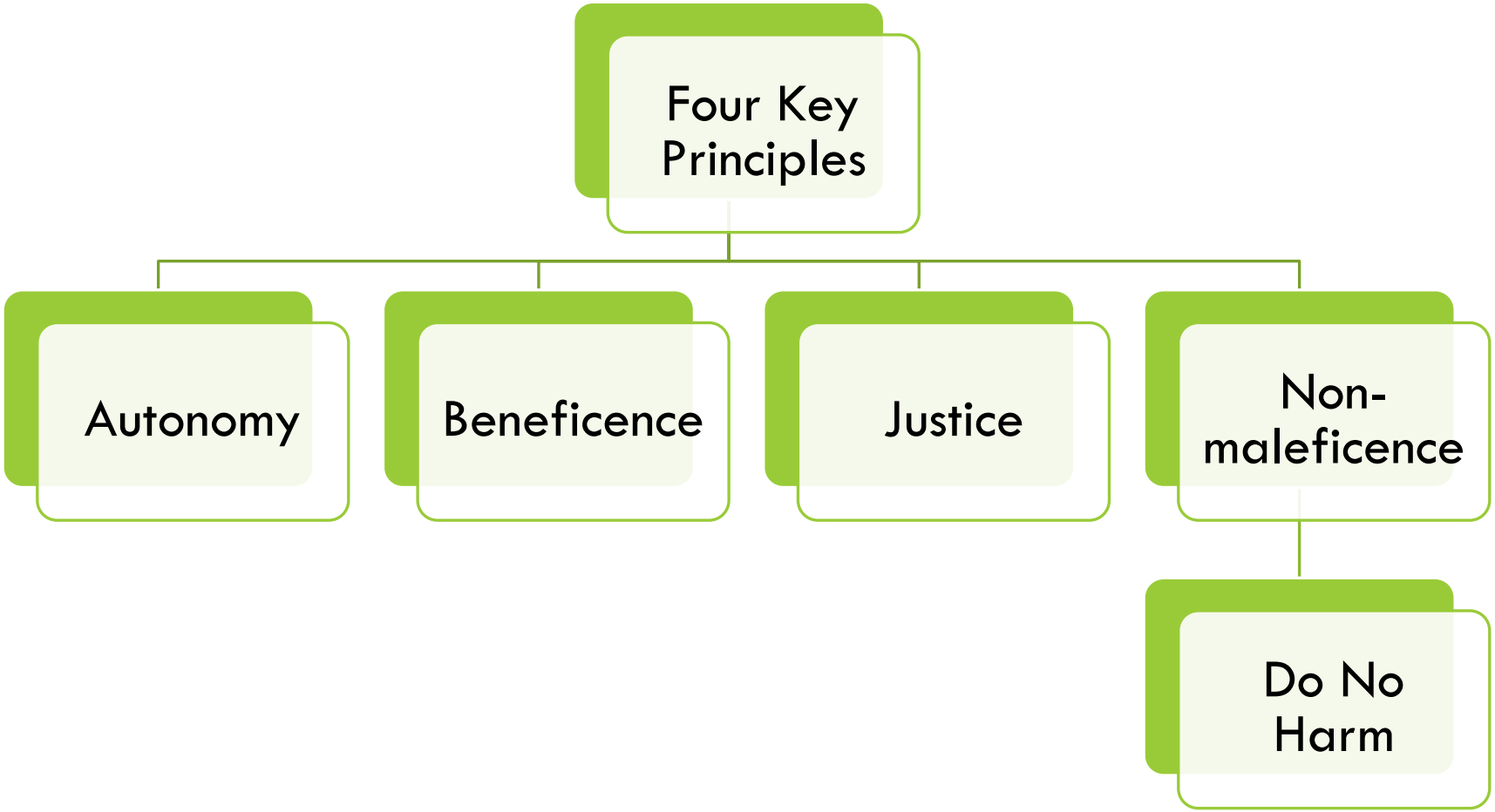
Wendy Grace, MD, MS, MA
St Patrick Hospital
Hospitalist

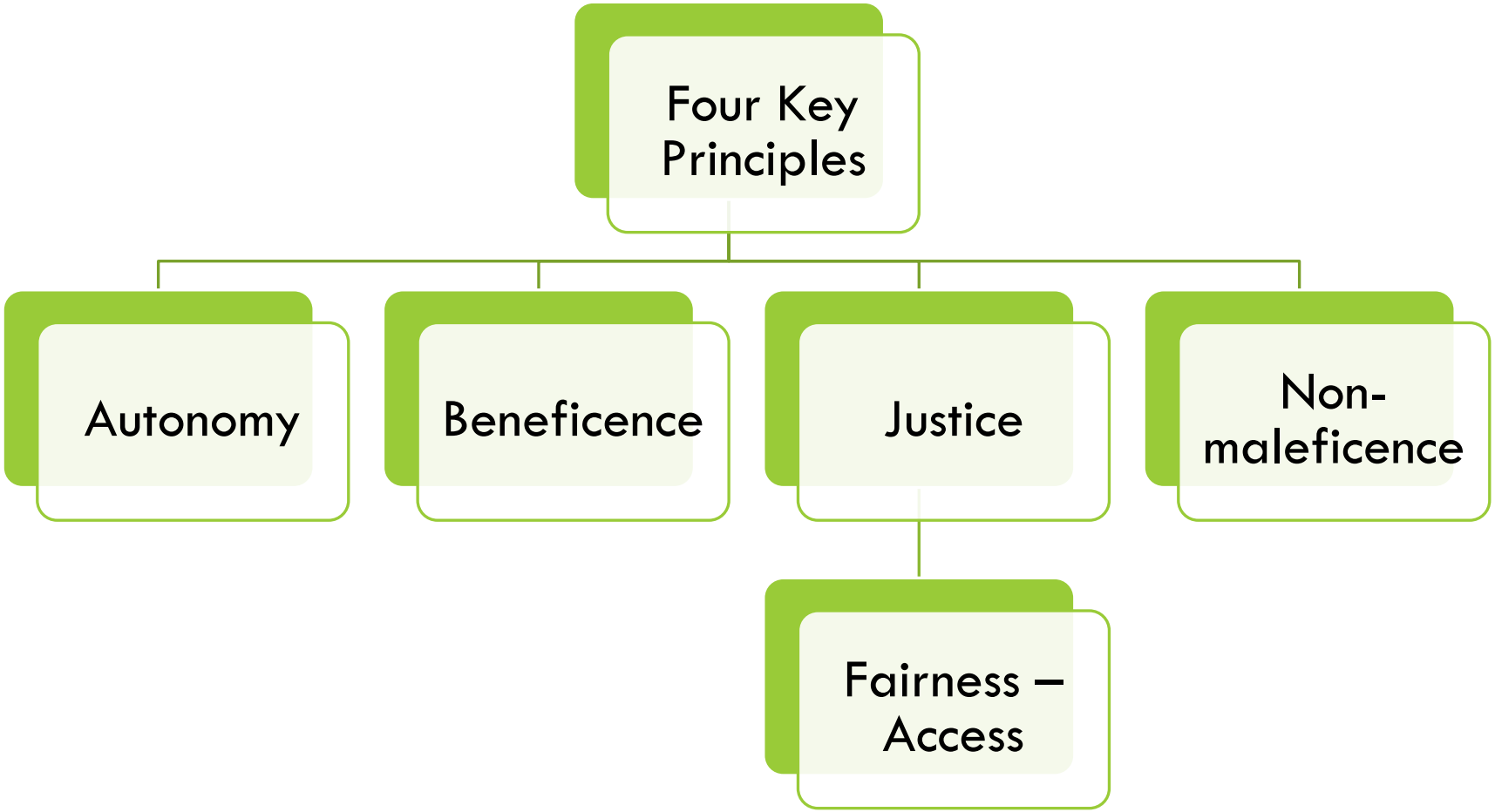
DISCLAIMERS

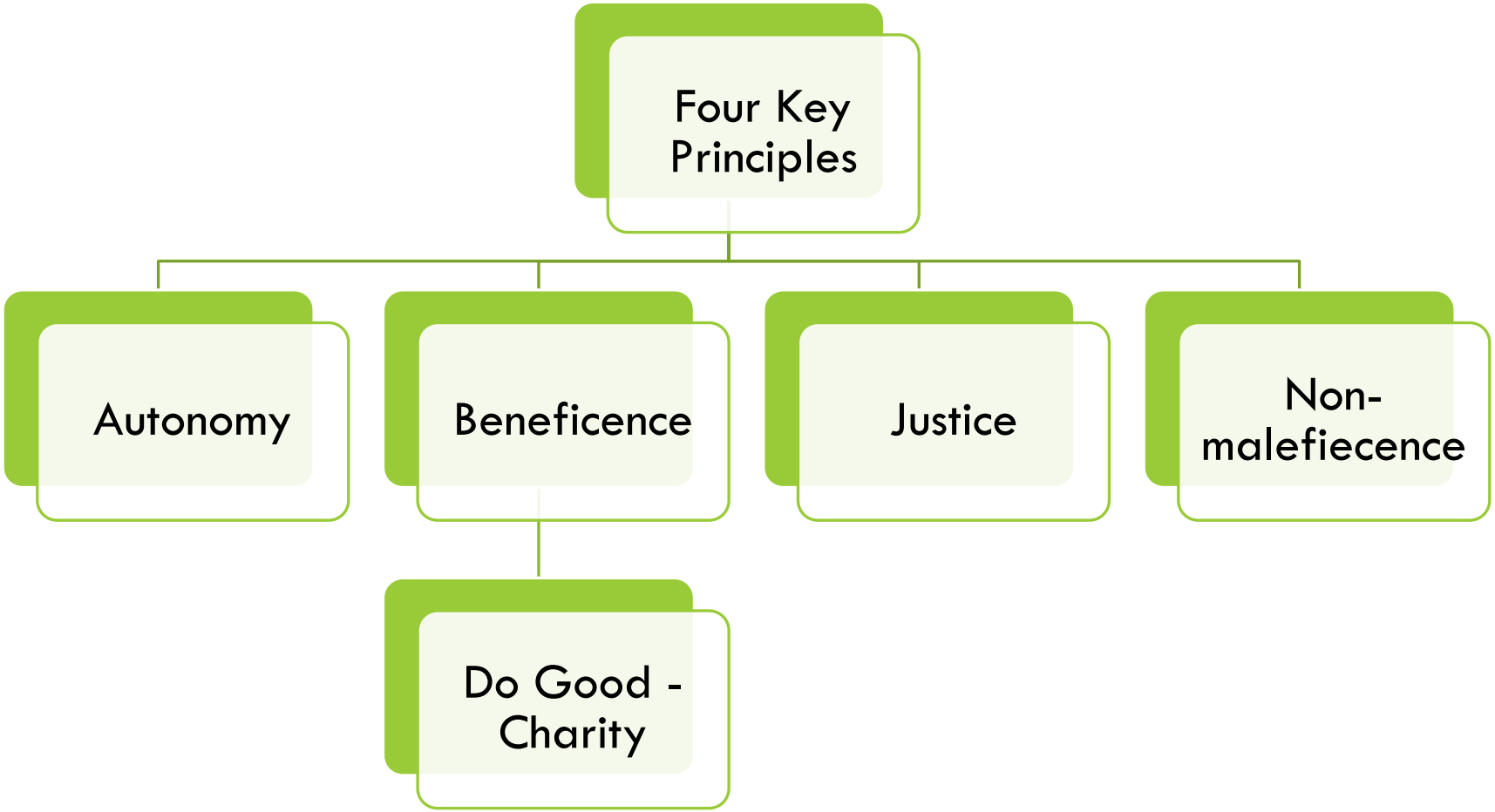
Ethics ≠ law

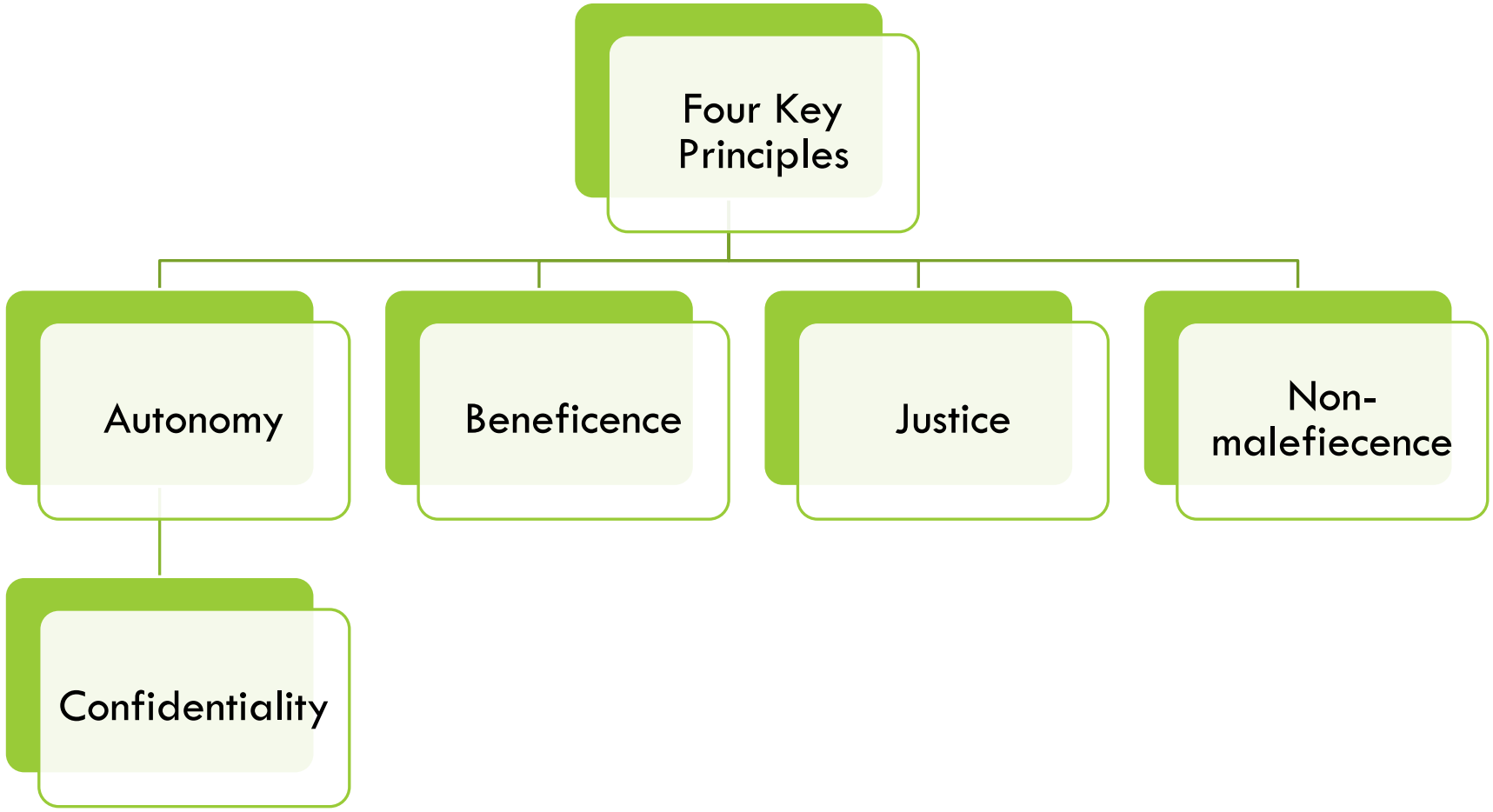
Competency ≠ capacity

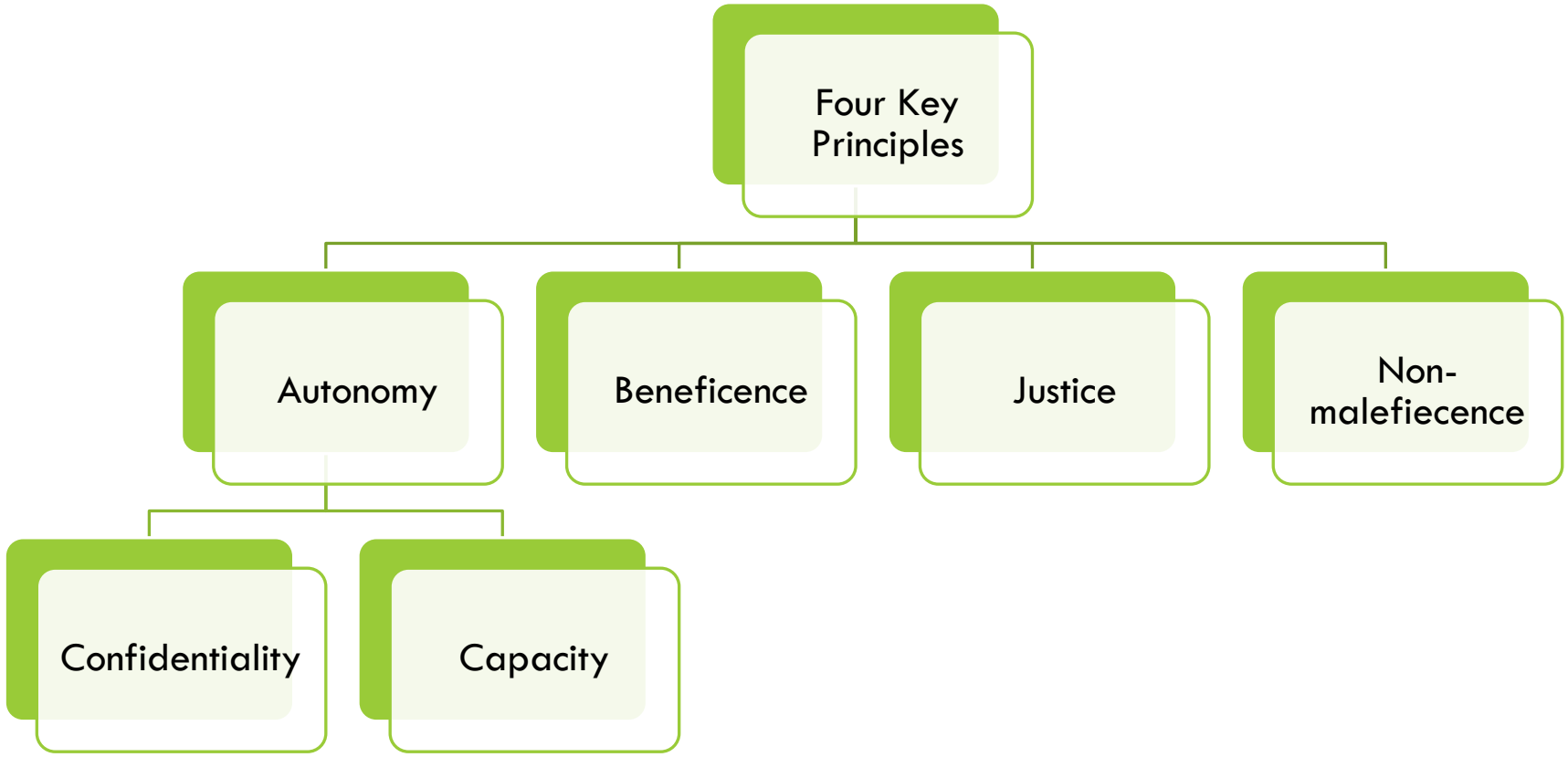

Four Key Principles
Autonomy
Beneficence
Justice
Non-malefiecence

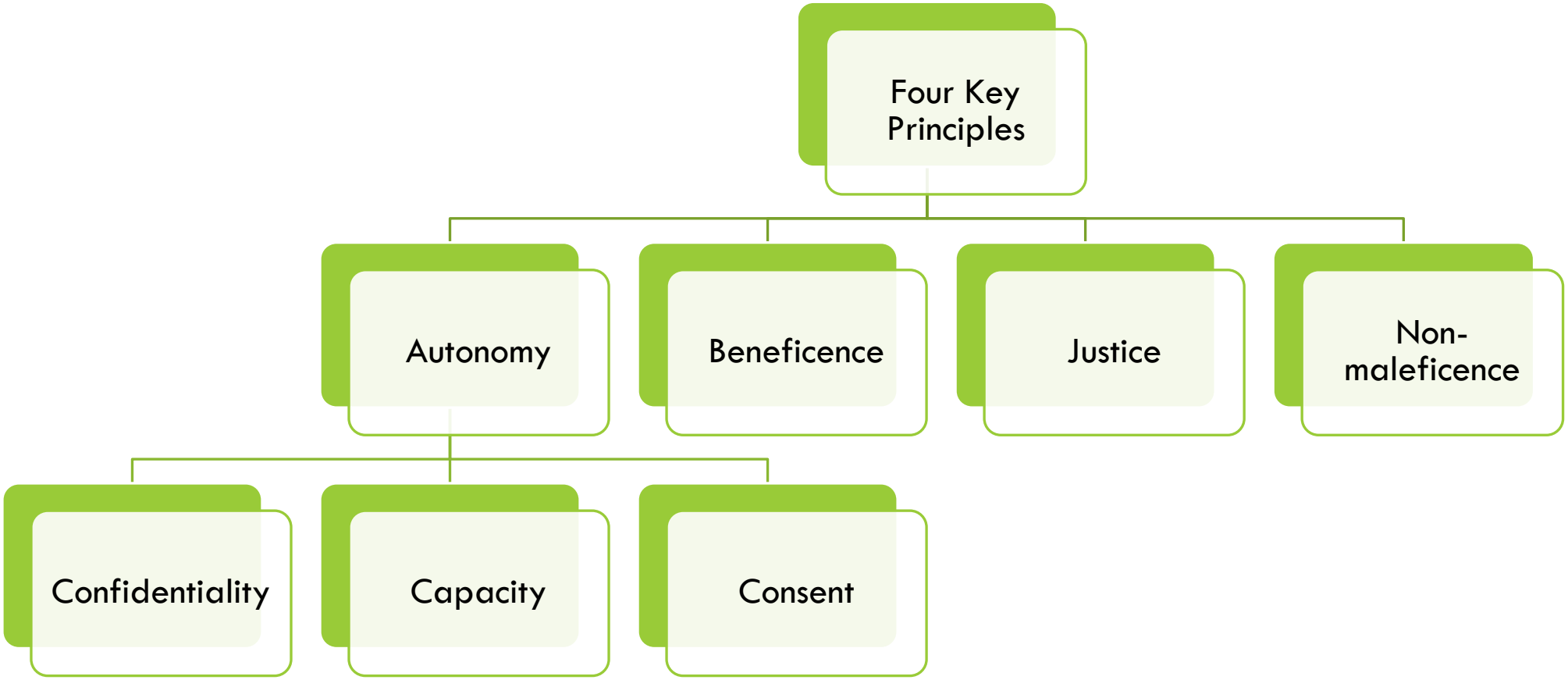

Four Key Principles
Autonomy
Beneficence
Justice
Non-maleficence
Do No Harm


Four Key Principles
Autonomy
Beneficence
Justice
Non-maleficence
Fairness – Access


Four Key Principles
Autonomy
Beneficence
Justice
Non-malefiecence
Do Good - Charity


Four Key Principles
Autonomy
Beneficence
Justice
Non-malefiecence
Confidentiality


Four Key Principles
Autonomy
Beneficence
Justice
Non-malefiecence
Confidentiality
Capacity


Four Key Principles
Autonomy
Beneficence
Justice
Non-maleficence
Confidentiality
Capacity
Consent

THE UNFORTUNATE MR. JOHNSON

Herbert Johnson is a 71 yo morbidly obese male with HFpEF and uncontrolled diabetes. Herbert's landlord found him passed out on the floor when neighbors had not seen him "for a few days". He presented in septic shock was found to have metabolic encephalopathy, acute renal failure, and an ulcer on his right lower leg.

SCENARIO 1

He is started on pressors and IV antibiotics, but he does not improve.

You determine that his leg needs to be amputated immediately for source control.

He is still encephalopathic.

He lives alone. He has no known advanced directive on file.

Do you need consent?

NO

REASONABLE PERSON STANDARD

When a patient is unconscious or otherwise lacks capacity and there is an *imminent risk of death or serious harm*, consent is considered to be implied due to the *reasonable person standard*: the law assumes a reasonable person would consent to life-saving treatment.

However, a valid advance directive or DNR order is considered an explicit refusal of care must still be honored.

SCENARIO 2

Mr. Johnson starts to come around after fluid resuscitation and IV antibiotics. Blood pressure and Cr improves, and he is now conversant. According to nursing, he still seems a bit "off" – AO x 1-2, sometimes thinks he is in St Louis or that it is 1998, but at other times he seems fairly lucid. He states he is divorced and has no family or close friends.

Vascular Surgery recommends amputation.

Do you need consent?

YES

What is it, and how are you going to get it?

CONSENT

- The nature of the intervention.
- The perceived benefits and risks of the intervention.
- Reasonable alternatives.
- An **assessment of the patient's understanding** of these elements
  - I.e., does the patient have *capacity* for this decision?

CAPACITY

SB 92: “"Decisional capacity" means the ability to provide informed consent to or refuse medical treatment or the ability to make an informed health care decision as determined by a health care provider experienced in this type of assessment.”

Context specific!!

- *This* choice at *this* time.

Patient must demonstrate the ability to:

- Receive and process information
- Evaluate R/B/A and consequences
- Communicate the choice
- Give a reasonable explanation for choice

The choice should be consistent with known values or prior expressed wishes.

WHO CAN PERFORM A CAPACITY EVALUATION?

You!!

AID TO CAPACITY EVALUATION (ACE)

Developed by Dr Etchells at Sunnybrook & Women's College in Toronto

SCENARIO 3

Mr. Johnson starts to come around after fluid resuscitation and IV antibiotics. Blood pressure and Cr improves, but he remains severely encephalopathic. Vascular surgery thinks he will need an amputation of the infected leg in the next several days for definitive source control.

Do you need consent?

YES

Does Mr Brown have capacity?

No

Who can decide for him?

Unfortunately, Mr. Johnson seems to have been a loner – nice enough, but kept to himself. Rumor is that he drinks a bit, but no one is really sure. His landlord confirms that she does not know of any family or close friends. Your stellar social work team can find no advanced directive on file listing next of kin.

PROXY DECISION MAKING

Proxy ≠ surrogate

- Surrogate - designated by the patient or courts
  - DPOAH
  - Guardian with medical treatment decision-making authority
- Proxy - selected either from among interested persons, or from willing and able medical providers

"Lay proxy decision-maker" - an interested person authorized to make medical decisions for a patient who lacks decisional capacity.

"Medical proxy decision-maker" means a physician or APP designated by the attending health care provider.

MCA 50-9-106

If a patient lack capacity, decisions can be made for him/her by (in this order):

-Spouse

-Adult child, or majority of adult children

-Parents

-Adult sibling, or majority of siblings

-Full guardian

SB 92

"A health care provider or health care facility may rely in good faith upon the medical treatment decision of a proxy decision-maker selected or appointed for a patient lacking DMC, if the patient *does not* have:

- Guardian with medical decision-making authority
- Agent appointed in a medical durable power of attorney
- Any other known person with the legal authority to provide consent or refusal of medical treatment on the patient's behalf
- Any "interested persons" who are willing to act on the patient's behalf"

CRITERIA FOR PHYSICIAN PROXY

The attending health care provider may designate a willing physician or APP to make health care treatment decisions as a patient's proxy decision-maker if:

-After making reasonable efforts, the health care provider or agent is unable to locate any persons with authority to make medical decisions for the patient or no interested person with authority to make medical decisions for the patient is willing and able to serve as lay proxy decision-maker *and*

-Ethics committee agrees

SCENARIO 4

Mr. Johnson starts to come around after fluid resuscitation and IV antibiotics. Blood pressure and Cr improves, but he continues to be encephalopathic. Vascular surgery thinks he will need an amputation of the infected leg in the next several days for definitive source control. Your stellar social work team has found a sister Bev who lives in Hawaii, from whom he has been estranged for over 20 years. She says they also have two brothers from which he is also estranged.

Do you need consent?

YES

Does Mr Brown have capacity?

NO

Who can consent?

Can you speak to the sister about the patient's care?

YES

CONFIDENTIALITY

Critical Illness is an exception to the rule.

- If a patient is incapacitated due to a critical illness information may be shared with with family, friends, or other persons involved in the patient's care
  - Limited to relevant information based on the provider's professional judgment

Other exceptions

- Imminent threat to themselves or others
- Public health
- Payment

Can Bev make decisions for Mr Johnson?

YES

STICKY WICKET - SUBSTITUTED JUDGEMENT

WARNING!

Designated surrogates are often inaccurate in stating patients' preferences in specific scenarios.

How well will a proxy do?

STICKY WICKET - CAREGIVER OVERRIDE

Surrogates frequently consider aspects of **patient wellbeing** to be more important that the patient's **previously stated preferences.**

- Preexisting conditions such as dementia
- Unanticipated outcomes such as hemiparesis

The dreaded out-of-state daughter…

SCENARIO 5

Mr. Johnson starts to come around after fluid resuscitation and IV antibiotics. Blood pressure and Cr improves, as does his mental status. He seems fairly lucid now, and you confirm this with ACE testing. Vascular surgery thinks he will need an amputation of the infected leg in the next several days for definitive source control. Your stellar social work team has found an advanced directive on file from 2016 stating that he is DNR and would not want "extreme measures". After speaking to him he *does* want to undergo the procedure.

Can Mr Johnson change his mind?

YES

ADVANCED DIRECTIVES

Cruzan vs Director, Missouri Department of Health 1990

- Set a very high standard of evidence for withdrawing care
- Family members may decide for patients only if "substantial proof that their views reflect the patient's"
- AD were the solution to this dilemma

Imperfect

- Burdensome: notarized, witnessed
- Unpopular: limited use by patients
- Absent: can't find them, don't remember what they say
- Out of date: Preferences change over time
- Unhelpful: too specific and not specific enough

Patients care less about specific interventions than they do about outcomes.

ADVANCED CARE PLANNING

Focuses more generally on values, goals, and preferences

- 5 Wishes

Also can be time-consuming

"It's use neither increases the likelihood that decisions are concordant with patients' values nor improves patients' quality of life" but does decrease surrogate decision-maker PTSD, depression, and anxiety.

POLST

Quick, broad

Targeted towards serious illness

Must be certified by a provider

Still don't work well

- 38% of people with restricted treatment on POLST were admitted to ICU
- 41% of POLST orders with consistent with current preferences

HOW CAN WE DO BETTER?

Trust families.

Talk about preferences early and often.

- "I am going to ask you what Mr Johnson would say if he were able to speak for himself."

Consider the best interest of the patient as s/he is now.

Consider how culture, race, ethnicity, and spiritual beliefs play into these decisions.

SCENARIO 6

Mr. Johnson starts to come around after fluid resuscitation and IV antibiotics. Blood pressure and Cr improves, as does his mental status. He seems fairly lucid now, and you confirm this with ACE testing. Vascular surgery thinks he will need an amputation of the infected leg in the next several days for definitive source control. Your stellar social work team has found an advanced directive on file from 2016 stating that he would want everything possible done to preserve life. However, he is adamantly refusing to "let you quacks saw off my damn leg!!"

Can he refuse?

YES

INFORMED REFUSAL

- If capacity is confirmed (no suspicion of depression) AND
- Patient is able to relate back R/B/A of treatment AND
- Can relate back the risks of refusal

- Patients are allowed to make “bad” decisions if s/he demonstrates capacity for THIS decision at THIS moment.

- Document and witness!

OTHER EXCEPTIONS TO CONSENT

- **Patient is legally incapacitated**. "substituted judgment"
- **Waiver of consent.** A competent patient may voluntarily waive their right to the full informed consent process and choose to have the doctor make decisions for them.
- **Therapeutic privilege**. This is a rare and controversial exception in which a physician may withhold information from a patient if they have a reasonable belief that disclosing it would cause the patient serious and immediate harm, such as provoking suicidal behavior. The American Medical Association's Code of Medical Ethics strictly limits the use of therapeutic privilege, as it can damage patient trust.

ETHICS OF THE FUTURE – OR, WHY IS DR CRUSHER EVEN THERE??

Telemedicine/AI

- "Deskilling" of health care workers – obsolescence – do we even need Dr Crusher?
- Doctor-patient relationship: Does your new "provider" need to be real??
- AI in the office, hospital
- Data privacy and security
- Disparities
- Accountability in adverse patient outcomes

Enhancement