Personhood and Reproductive Health Care

South Carolina Medical Association
Bioethics Committee Educational Session

April 25, 2025

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Disclosures

Joy Blanton Scurry MD has no conflicts of interest nor relevant financial relationships to disclose.

Nancy Zisk JD has no conflicts of interest nor relevant financial relationships to disclose.

The mission of the Bioethics Committee of the SCMA is to serve by examining carefully ethical issues in health care, informing through education, and advising and supporting the SCMA.

The vision of the Bioethics Committee of the SCMA is to help improve health care using ethical thought, principles, practices, and experiences.

Objectives:

1. Explore the limits of legislative bodies in healthcare decision making and the ramifications for the doctor patient relationship.
2. Describe the bioethical considerations of what it is to "regard responsibility to the patient as paramount" (Medical Ethics Principle VIII) when providing reproductive health care.
3. Explore the bioethical implications of being in "support of access to medical care for all people" (Medical Ethics Principle IX) when a patient presents with reproductive health care needs complicated by the Social Determinants of Health.

Our presentation

- I. The law
  - The *Dobbs* decision
  - How the Supreme Court has endangered other currently constitutionally protected rights

II. The impact on medical care

- Rights of the patient
- Ethical duties of the treating physician
- The complications caused by social determinants of health
  - Preventative care
  - Access to care

The *Dobbs* Decision

- The Supreme Court held that
  - The "Constitution does not confer a right to abortion."
  - The right to an abortion is not
    - "deeply rooted in this Nation's history and tradition"
    - Or
    - "implicit in the concept of ordered liberty."

Thus, it is time to . . .

- return the issue of abortion to the people's elected representatives.

If the test for constitutional protection is whether the right is deeply rooted in this Nation's history and tradition" then . . .

- The right to marry may lose its protection.
- Currently, the law is clear that the right to marry is a fundamental right inherent in the liberty of the person.
- It has protected
  - Individuals of different races
    - *Loving v. Virginia* (1967)
  - Individuals of the same sex
    - *Obergefell v. Hodges* (2015)

The right to use contraception may also be endangered

- In 1965, the Supreme Court protected the right of married couples to use contraception.
  - based on the "intimate relation of husband and wife and their physician's role in one aspect of that relation."
    - *Griswold v.Connecticut* (US 1965)
- In 1972, the Supreme Court extended that protection to unmarried couples.
  - "If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child."
    - *Eisenstadt v. Baird* (US 1972)

The problem

- The right to interracial marriage and the right to access and use contraception are not
  - "deeply rooted in this Nation's history and tradition" nor
  - "implicit in the concept of ordered liberty."

In fact, as to contractive use, the dissenting Justices in *Dobbs* observed:

- The "American legal landscape in the decades after the Civil War was littered with bans on the sale of contraceptive devices."
  - *Dobbs v. Jackson Women's Health Org.* (US (2022) (Breyer, Sotomayor, Kagan, JJ., dissenting).

And interracial marriage was illegal until . . .

- 1967, when the Supreme Court extended constitutional protection to it, even though it had been prior to that
  - a crime "traditionally . . . subject to state regulation without federal intervention"
    - *Loving v. Virginia* (US 1967)

And same sex marriage . . .

- Was not recognized as a constitutionally protected right until 2015, when the Court noted that
  - the "limitation of marriage to opposite-sex couples may long have seemed natural and just."
    - *Obergefell v. Hodges* (US 2015).

But, the Supreme Court told us not to worry

- In the Court's words:
  - To "ensure that our decision is not misunderstood or mischaracterized, we emphasize that our decision concerns the constitutional right to abortion and no other right."

But wait!

- Justice Thomas agreed with the Court, but
  - stated explicitly that the Court should reconsider its decisions protecting the rights to contraception and same-sex marriage and intimacy and, when they are reconsidered, they should be overruled.
    - As an aside, Justice Thomas did not call for the Court to reconsider the right to interracial marriage, even though it was decided on the same bases as the rights to contraception and same-sex marriage and it may be because his marriage is an interracial one.

The critical question is how far will the Court's rationale extend?

- The Court attempted to limit the reach of its decision by noting that only abortion affects "potential life."
  - But the Court does not define what that means.

So many questions . . . so many lawsuits . . .

- When does life begin?
  - After a fetus is viable?
  - As soon as an egg is fertilized?
    - The Alabama Supreme Court made the sweeping assumption that
      - "[a]ll parties to these cases, like all members of this Court, agree that an unborn child is a genetically unique human being whose life begins at fertilization and ends at death."
      - *LePage v. Reproductive Medicine* (Alabama 2024).

What about before fertilization?

- Justice Thomas stated the Court should reconsider its protection of the right to contraception.
  - Isn't an unfertilized egg and sperm the basis of all "potential life"?
  - Can the Court come after
    - contraceptive devices and
    - sterilization procedures and
    - birth control pills?
  - Why not?

October 28, 1920

Life

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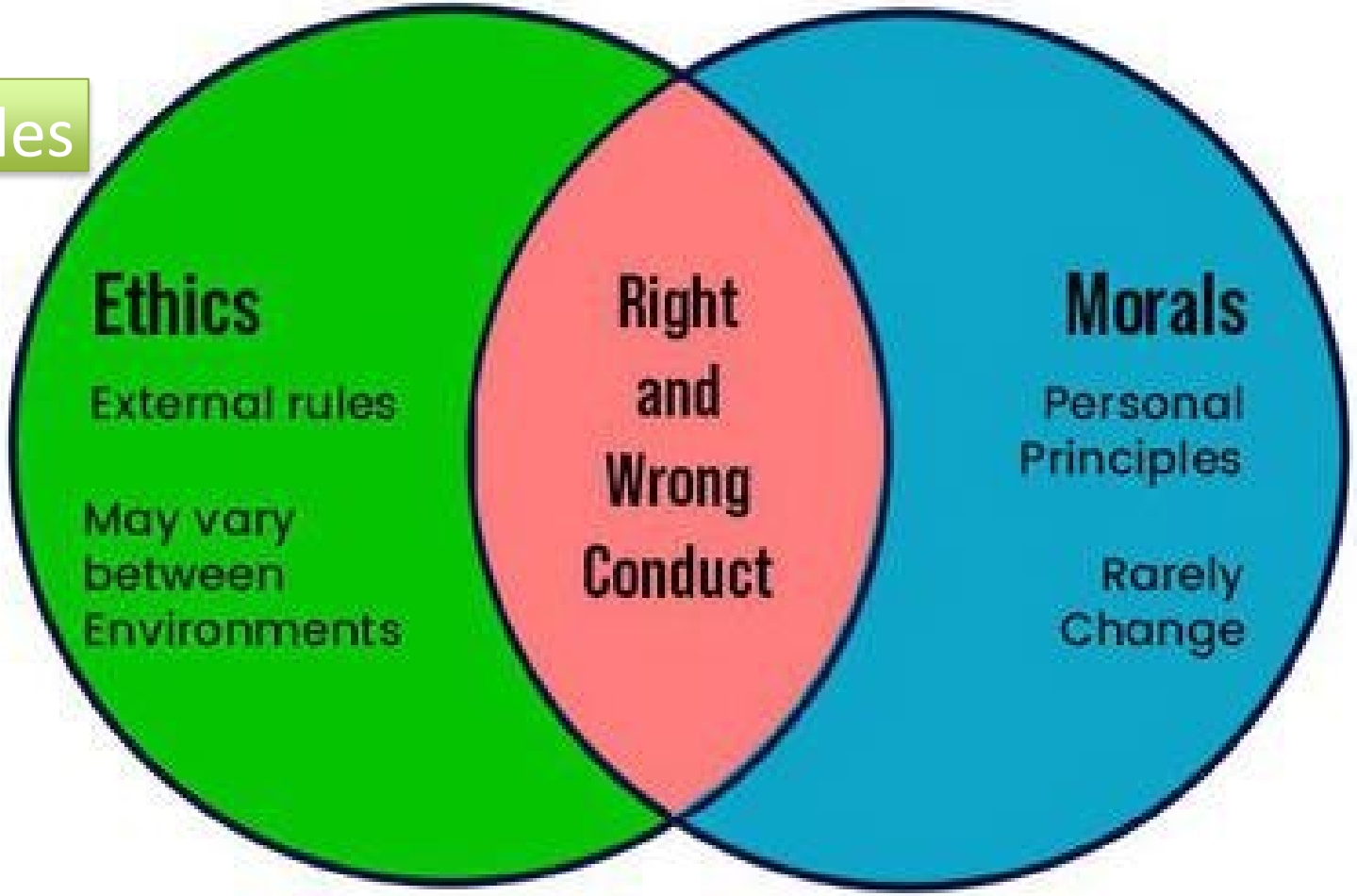
"Congratulations"

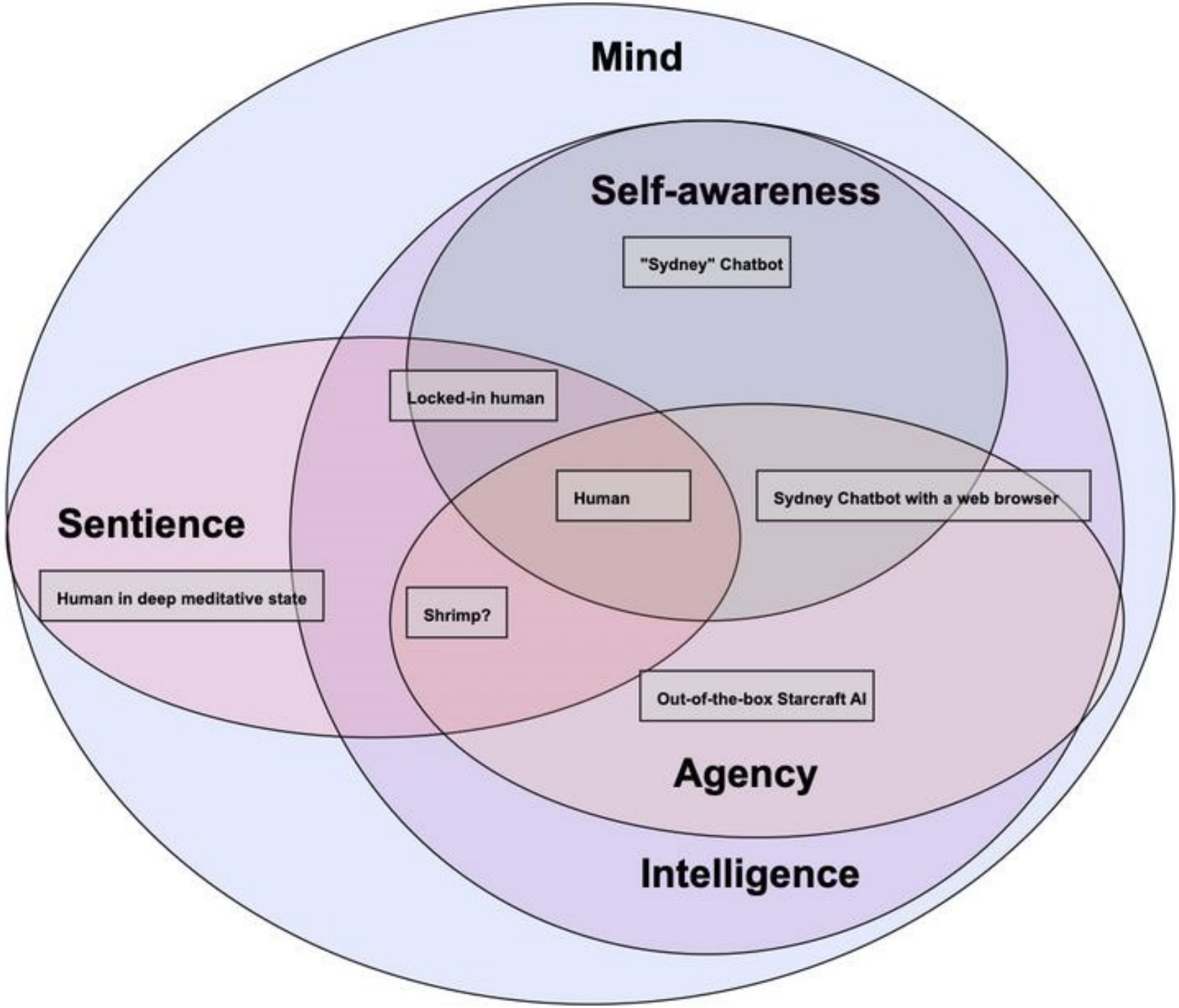

J MARION SIMS
1813
1883

Paramount (adjective): more important than anything else; supreme.

Guiding Principles

Beliefs



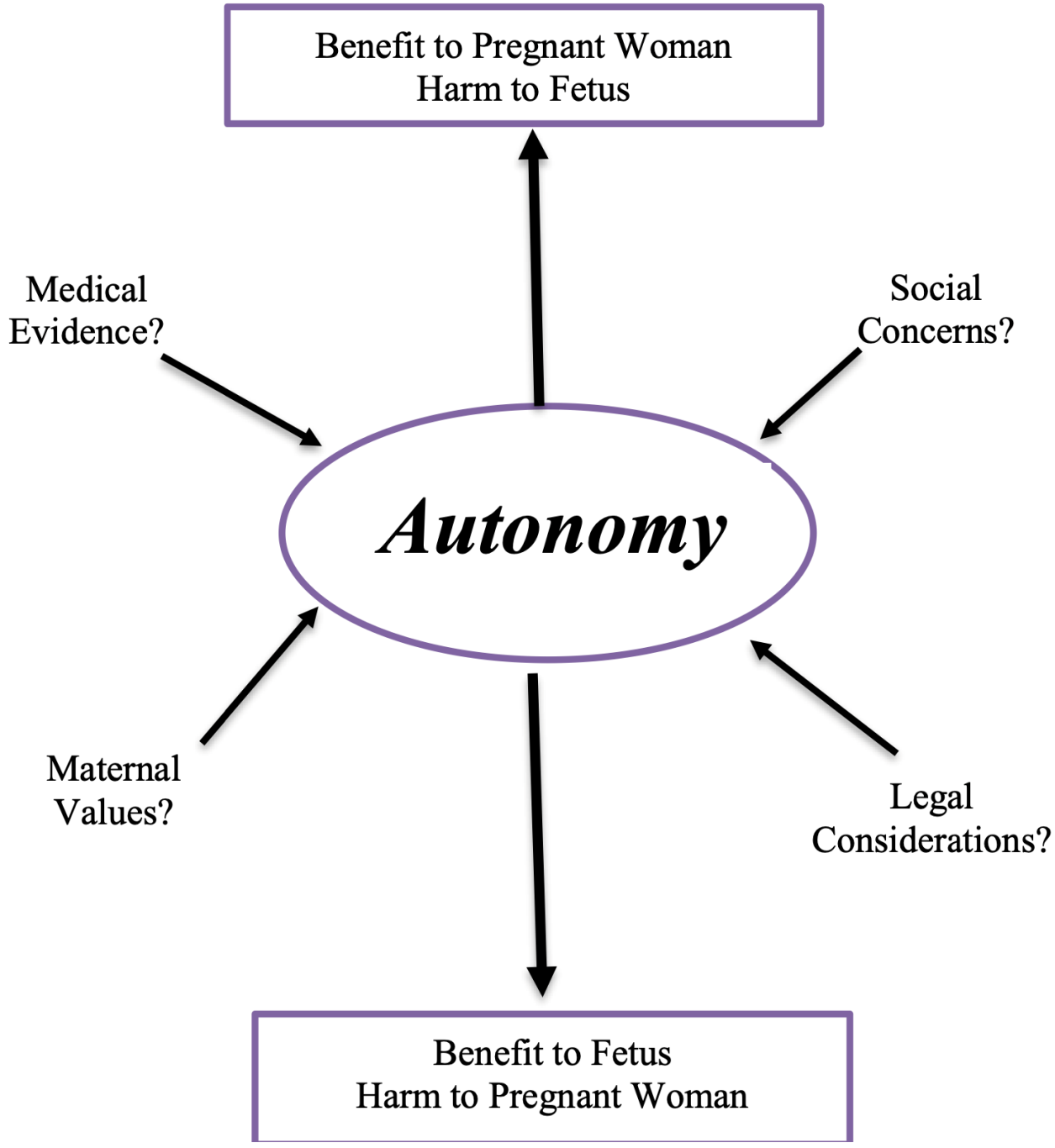

Mind
Self-awareness
"Sydney" Chatbot
Locked-in human
Human
Sydney Chatbot with a web browser
Sentience
Human in deep meditative state
Shrimp?
Out-of-the-box Starcraft AI
Agency
Intelligence

The Two-Patient Model in Maternal-Fetal Surgery

- “The ethical issues of fetal surgery are complicated since any intervention is invasive, often experimental, and **involves two patients.**”
  Have, H., & Patrão Neves, M. (2021). Fetal surgery. In: **Dictionary of Global Bioethics.**

- **Fetus** might be seen not only as a patient, but as the **primary patient, or the more important of the two.**
- Seeing the fetus as a patient could lead to doctors seeing it as a separate patient, with **interests separate from those of the pregnant woman**.

MATERNAL-FETAL CONFLICT



The One-Patient Model in MFS

- Focus on ~~conflict~~ is replaced with a commitment to ensuring that pregnant women are provided with the **best possible care and support in their decision-making.**
    - The pregnant woman is considered the **sole patient** whose autonomous choices and interests must be taken into account.
    - Uncontroversial that pregnant women are patients.
- **Conceptually and practically clear** what we mean by saying that the pregnant woman is a patient.

Fetus as a Patient Framework in MFS

Obstetric ethicists Chervenak and McCullough

- Human being becomes a patient when

  1) ******presented to the physician for medical care******, and

  2) there exist clinical interventions that are "are reliably expected to result in a greater balance of **clinical benefits over harms** for the human being in question."

- ***"The pregnant woman enables patienthood; and therefore dependent moral status, to be conferred upon the fetus by choosing to present *it* for treatment."***

- At least up to a certain point, as they accept that the **moral situation** may change after the **viability threshold is passed**.

Social Determinants of Health

Social Determinants of Health
Copyright-free
Healthy People 2030

Healthy People 2030 organizes SODH into 5 domains:

1. 1.Economic Stability
2. 2.Education Access and Quality
3. 3.Health Care Access and Quality
4. 4.Neighborhood and Built Environment
5. 5.Social and Community Context

Table 1. Sample Screening Tool for Social Determinants of Health ⇦

Domain	Question
Food	In the last 12 months, did you ever eat less than you felt you should because there was not enough money for food?
Utility	In the last 12 months, has your utility company shut off your service for not paying your bills?
Housing	Are you worried that in the next 2 months, you may not have stable housing?
Child care	Do problems getting childcare make it difficult for you to work, study, or get to health care appointments?
Financial resources	In the last 12 months, have you needed to see a doctor but could not because of cost?
Transportation	In the last 12 months, have you ever had to go without health care because you did not have a way to get there?
Exposure to violence	Are you afraid you might be hurt in your apartment building, home, or neighborhood?
Education/health literacy	Do you ever need help reading materials you get from your doctor, clinic, or the hospital?
Legal status	Are you scared of getting in trouble because of your legal status? Have you ever been arrested or incarcerated?
Next steps	If you answered yes to any of these questions, would you like to receive assistance with any of those needs?

Modified from Health Leads. Social needs screening toolkit. Boston (MA): Health Leads; 2016; *and* Bourgois P, Holmes SM, Sue K, Quesada J. Structural vulnerability: operationalizing the concept to address health disparities in clinical care. Acad Med 2017;92:299–307.

Economic Security

• On average, women make 82 cents for every one dollar men make. This gap is even more significant for Latina, Native American, and Black women who make between 54 and 62 cents for every dollar paid to white, non-Hispanic men.

National Partnership for Women and Families. Quantifying America's Gender Wage Gap by Race/Ethnicity. March 2020.

• When mothers have less money to support their families, they are forced to choose between essential resources like housing, childcare, food and health care.

National Partnership for Women and Families. Black Women's Maternal Health: A Multifaceted Approach to Addressing Persistent and Dire Health Disparities-Issue Brief. April 2018.

• Financial Harm: "Motherhood Penalty"

Caregiving

- 41% of mothers are the sole or primary breadwinners for their families (earning at least half of their total household income) and are more likely to be overrepresented in low-wage jobs.

Glynn, S.J. Breadwinning Mothers Are Increasingly the U.S. Norm. Center for American Progress, May 10, 2019. https://www.americanprogress.org/issues/women/reports/2019/05/10/469739/breadwinning-mothers-continue-u-s-norm/

- Women who earn low wages are more likely to lack adequate childcare, have limited transportation options, and have more difficulty getting time off work, which can lead to missed medical appointments and delay in seeking medical care.

Prather, C., Fuller, T. R., Jeffries, W. L., 4th, Marshall, K. J., Howell, A. V., Belyue-Umole, A., & King, W. Racism, African AmericanWomen, and Their Sexual and Reproductive Health: A Review of Historical and Contemporary Evidence and Implications for Health Equity. Health equity, 2(1), 249–259.

Health/Health Care Access

- Black women are more likely to be uninsured than non-Hispanic white women, have more financial barriers when seeking health care services, and are less likely to receive prenatal care.

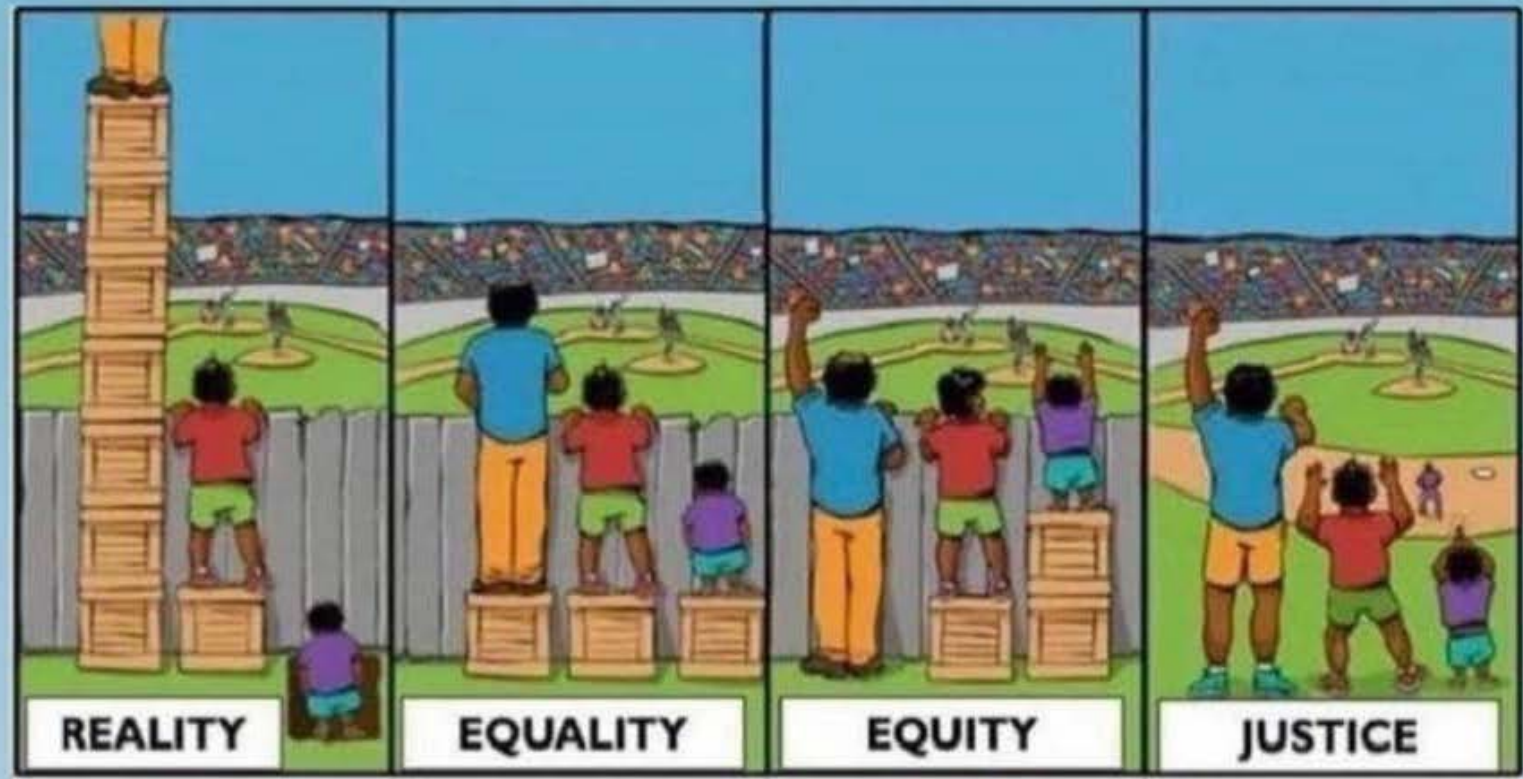
Kaiser Family Foundation. Women's Coverage, Access, and Affordability: Key Findings from the 2017 Kaiser Women's Health Survey. Mar 2018.

- For women of color, structural inequality, discrimination, and systemic racism have been shown to have severe effects on the health care experience; and are linked to disparities in the rates of cancer, HIV, sexually transmitted infections (STIs), and mortality during pregnancy and childbirth.

Prather, C., Fuller, T. R., Jeffries, W. L., 4th, Marshall, K. J., Howell, A. V., Belyue-Umole, A., & King, W. Racism, African American Women, and Their Sexual and Reproductive Health: A Review of Historical and Contemporary Evidence and Implications for Health Equity. Health equity, 2(1), 249–259. https://doi.org/10.1089/heq.2017.0045

- Black women in South Carolina experience maternal mortality at a disproportionately higher rate compared to white women, with Black women dying at **four times** the rate of white women.

The South Carolina Maternal Morbidity and Mortality Review Committee (SCMMMRC)



REALITY	EQUALITY	EQUITY	JUSTICE
One gets more than is needed, while the other gets less than is needed. Thus, a huge disparity is created.	The assumption is that everyone benefits from the same supports. This is considered to be equal treatment.	Everyone gets the support they need, which produces equity.	All 3 can see the game without supports or accommodations because the cause(s) of the inequity was addressed. The systemic barrier has been removed.

https://www.commonwealthfund.org/publications/issue-briefs/2023/oct/high-us-health-care-spending-where-is-it-all-going

University

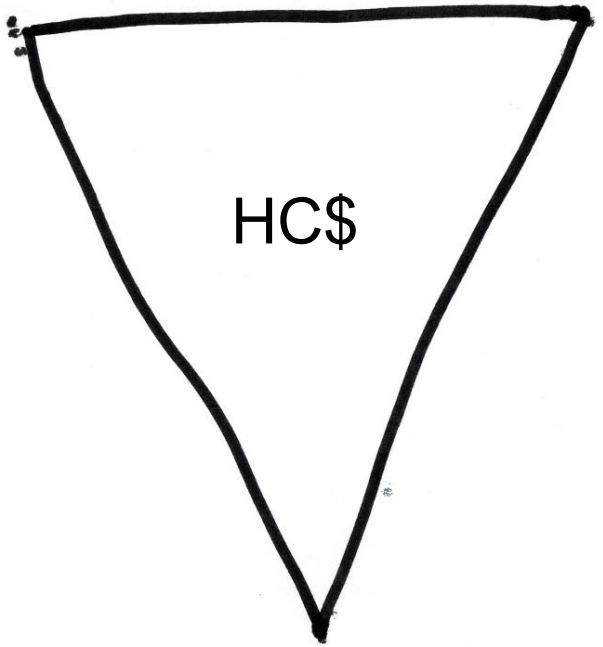
Component	Share of excess spending
U.S. pays more in administrative costs of insurance	~15%
U.S. providers spend more on administrative activities	~15%
U.S. pays more for prescription drugs	~10%
U.S. physicians earn more	~10%
U.S. registered nurses earn more	~5%
U.S. invests more in medical machinery and equipment	<5%
Sum of components estimated	~60%

Current Distribution of US Healthcare Dollar

Specialty

Hospital Based

End of Life



Excess to Peer Nations

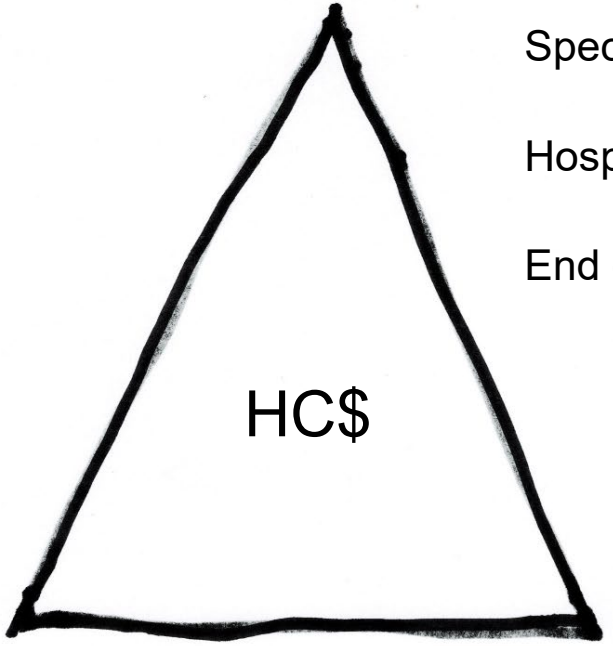
Therapy

Community Based

Prevention

Proposed Flip for Improved Health Care Outcomes

Less End Stage Disease



Specialty

Hospital Based

End of Life

More People Served

Therapy

Community Based

Prevention

Contraceptive Effectiveness[a]

Contraceptive method	Risk of contraceptive failure[b]
Tier 1 (most effective methods)	
Intrauterine device or implant	1.4%
Tier 2 (moderately effective methods)	
Hormonal contraceptives (progesterone-only or combined contraceptives)	
Injectable form	4.0%
Oral form	7.2%
Tier 3 (least effective methods)	
Male condom	12.6%
Withdrawal	19.9%

ACOG Guide to Language and Abortion

“Baby,” “unborn child,” or “pre-born child”: Medically inaccurate

USE INSTEAD: Through ten completed weeks after last menstrual period, **“embryo”**

After that point until delivery, 11-42(+) weeks “**fetus”**

“Abortion on-demand”: Dismissive of the medical needs of **pregnant people**

Abortion is a **medical intervention** provided to individuals who need to end the medical condition of pregnancy.

USE INSTEAD: **“Abortion”**

“Elective abortion”: Motivation behind the decision to get an abortion should not be judged as “elective” or “not elective” by an external party.

USE INSTEAD: **“Abortion”** or, if necessary, **“Induced abortion”**

Induced Abortion

The termination of pregnancy by various means, including medical surgery, before the fetus is able to sustain independent life.

- Until 1973 abortion was considered a crime (by the mother and the doctor) ***unless*** performed by physicians **to protect the life of the mother**, a phrase often broadly interpreted.
- **Voluntary?**
- **Intentional?**
- **Purposeful?**

Spontaneous Abortion, “Miscarriage”

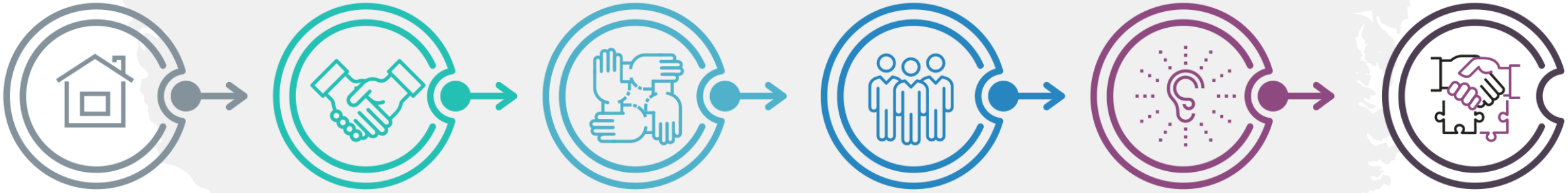
Early pregnancy loss, characterized by the spontaneous termination of an intrauterine pregnancy during the first trimester.

- Complex clinical scenario requiring multifaceted understanding and management

6 GUIDING PRINCIPLES TO A TRAUMA-INFORMED APPROACH

The CDC's Center for Preparedness and Response (CPR), in collaboration with SAMHSA's National Center for Trauma-Informed Care (NCTIC), developed and led a new training for CPR employees about the role of trauma-informed care during public health emergencies. The training aimed to increase responder awareness of the impact that trauma can have in the communities where they work.

Participants learned SAMHSA'S six principles that guide a trauma-informed approach, including:



1. SAFETY
2. TRUSTWORTHINESS & TRANSPARENCY
3. PEER SUPPORT
4. COLLABORATION & MUTUALITY
5. EMPOWERMENT VOICE & CHOICE
6. CULTURAL, HISTORICAL, & GENDER ISSUES

Adopting a trauma-informed approach is not accomplished through any single particular technique or checklist. It requires constant attention, caring awareness, sensitivity, and possibly a cultural change at an organizational level. On-going internal organizational assessment and quality improvement, as well as engagement with community stakeholders, will help to imbed this approach which can be augmented with organizational development and practice improvement. The training provided by CPR and NCTIC was the first step for CDC to view emergency preparedness and response through a trauma-informed lens.

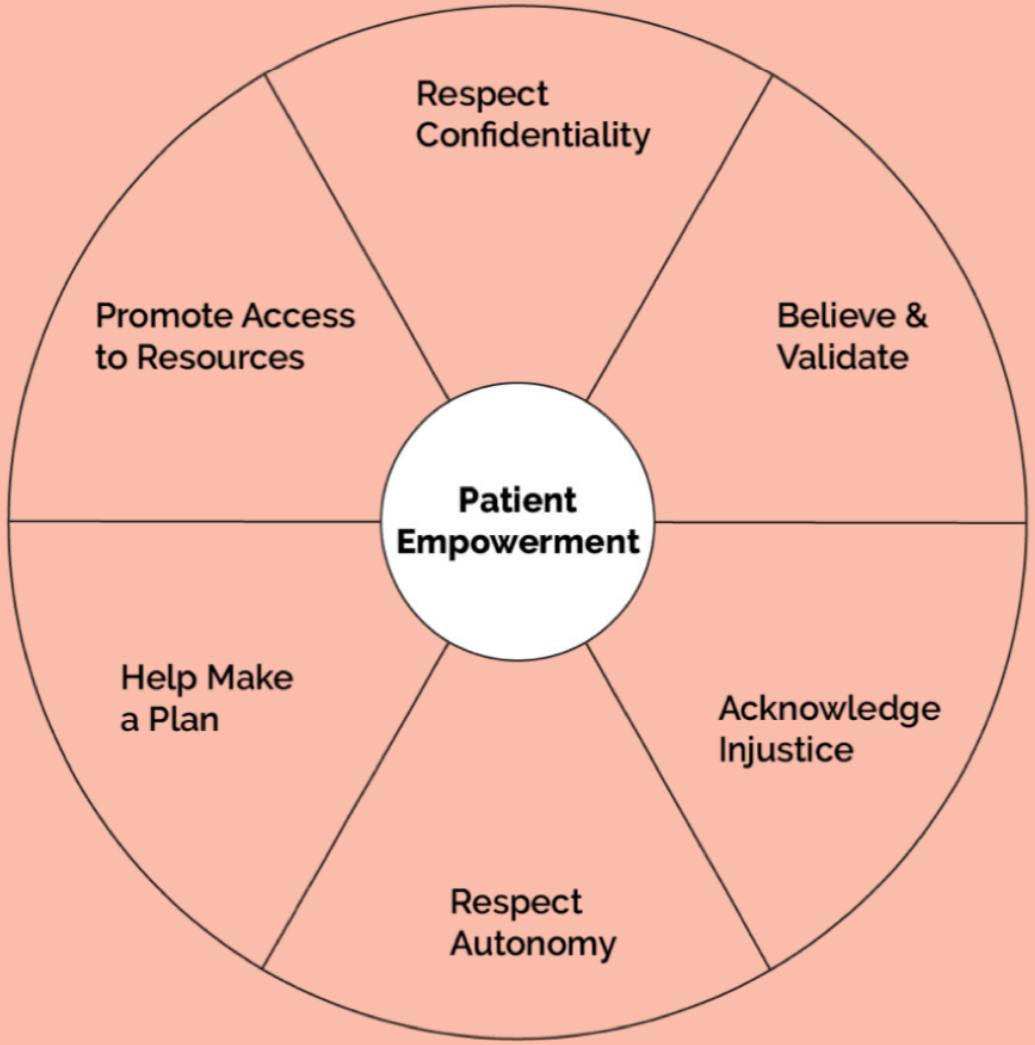
Middle Ground “Two-Patient Ecosystem Model” in MFS

Advocated by Susan Mattingly

- Stresses the **biological unity and inseparability of the dyad**, as “literally, if not conceptually, the pregnant woman incorporates the fetus, so direct medical access to the fetal patient is as remote as ever.”

- The way forward is not to deny the possibility of fetal patienthood, but instead “challenge the orthodox view of the professional-patient relationship, which suppresses dependency relations among patients and posits them as strangers to one another,” suggesting a **family-oriented model of illness and treatment** which focuses on **relationships, protection, dependence and care**.


Nata
Chaplain



Power dynamics: Avoid 'power-over' stances

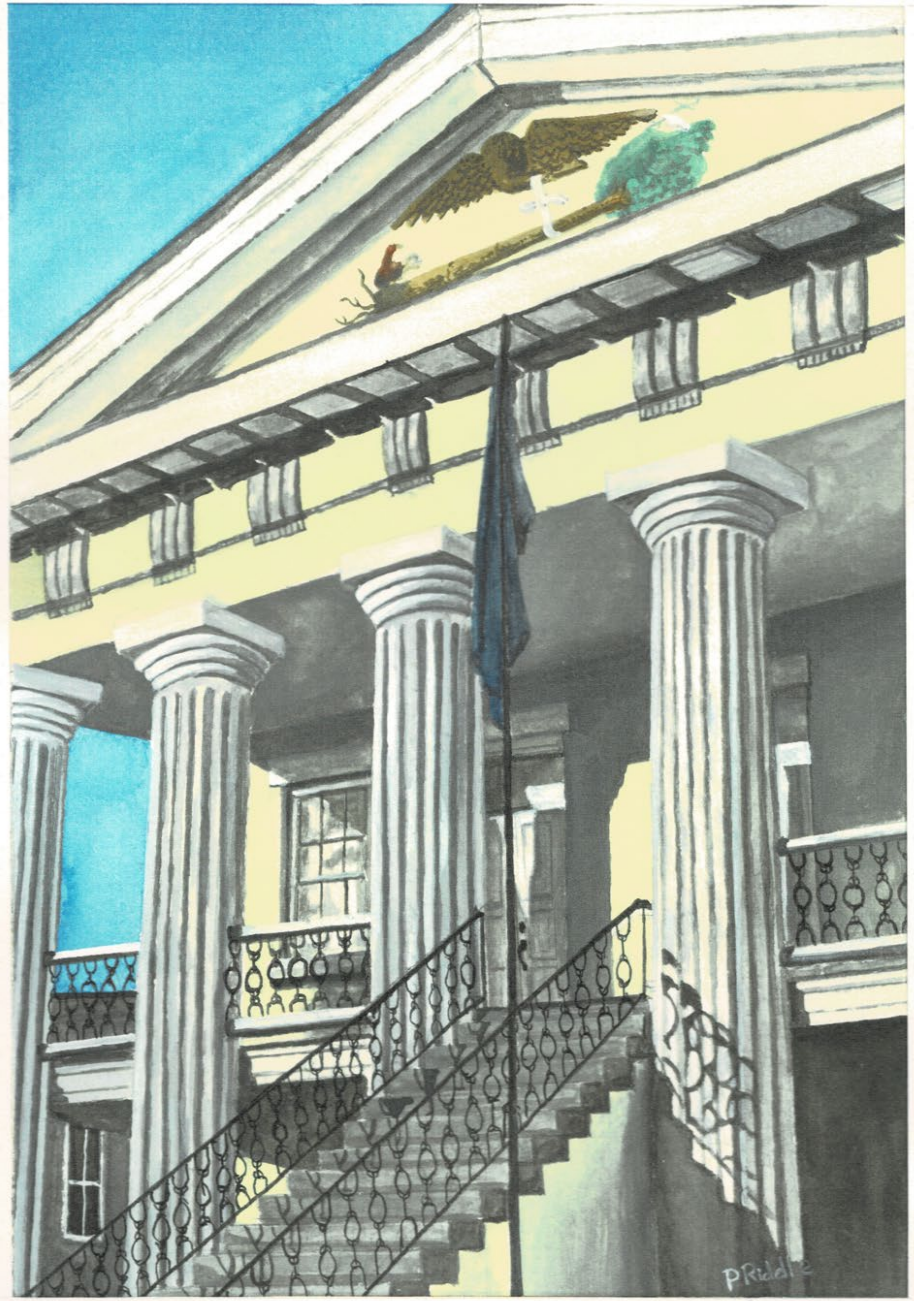
- Sit at eye level.
- Conduct the interview with the patient clothed.
- Speak slowly and clearly.
- Develop a shared agenda.
- Offer choices for disclosure, examination, procedures, treatment.
- Ensure that locus of control is with the patient at all times.

WHERE THE LOVE
OF WOMAN IS
THERE ALSO IS
LOVE OF THE PEOPLE.

Not laws, but standards of **conduct** which define the essentials of **honorable** behavior for the physician:

Principle IX: "A physician **SHALL** support access to medical care for all people."

Victory Beyond Sims by Vinnie Bagwell



P.Riddle

Newberry Community Hall

Newberry, South Carolina


LIBERTY