

# Patients' and Practitioners' Rights and Duties in the Cath Lab



Medtronic Offices Midrand

10 June 2017

Presented by  
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# Agenda



- ▶ Cath Lab Team
- ▶ Patient Rights and Obligations
- ▶ Practitioner Rights and Obligations
- ▶ Specific Considerations
- ▶ Concluding Remarks



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# Cath Lab Team



- ▶ Cardiologist
- ▶ Anaesthetist
- ▶ Radiographer
- ▶ Clinical Technologist
- ▶ Nurse
- ▶ Others?



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# Rights and Obligations



- ▶ Constitution of RSA (Bill of Rights)
- ▶ Legislation and Ethical Rules
- ▶ National Health Act
- ▶ Health Professions Act
- ▶ Nursing Act
- ▶ Medical Schemes Act
- ▶ Consumer Protection Act
- ▶ Protection of Personal Information Act
- ▶ Patients' Rights Charter
- ▶ Others



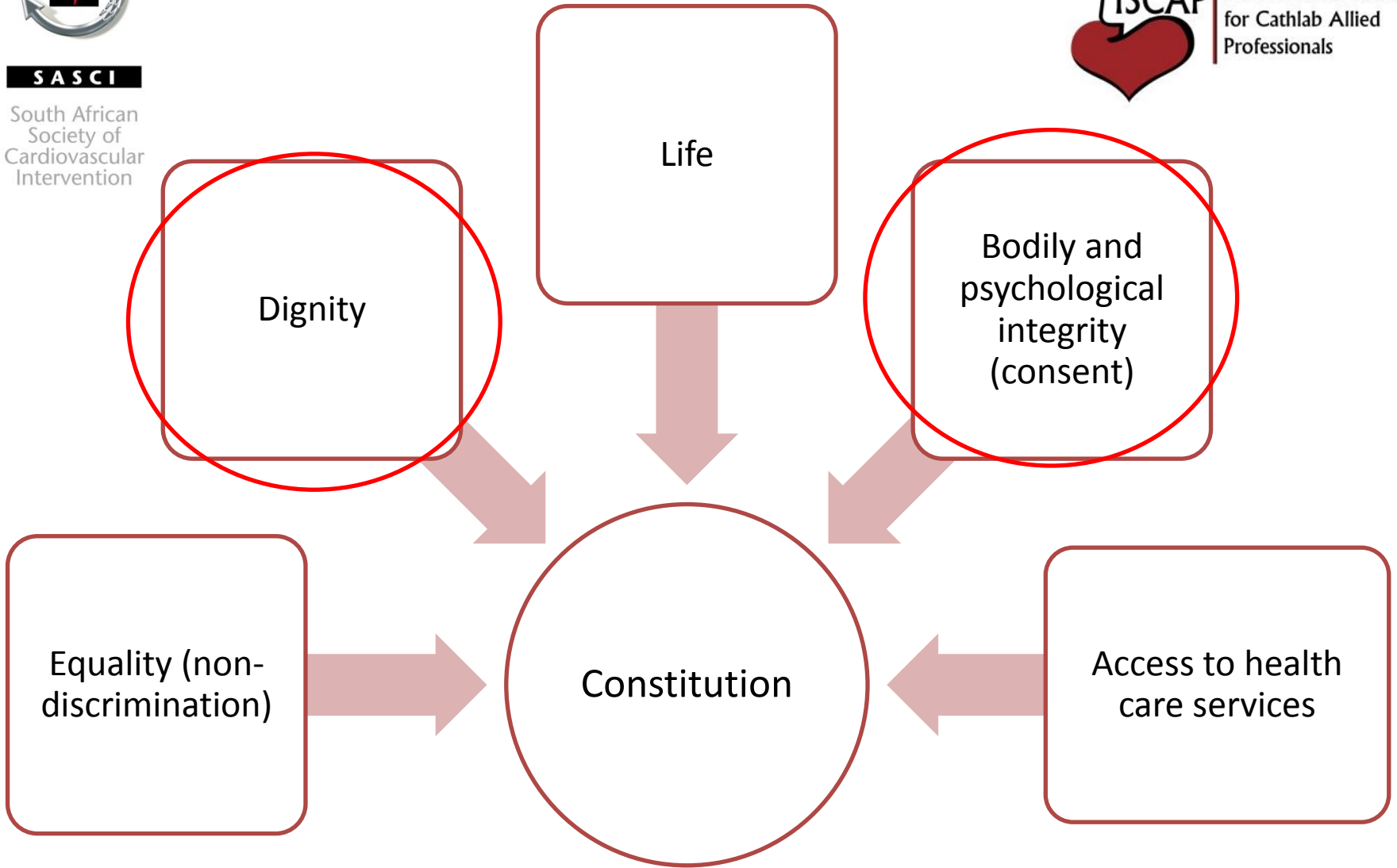
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# Patients

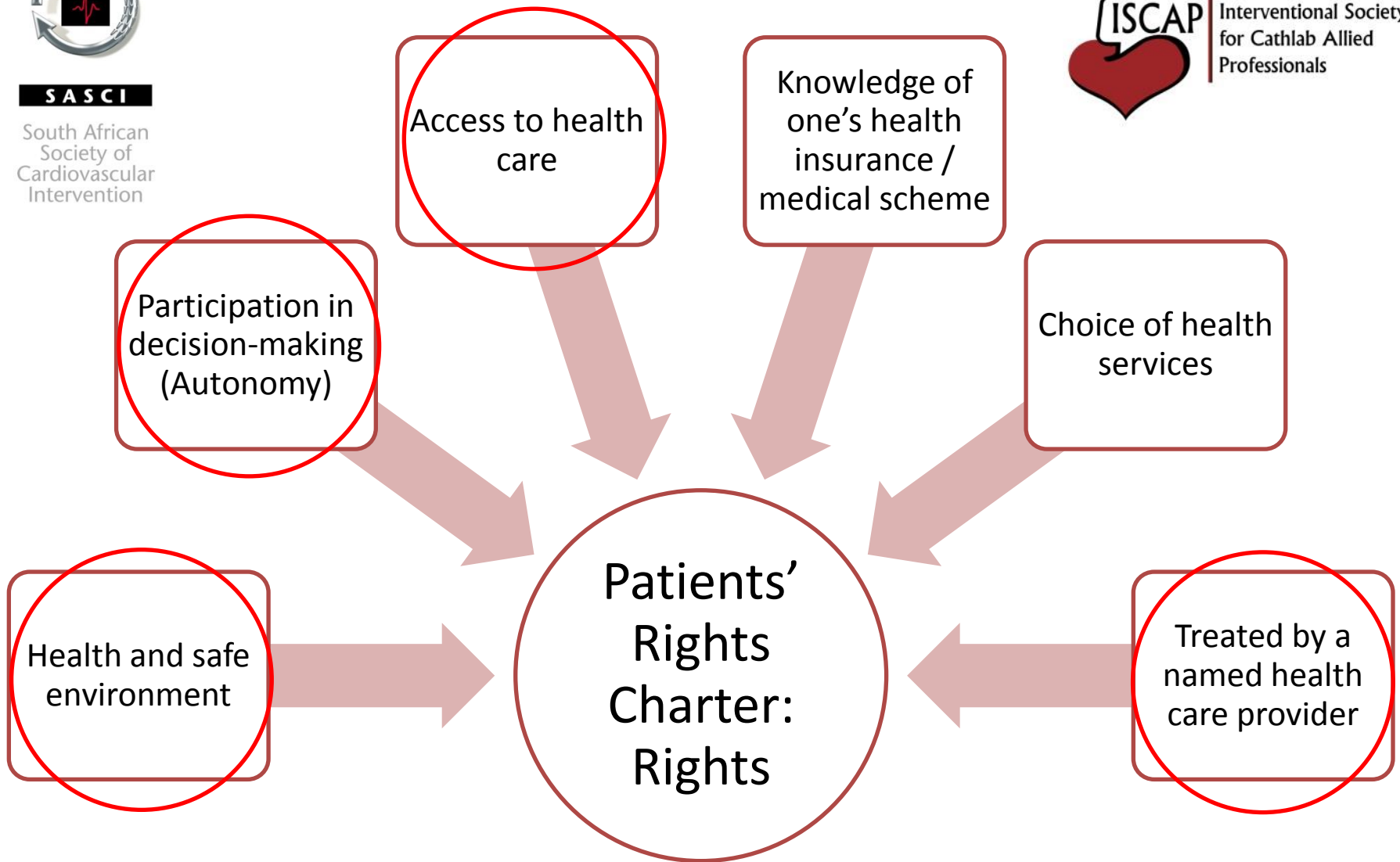


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Refusal of  
treatment

Second opinion

Informed  
consent

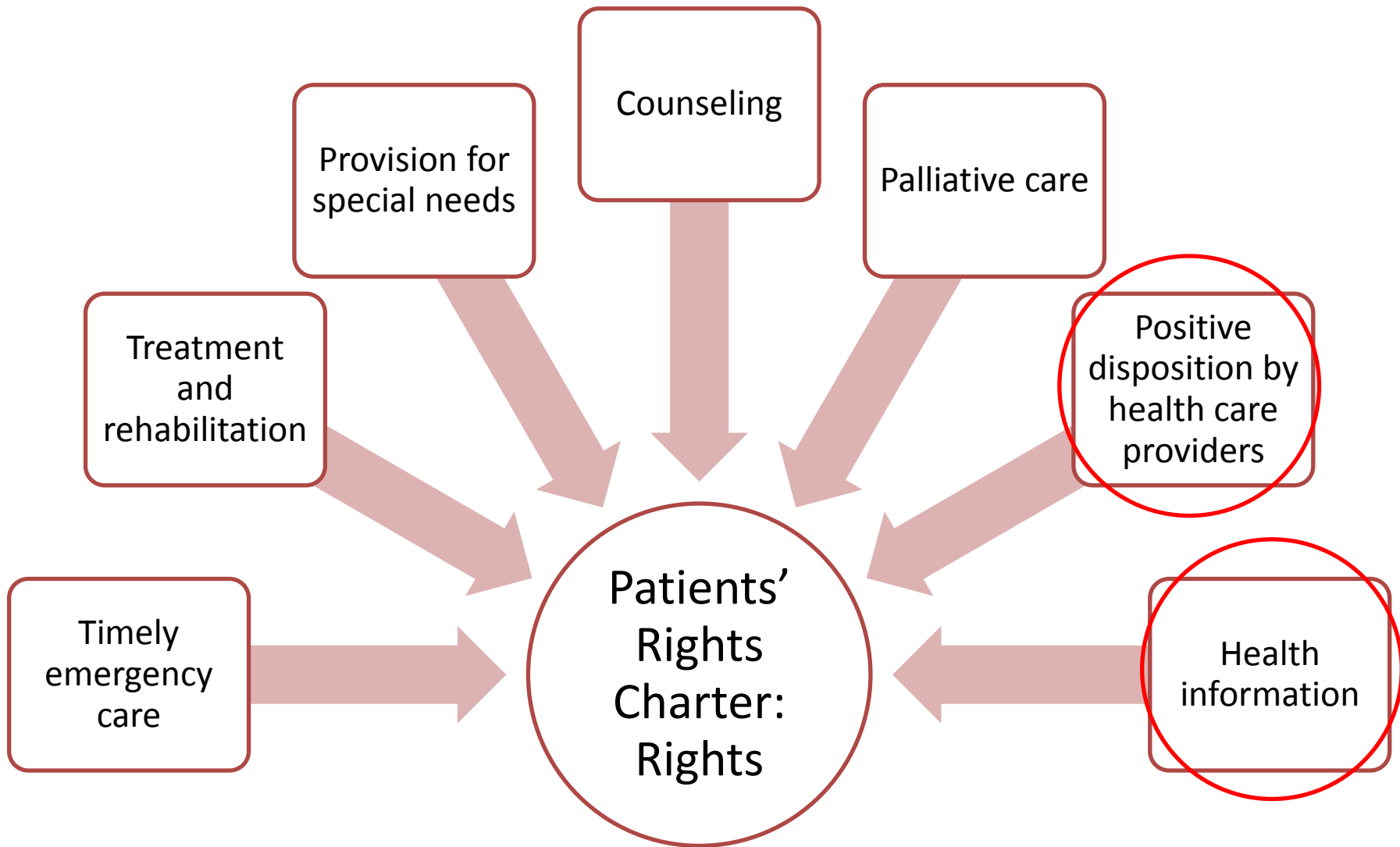
Continuity of  
care

Confidentiality  
and privacy

Complaints  
about health  
services

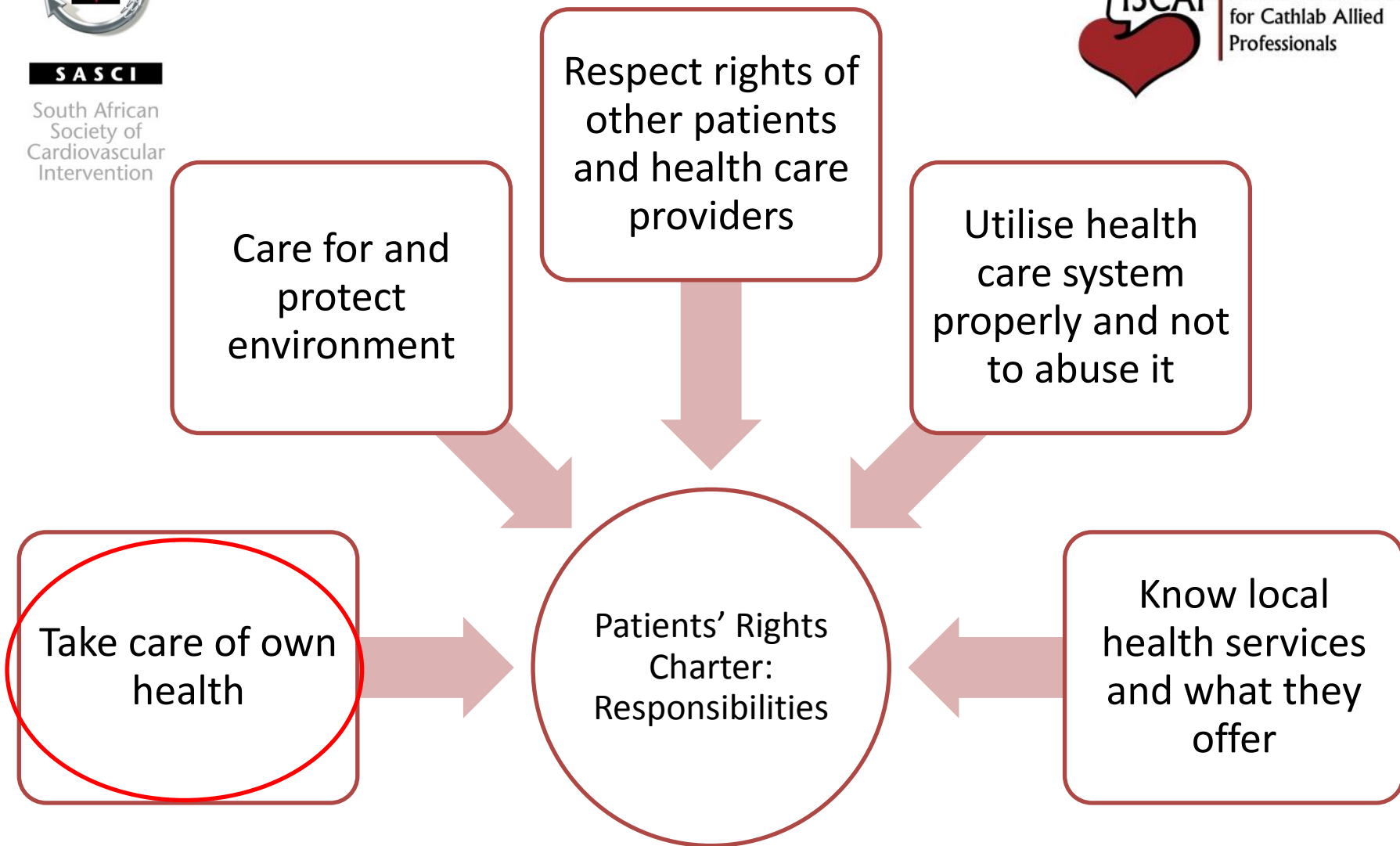
Access to  
health  
care





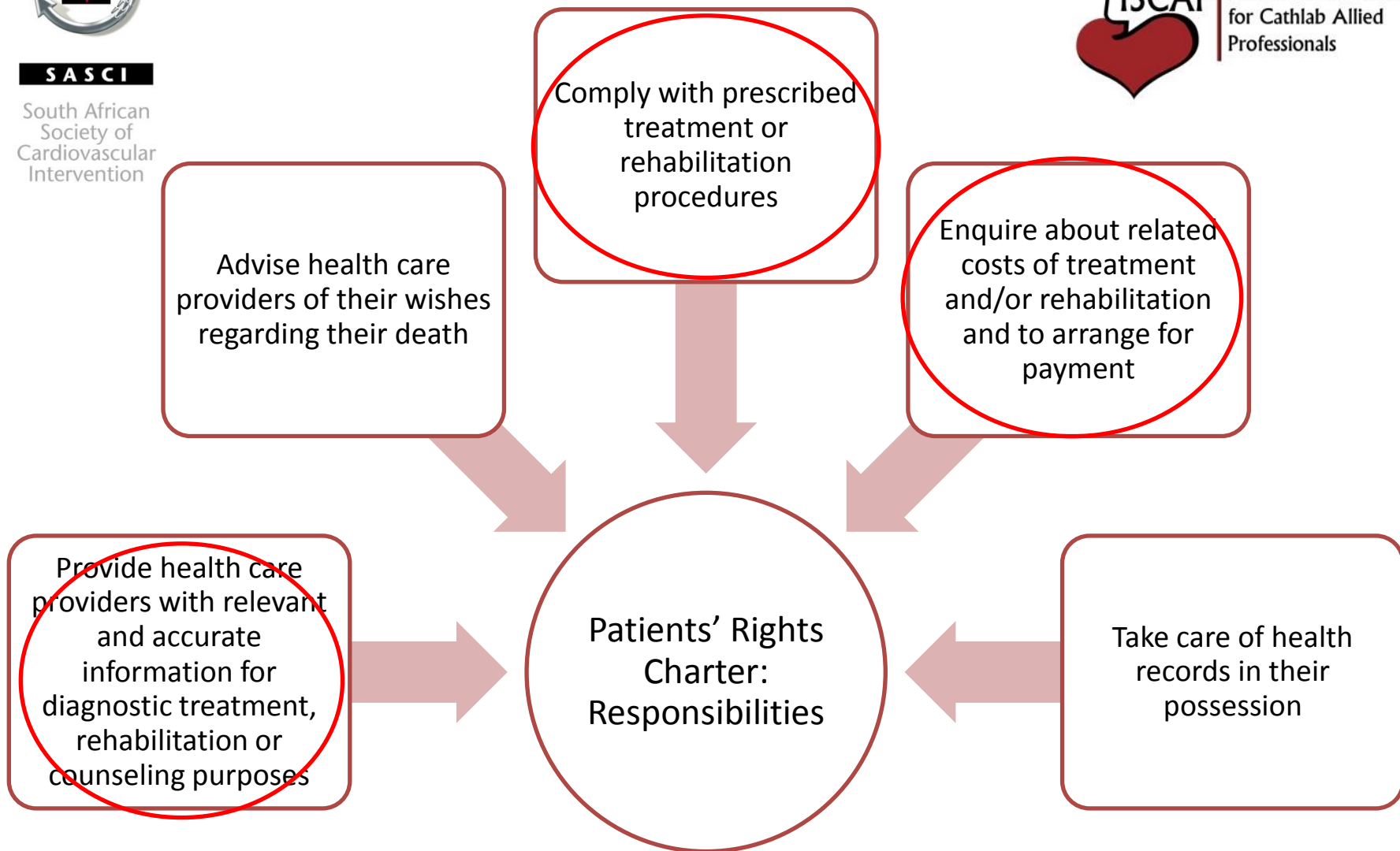


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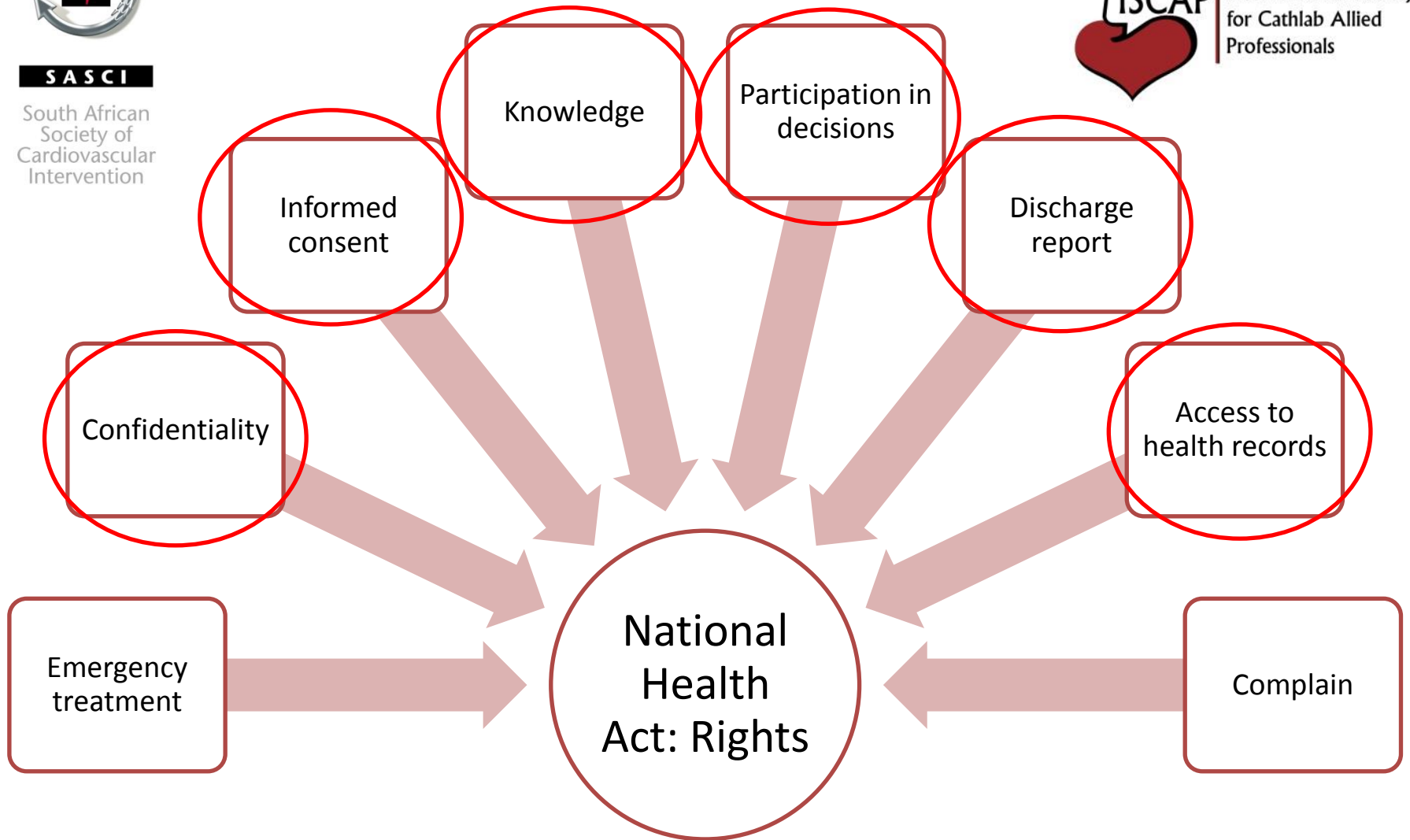


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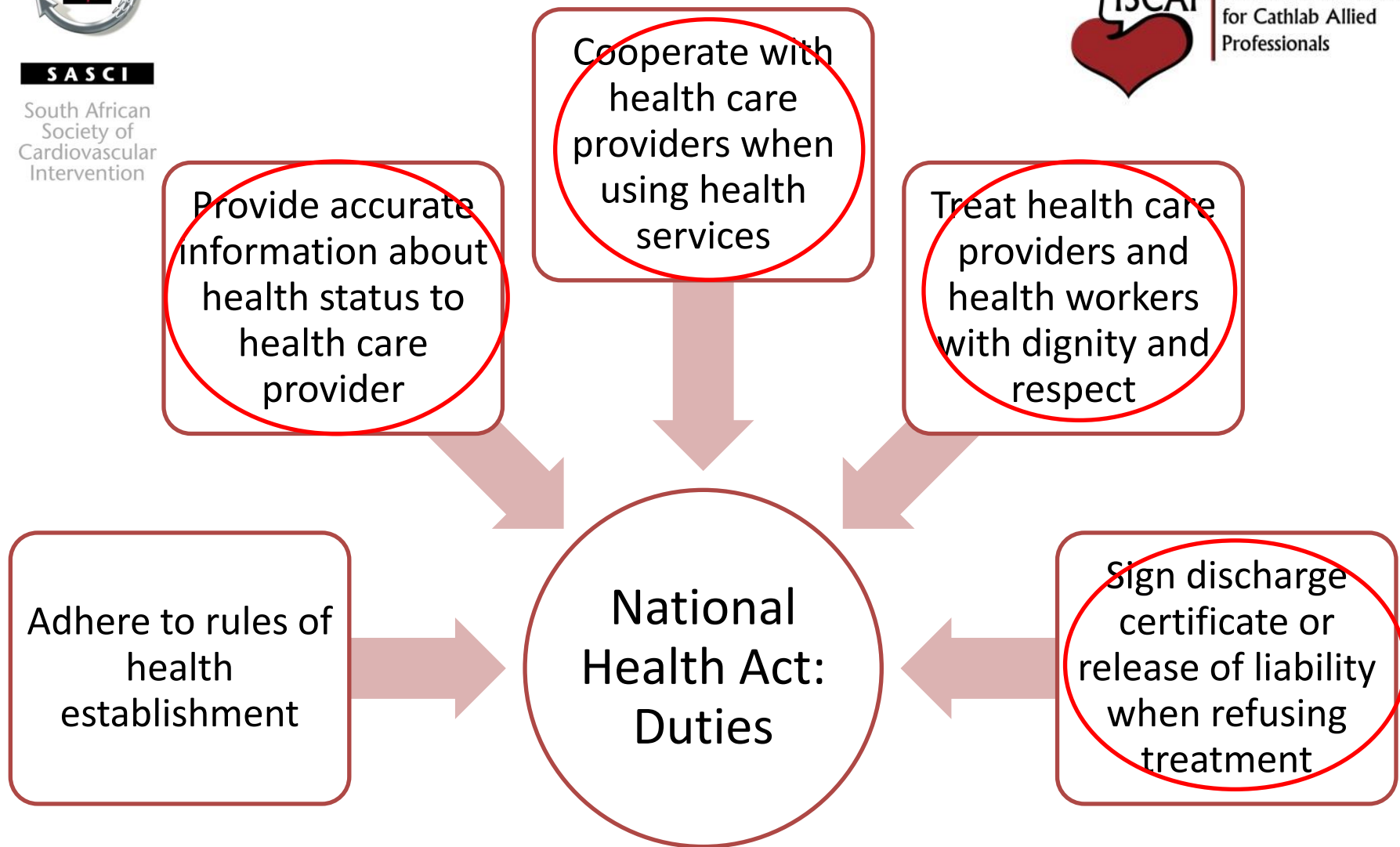
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Price, Plain language

Disclosure and information

Fair and responsible marketing

Quality, Unethical / Unconscionable conduct

Choose practitioners

Fair and honest dealing

Privacy (Marketing)

Risks, Indemnities

Fair, just and reasonable terms and conditions

Equality in consumer market (Non-discrimination)

Consumer Protection Act (CPA): Rights

Product Liability

Fair value, good quality and safety



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# CPA: Right to Choose



- ▶ Patient's right to choose may only be taken away in specific circumstance
- ▶ Condition for supplying services that patient
  - Must purchase other goods / services from practitioner
  - Enter into further agreement to purchase from practitioner / designated 3<sup>rd</sup> party
  - Agree to *purchase* any goods / services from designated 3<sup>rd</sup> party
- ▶ Only if: Convenience outweighs limitation of right to choice or economic benefit



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# CPA: Quality of Services



- ▶ Right to
  - Timely performance and completion of services
  - Timely notice of unavoidable delay
  - Performance of services in manner and of quality that patients are generally entitled to expect
- ▶ Service does not meet standards: Remedy defect / refund reasonable proportion of price for goods/services
  - Circumstances of supply and agreed conditions to be considered





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# CPA: Plain Language



- ▶ Notices, documents to patients
  - Form prescribed into CPA / other legislation
  - If no form prescribed: Must be in plain language
  - Plain language = Reasonable to conclude that
    - Patient with average literacy skills and
    - Minimal experience as patient (consumer)
    - Understand content, significance and import of notices, documents
  - Form, style, vocabulary, illustrations, context, comprehensiveness, etc. to be considered



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# CPA: Unethical Conduct



- ▶ Avoid unconscionable conduct
- ▶ What is “unconscionable conduct”?
  1. Unethical / improper to degree that would shock conscience of reasonable person
  2. Physical force, coercion, undue influence, pressure, duress, harassment or unfair tactics by practitioner / agent when
    - Supplying goods / services
    - Concluding agreement to supply goods / services
    - Collecting payment for goods / services



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# CPA: Unethical Conduct



3. If practitioner knowingly takes advantage of fact that patient is substantially unable to protect own interests because of
  - Physical, mental disability
  - Illiteracy
  - Ignorance
  - Inability to understand language of agreement (terms and conditions of treatment / consent)
  - Any similar factor



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# CPA: Risks



- ▶ Risks of unusual nature to be pointed out
  - Written in plain language
  - Fact, nature and effect of provision drawn to attention of patient in conspicuous way before engaging in activity / accepting payment (whichever is first)
  - Patient must have adequate opportunity to receive and understand notice
  - Patient must consent



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# CPA: Indemnities



## ▶ Impermissible for gross negligence

- ▶ Excluding / limiting liability of practitioner for death / personal injury caused to patient through his/her act/ omission presumed to be unfair...proof
- ▶ Point out to patient
  - Written in plain language
  - Fact, nature and effect of provision drawn to attention of patient in conspicuous way before engaging in activity / accepting payment (whichever is first)
  - Patient must have adequate opportunity to receive and understand notice



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# Also Consider Following:



- ▶ **Avoid false, misleading or deceptive representations:**
  - False statement / implication of material fact, performance characteristics of services
  - Fail to correct misunderstanding by patient amounting iro material fact, performance characteristics (e.g. stent), quality of services, practitioner has particular status / affiliation, charge is for specific purpose
  - Fail to disclose material fact
  - Use exaggeration, innuendo or ambiguity iro material fact



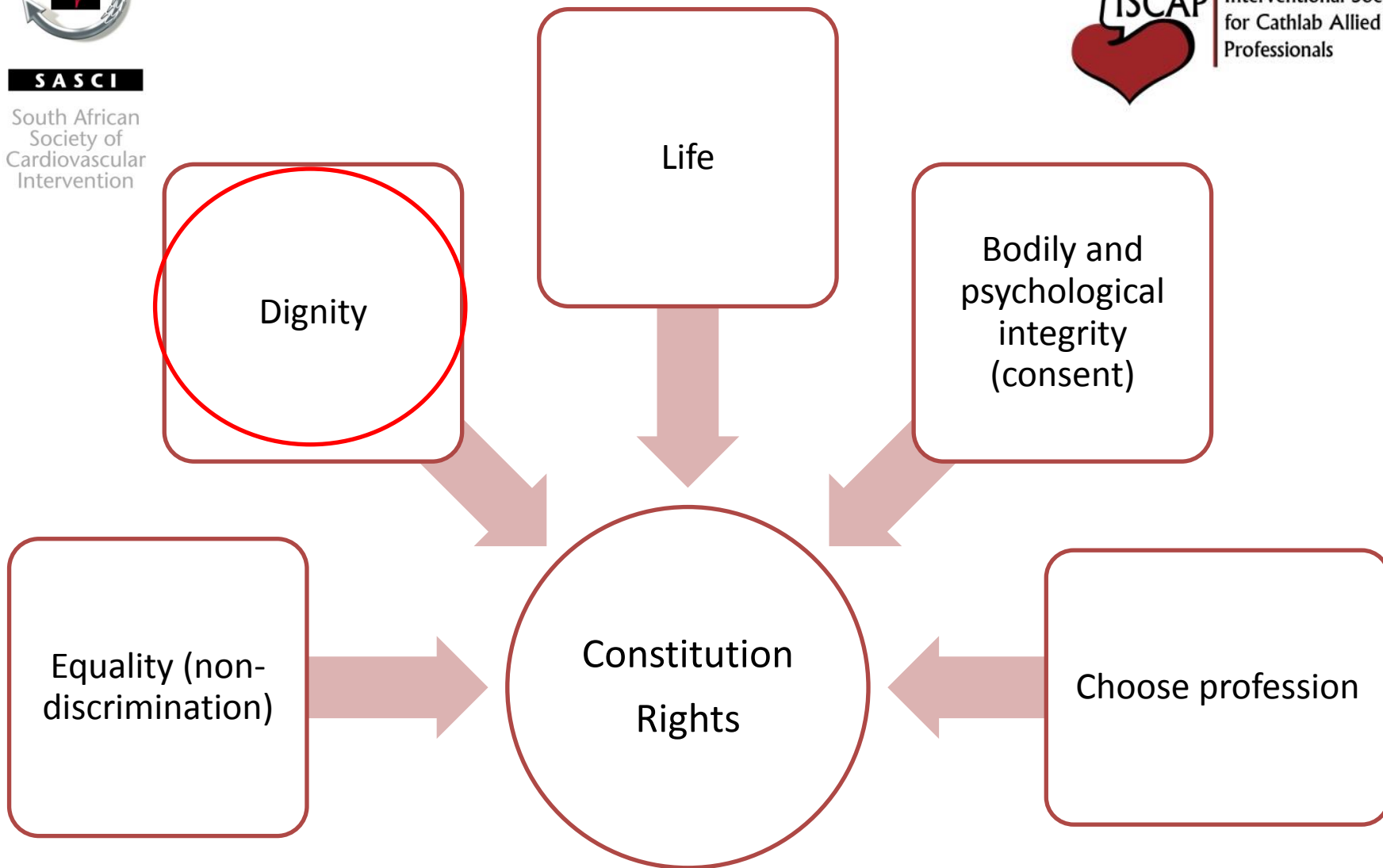
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# Practitioners



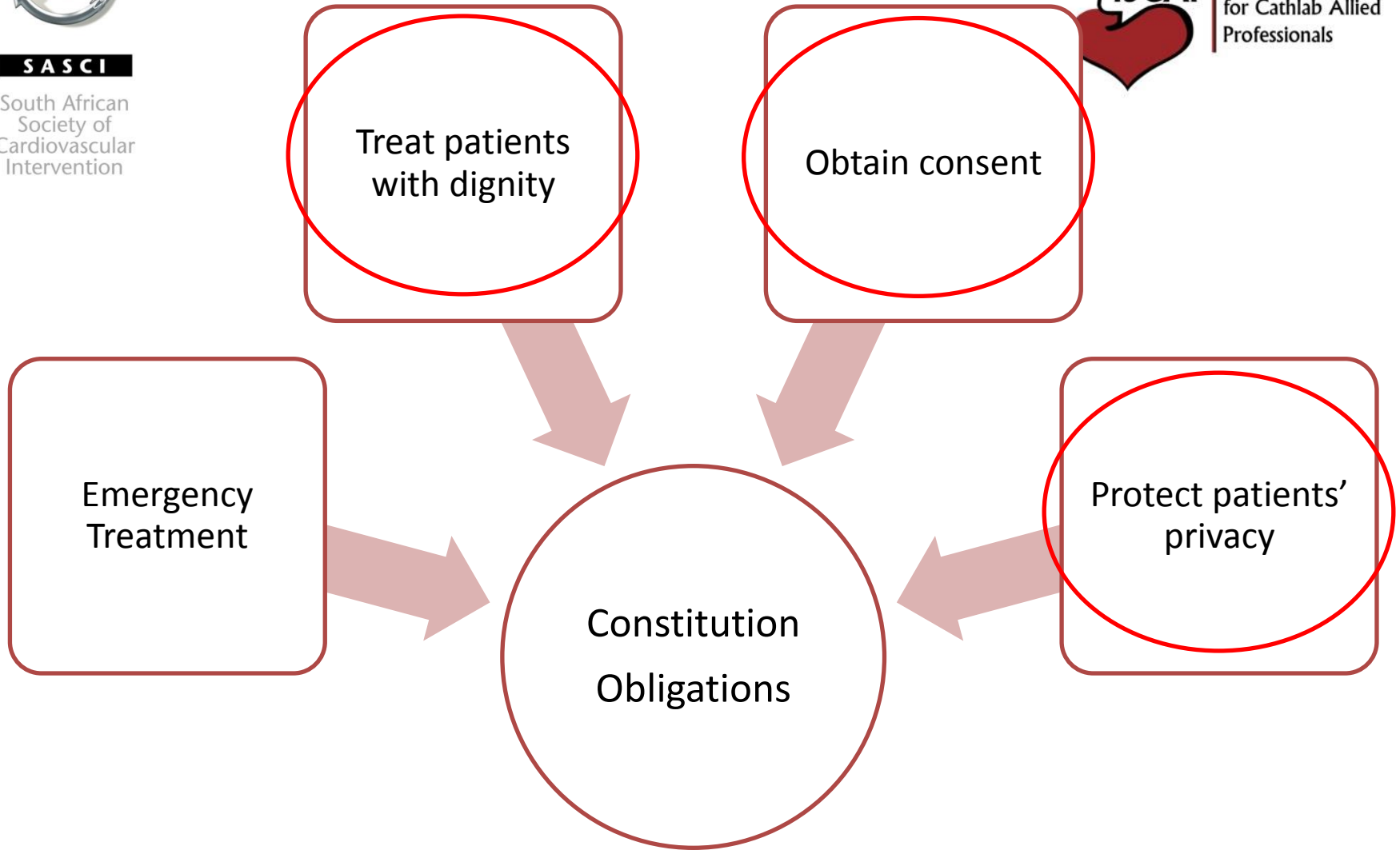
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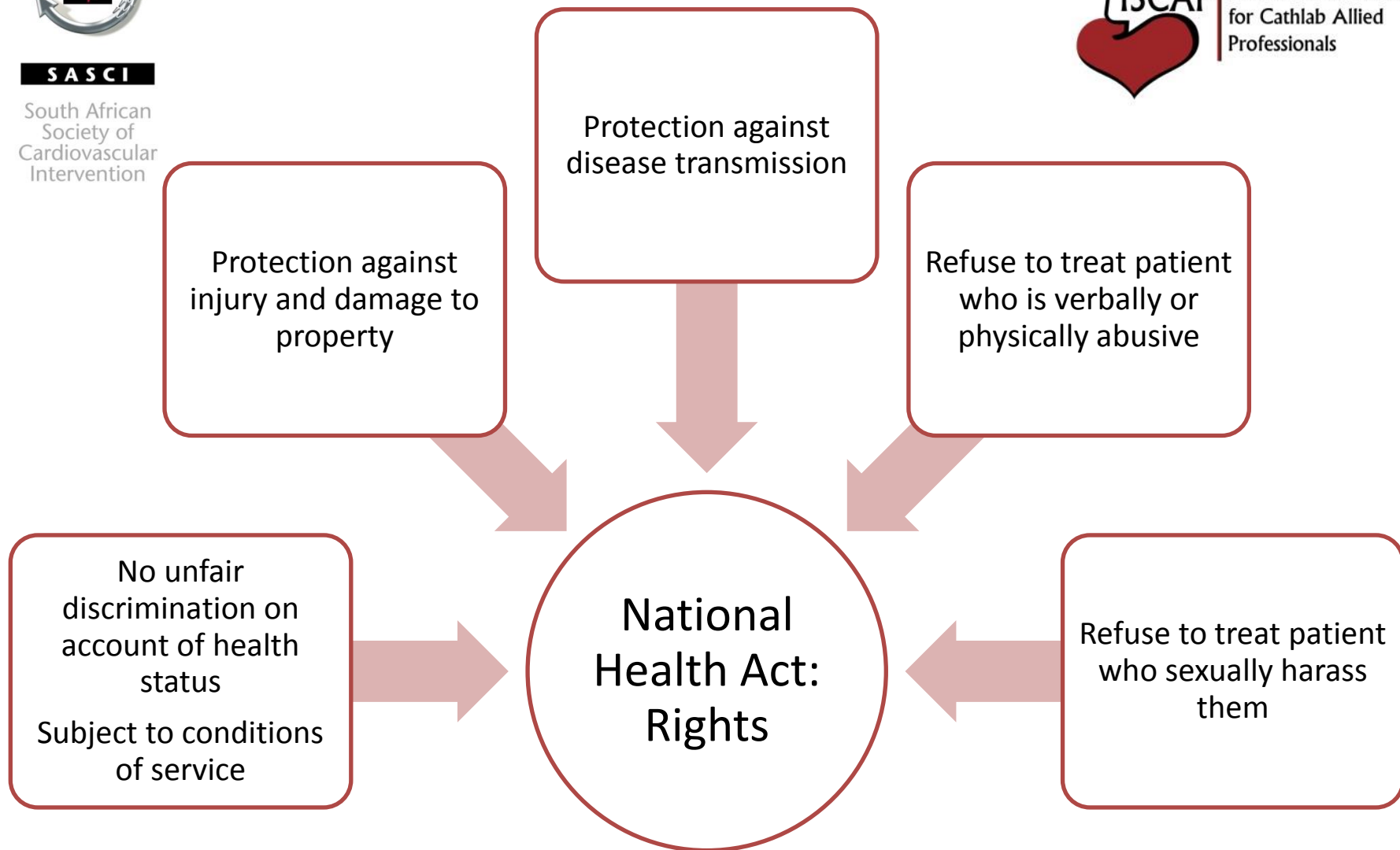
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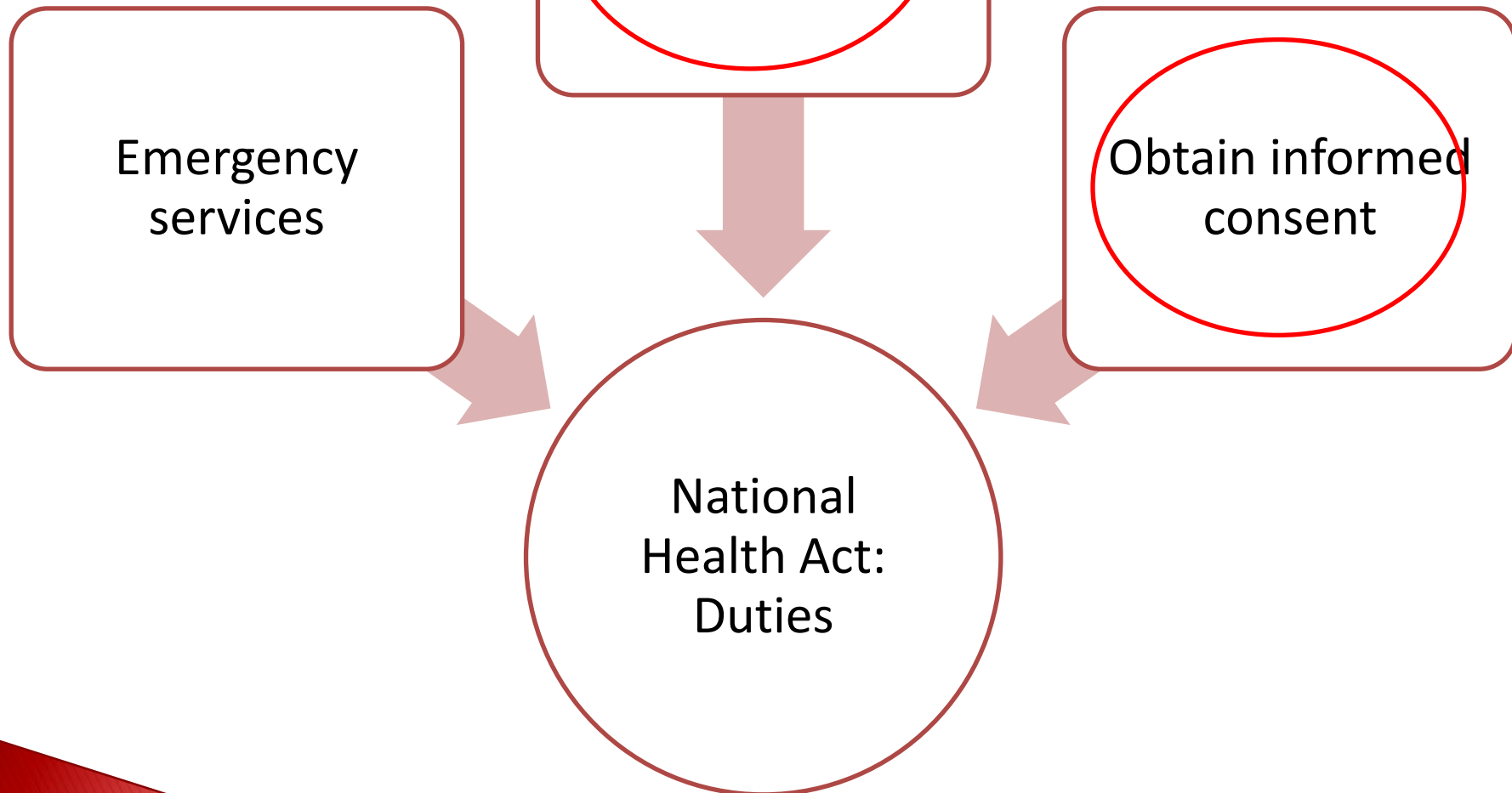
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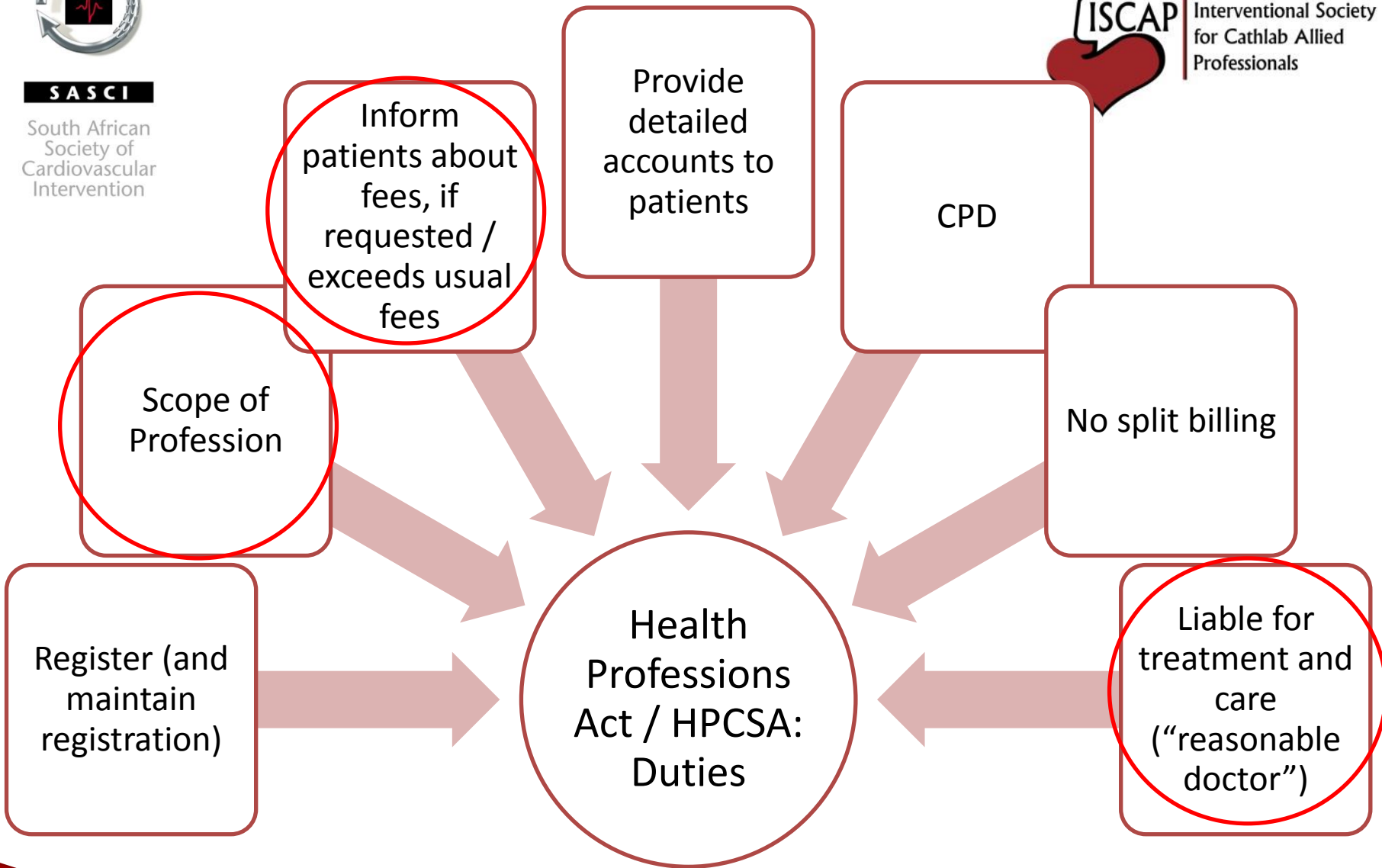
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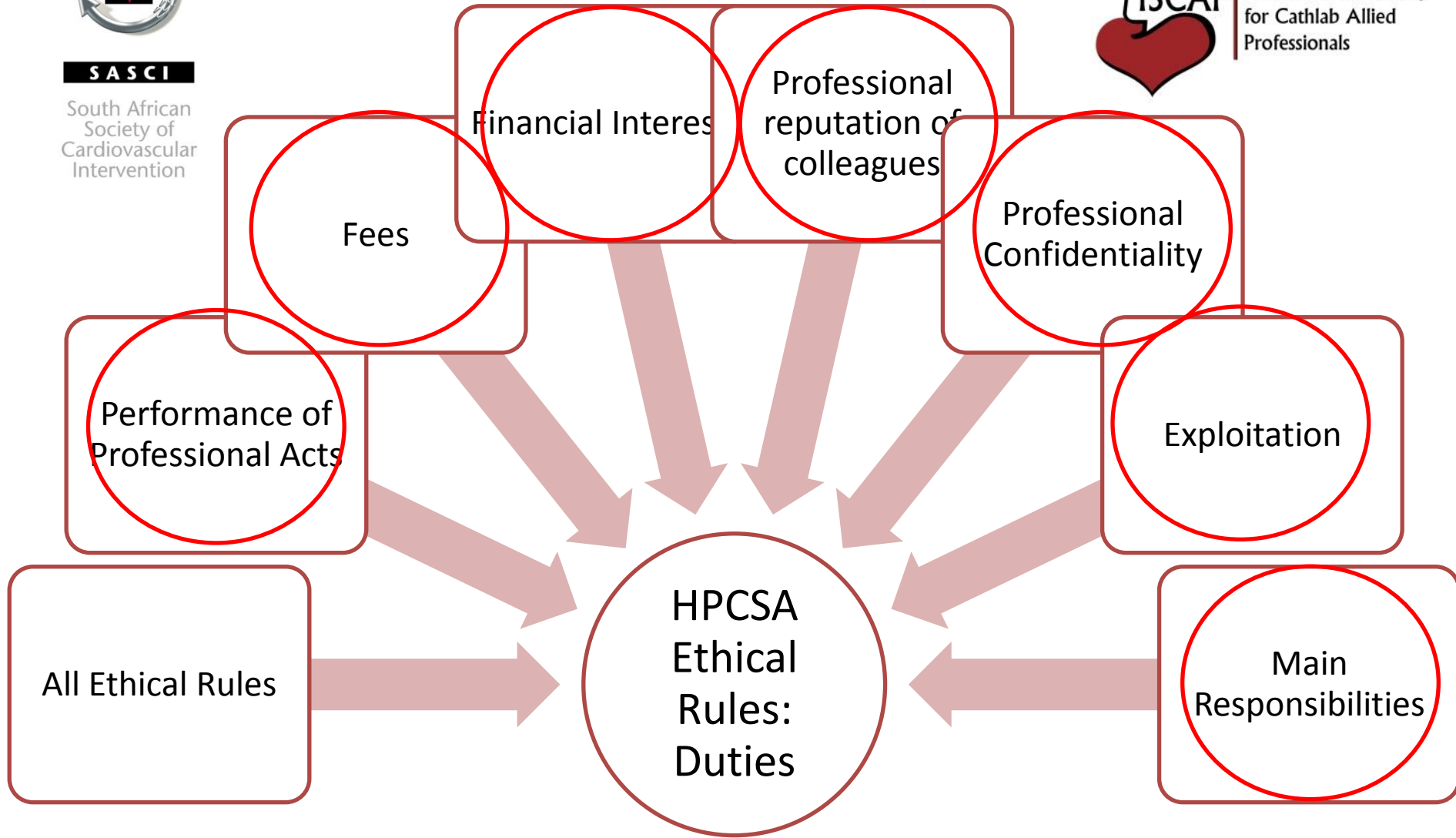


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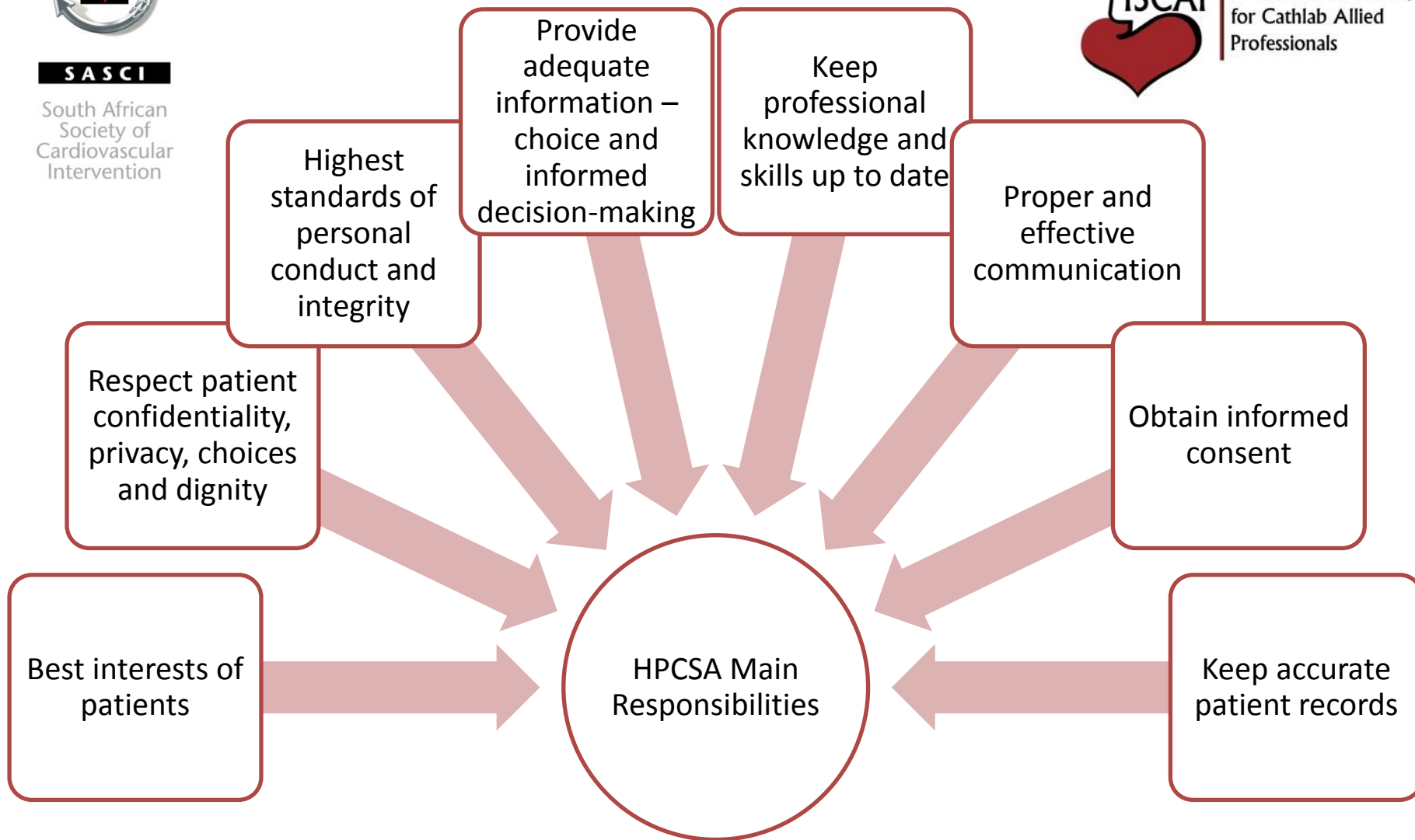


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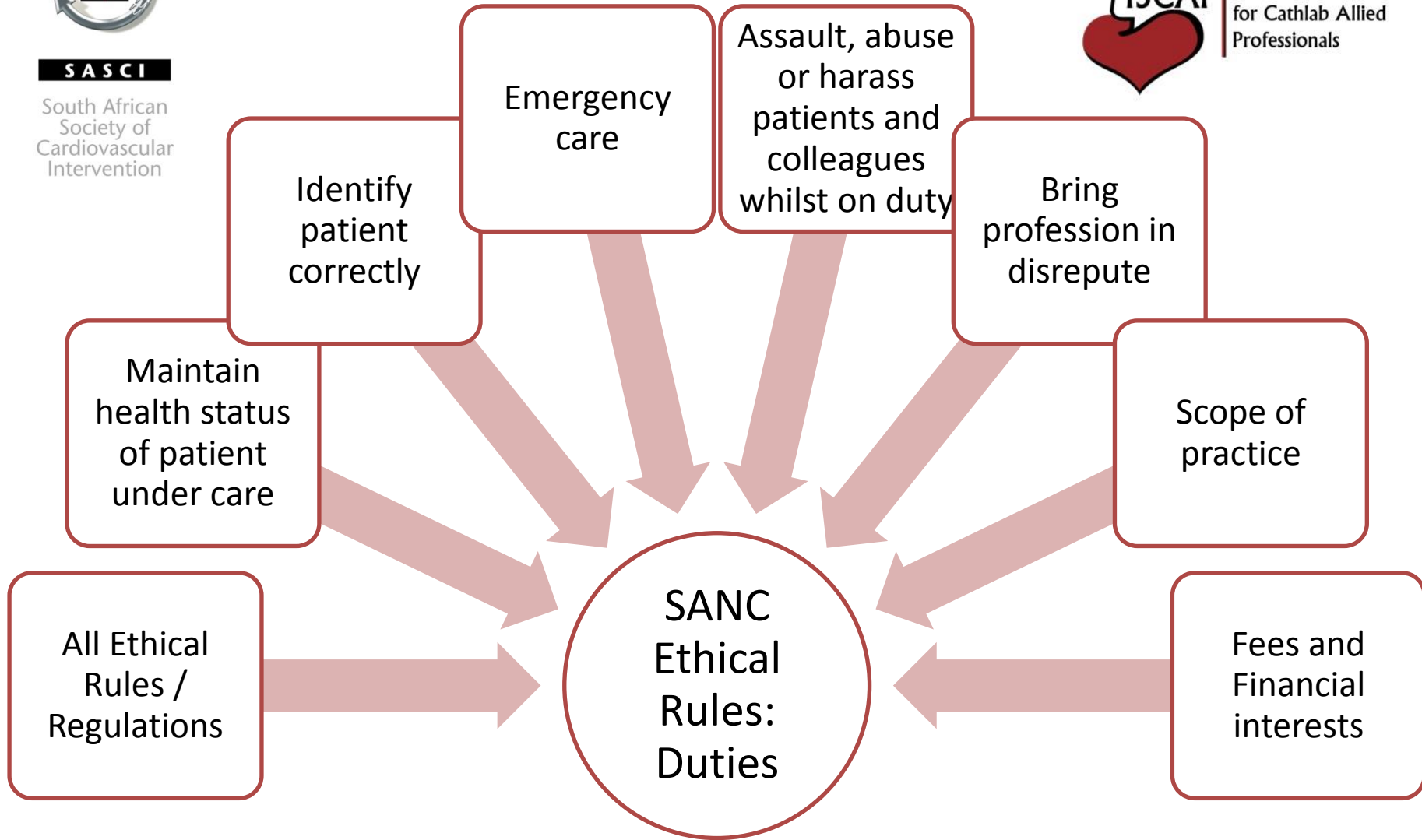


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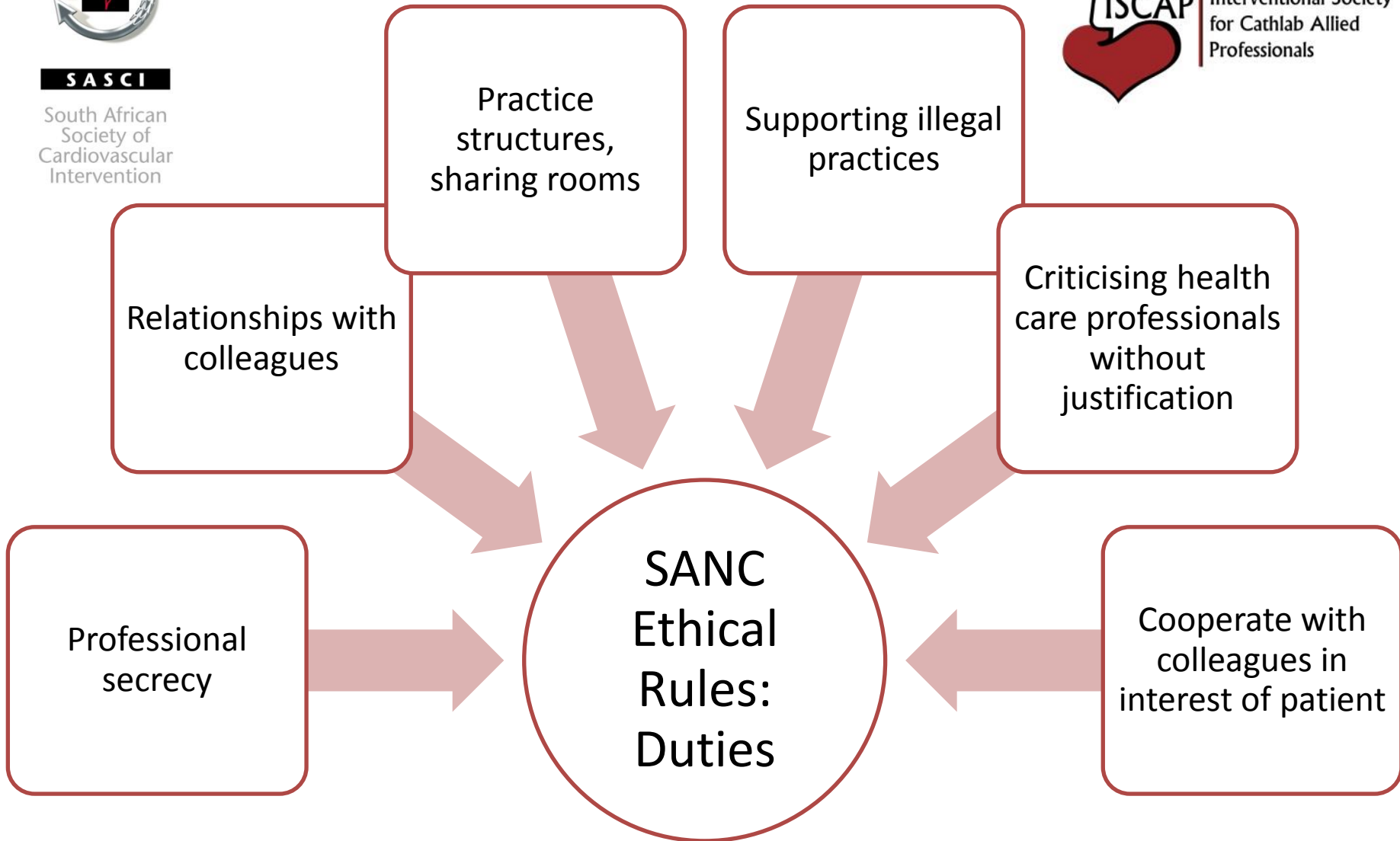


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# Specific Considerations



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# Privacy



- ▶ Privacy
- ▶ Confidentiality
- ▶ Patient records
- ▶ Protection of Personal Information Act



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# Informed Consent



- ▶ Patients are entitled to full knowledge about
  - Their health status unless contrary to their best interests (therapeutic privilege)
  - Diagnostic procedures and treatment options available
  - Benefits, risks, costs and consequences associated with each treatment option
  - Right to refuse health services and explanation of implications, obligations, risks and consequences



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# Informed Consent



## ▶ Informed Consent

- Obtain informed consent before rendering a health service unless a public health risk or emergency (unless patient refused treatment)
- Where possible, in language patient understands and with regard to literacy
- Inform patients fully, even if they are not capable to provide informed consent



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# Informed Consent



- ▶ Requirements for consent
  - Knowledge of harm/risk
  - Appreciate/understand nature & extent of harm/risk
  - Consent to harm and assume risk
  - Comprehensive (Entire transaction incl consequences)
- ▶ Verbal/in writing?
- ▶ Who should obtain consent?
- ▶ Who should consent?
- ▶ HPCSA: Financial consent... disciplinary hearings



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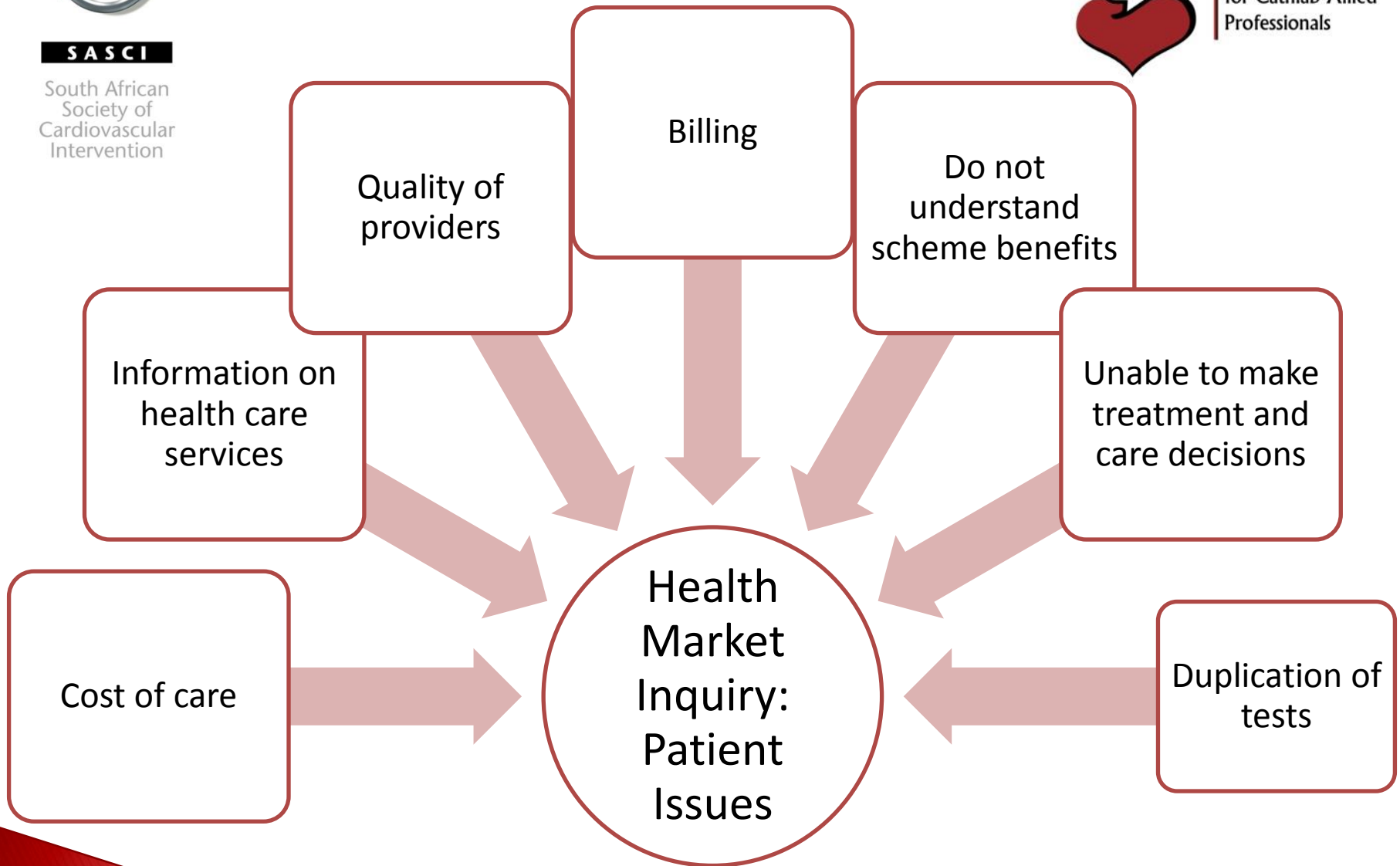
# Documentation



- ▶ Legislative requirements
- ▶ Plain language
- ▶ Terms and conditions
- ▶ Consent
- ▶ Risks
- ▶ Indemnities



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# Other Matters



- ▶ Pre-authorization
- ▶ Independent practitioners
- ▶ Employees...vicarious liability
- ▶ Product liability
- ▶ Payment...Prescribed minimum benefits
- ▶ Indemnity Insurance
- ▶ Health care team
- ▶ Communication





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# Conclusion

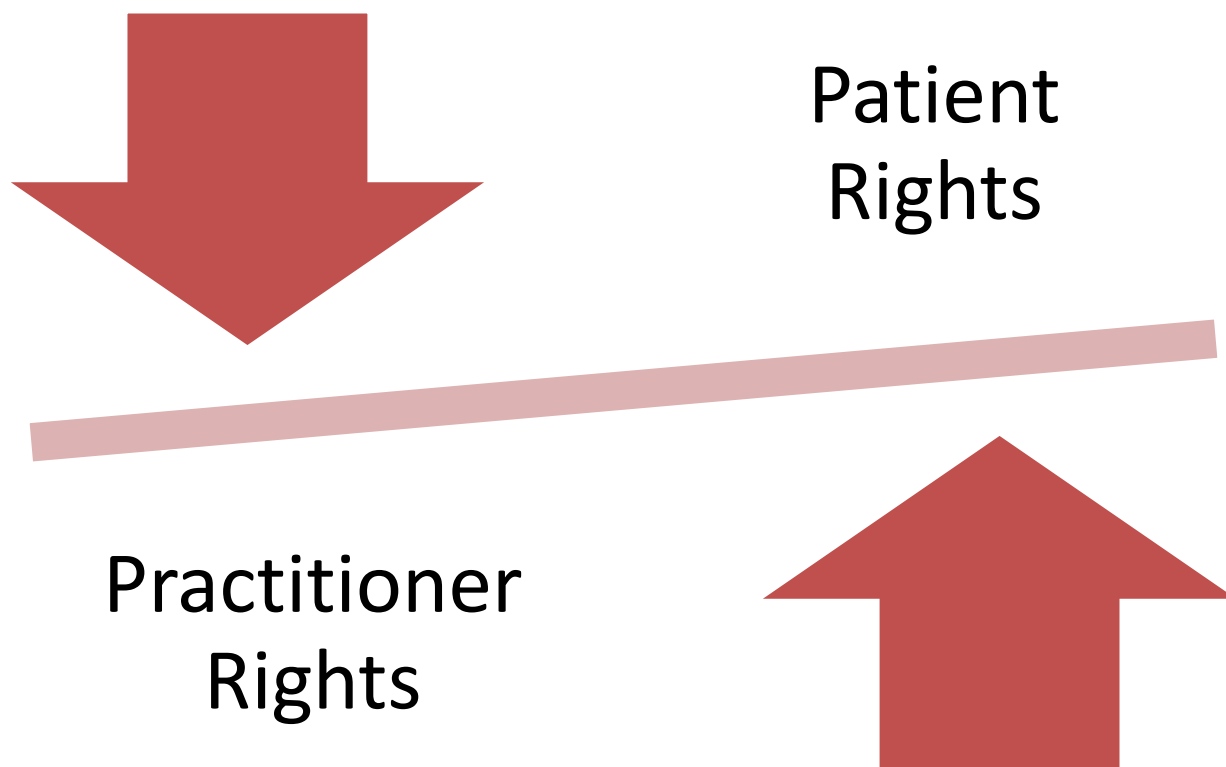


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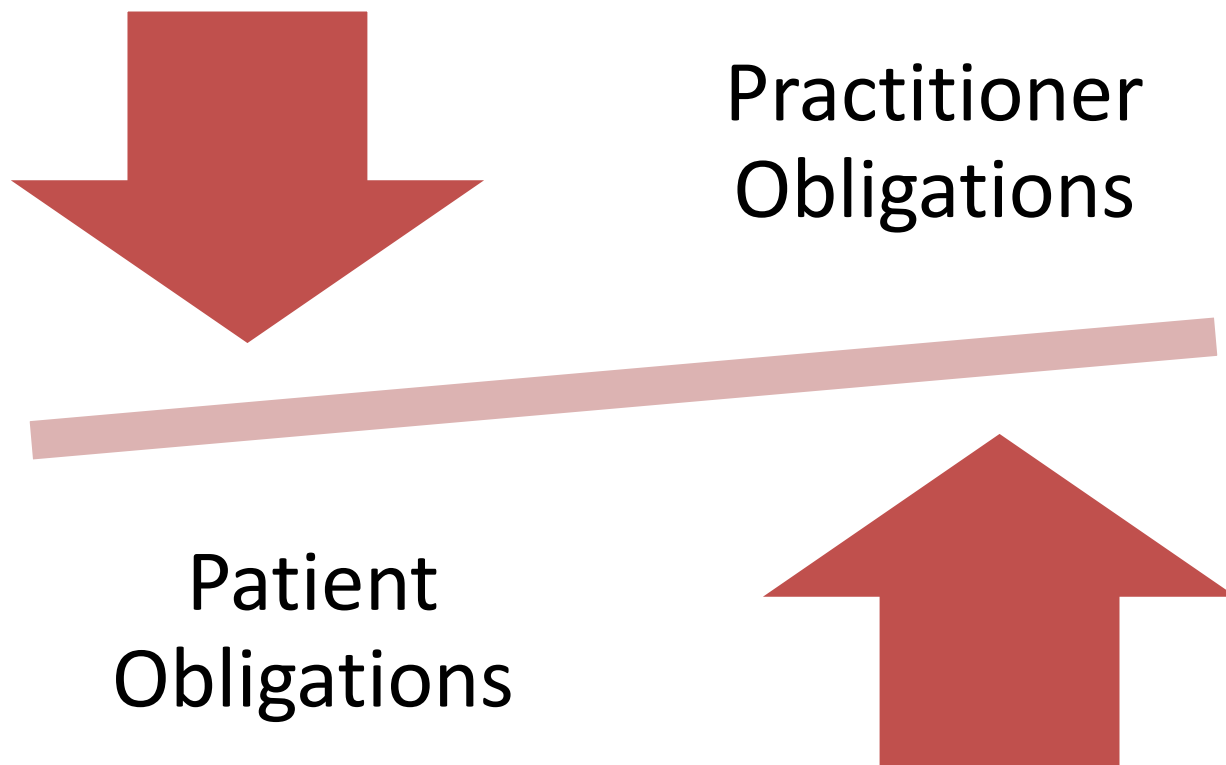
Interventional Society  
for Cathlab Allied  
Professionals





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▶ Questions?

▶ Thank You

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