Compelled to Inoculate: May Parents Refuse Vaccinations for Their Children?

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The largest outbreak of mumps in the United States in recent years began in the summer of 2009 in New York's Rockland and Sullivan counties. Hundreds of teenage campers from the Hassidic communities of Monsey and Kiryas Yoel contracted the mumps after being exposed to one youngster from the United Kingdom who was not inoculated against the disease.¹

1. MMWR (Morbidity and Mortality Weekly Report) Vol.59 No.2 2/12/10. Of special interest is a major study analyzing this mumps outbreak in the Orthodox community. The authors of that study postulate that "chavrusa study, with its prolonged face-to-face contact, resulted in high inoculum exposures" which overcame the standard two-dose MMR coverage that these students received. Nonetheless, the researchers concluded that this immunization was effective in both reducing the severity of the cases and preventing the spread of this outbreak to surrounding communities.


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The Maimonides Fellowship is an interdisciplinary think tank of scholars on the interface of medicine, law, and bioethics with halacha, under the leadership of Dr. Fred Rosner.
Despite the proven efficacy of the MMR (mumps, measles, and rubella) vaccine, some parents have refused to have their children inoculated, claiming a causal link between the vaccine and autism – a claim that has been thoroughly repudiated by numerous research studies. In a comprehensive report on autism and the MMR vaccine on the NIH website, the National Institute of Child Health and Human Development states categorically: "To date there is no definite, scientific proof that any vaccine or combination of vaccines can cause autism." Indeed, the lead researcher, Andrew Wakefield, whose study sought to demonstrate a link between the MMR vaccine and autism, was found to be "dishonest and irresponsible" in his research and subsequently lost his license to practice medicine in the UK.

Nevertheless, significant questions remain:

Do parents have the right to refuse MMR inoculations for their children, where refusal to do so may lead to serious illnesses and potentially life-threatening complications for their offspring and others? By the same token, do adults have the right to decline flu vaccinations, where the risks of adverse reaction to the vaccine are negligible, and the benefits to one's self and others are significant?

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I. Medical Background:

Do MMR inoculations and influenza vaccinations pose any serious side effects or risk factors to those who are being immunized? What is the risk-benefit ratio (comparing projected benefits versus possible risks)?

There have been over 20 major studies whose findings refute any causal relationship between MMR inoculations and autism. Most are large population or cohort studies, some with over a million children. Additionally, there is no evidence that MMR vaccine is associated with the development of allergies.

Life-threatening allergic reactions from flu immunizations are extremely rare. According to the CDC website, allergic reactions are more likely to occur among persons with a severe allergy to eggs, because the viruses used in the influenza vaccine are grown in hens' eggs; hence the warning for those with a history of allergic reactions to eggs or to flu shots not to be immunized without consulting a physician. Another rare illness, Guillain-Barré syndrome (GBS), which is characterized by fever, nerve damage, and muscle weakness, may be associated with "no more than 1 or 2 cases per million people vaccinated [with current flu vaccines]." 

While there is no evidence of serious allergic reactions or side effects to MMR immunizations, the risks from not being vaccinated are significant. A major study reported that children in the United States with non-medical exemptions (e.g., religious or philosophical) between 1985 and 1992 were

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35 times more likely to contract measles than vaccinated children.\(^8\)

A critical complication of measles is encephalitis, an inflammation of the brain which can cause seizures. Measles can also develop into pneumonia and ear infections. The CDC reports that “about one out of 10 children with measles also gets an ear infection, and up to one out of 20 gets lifelong disabilities... [or] pneumonia. About one out of 1,000 gets encephalitis, and one or two out of 1,000 die.”\(^9\) Mumps and rubella are also serious illnesses which may cause rare, but potentially fatal complications.

**II. Law and Bioethics: Legal Precedent**

Do parents have the legal right to refuse MMR inoculations for their children, who may later transmit these diseases to their classmates or fellow campers? Does reduction of potentially serious childhood illnesses in a school setting constitute a "compelling state interest" to protect public health, which can override constitutional due process interests in bodily integrity and the refusal of unwanted medical treatment?

The fact that departments of health have the authority to mandate immunizations for school-age children derives from a landmark 1905 United States Supreme Court case – Jacobson v. Massachusetts.\(^{10}\) In what has been widely-regarded as arguably the most important judicial decision in public health, the Supreme Court upheld the rights of states to impose compulsory vaccination laws by recognizing that individual

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freedoms, with appropriate safeguards, must occasionally be subordinated to the common good.

The Jacobson decision followed an outbreak of smallpox in the Boston area between 1901 and 1903. Henning Jacobson maintained that the scientific basis for vaccination was unsound and that he would suffer if he were to be vaccinated. He refused to be vaccinated, and was fined five dollars – a substantial sum in that era. He appealed for relief to the courts, and the Massachusetts Supreme Court found compulsory vaccination under these circumstances to be consistent with the state constitution, whereupon Jacobson appealed to the United States Supreme Court. The Supreme Court examined whether involuntary vaccination violated Jacobson's "inherent right of every freeman to care for his own body and health in such way as seems to him best....." It balanced this personal right against the principle "that persons and property are subjected to all kinds of restraints and burdens, in order to secure the general comfort, health, and prosperity of the state..."

Since Jacobson, a host of courts have routinely sustained state laws that condition admission to public schools on submission of proof of vaccination against highly contagious childhood diseases, e.g. rubella, whooping cough, tetanus. In recent years, the Supreme Court has greatly expanded the parameters of constitutionally-protected interests entitled to due process protection by deeming them protected liberties. In addition to liberties that are explicitly guaranteed in the text of the Constitution such as freedom of religion and freedom of speech, fundamental liberties now include freedom from unwanted bodily intrusion, freedom from unwanted compulsory medical treatment (even that necessary to save life), and a more generalized, though nebulous, right to privacy. Mandatory vaccination laws obviously impact on these rights. However, just because a right is identified as a

fundamental liberty interest does not mean it is inviolate. Even fundamental rights can be overridden if there is a compelling governmental interest that cannot be achieved by less intrusive means. In other words, infringements of liberties that are constitutionally protected may be justified only if the end purpose is compelling and the means chosen are necessary to achieve that purpose.

As noted, courts routinely uphold the validity of mandatory childhood vaccination laws. The courts are deeply concerned about highly contagious diseases spreading over a large general population of vulnerable individuals who will be exposed to each other for long portions of the day. The prevention of serious disease among a large school-age population is surely a compelling state interest and a mandatory vaccination policy appears to be the only way to achieve that goal.

Mandatory vaccination polices may also infringe on the constitutional requirement of equal protection, in addition to the infringing of personal liberty under the due process clause (e.g., bodily integrity, unwanted medical treatment, privacy). All mandatory vaccination statutes such as childhood vaccination laws may also include a medical exemption and a religious or even a philosophical one. These equal-protection concerns have led some courts and commentators to conclude, even in the context of childhood immunization laws, where the interest of the state in the preservation of public health is most compelling, that equal protection must allow any person to opt out for any reason.12 This, of course, converts a supposedly-mandatory program into an optional one, which may significantly undermine the justification for the program

in the first place. Even so, it is probable that a program that requires “opt-out” to be excluded is likely to be much more successful than a program that requires “opt-in” to be included.

Bioethics

The question of mandatory childhood inoculations presents a serious conflict between two cardinal principles in contemporary bioethics: patient autonomy, the right of an individual to reject even low-risk, high-benefit medical treatment versus the "collective good" of the public, reflected in the principles of beneficence and non-maleficence. Are there limits to patient autonomy?

The principle of beneficence in contemporary bioethics incorporates preventive medicine, and typically includes inoculations and vaccinations. Nowadays, when flu vaccinations are considered high-benefit-low-risk procedures, one can argue that they should be mandated much the same as departments of health require childhood inoculations for school admissions. Yet, the principle of patient autonomy allows individuals to refuse even high-benefit-low-risk procedures, trumping the principle of beneficence. Would patient autonomy still predominate when it conflicts with the greater good of the community, such as when there is a risk of an epidemic?

Rabbi Abraham Isaac Kook speaks to the bioethical conflict between the individual and the community.\textsuperscript{13} R. Kook views the community as one organic body, and every individual as a limb of that body. As critical as any limb or organ may be to the body’s well-being, Jewish law permits endangering a limb when necessary to save the entire organism. Accordingly, health authorities may endanger part of the population, when deemed necessary, in order to protect the community as a whole.

whole. It may be argued that individuals, in rabbinic teachings, are not perceived as limbs of a national body, but rather, as "worlds unto themselves," thus pitting one organism against another. In such an instance, the Gemara\textsuperscript{14} teaches that if an enemy threatens to murder an entire Jewish community if they refuse to arbitrarily submit one of their own for execution, they must all die rather than acquiesce to this demand.

Critical to our discussion is one central issue: Would the principle of patient autonomy allow individuals to refuse immunizations when they may put the lives of others at risk? Typically, patient autonomy permits individuals to make medical decisions which relate to their own personal care and do not affect others. Patients have the right to refuse pacemakers and amputations, even though these interventions are low-risk, high-benefit procedures which could save their lives. Individuals may choose to undergo high-risk surgery as a medical option of last resort. In these decisions, the attendant risks and benefits are limited to the patient. However, when individuals refuse immunization, they pose the very real risk that, in so doing, they may contract the disease and begin infecting others, though, as noted, their personal risks are quite limited. Arguably, then, the principle of patient autonomy might not extend to the right to refuse immunizations.\textsuperscript{15}

III. Preventive Medicine in Jewish Law

Would halacha consider immunization against infectious

\textsuperscript{14} Ibid.

\textsuperscript{15} See J. Harris, S. Holm "Is There a Moral Obligation Not to Infect Others? " \textit{British Medical Journal} (1995) 311 pp.1215-1217. While this paper is focused on a physician's obligation to be immunized in order not to infect his patients, its moral argument may be applied to parents who knowingly admit their uninoculated children to school, thus possibly exposing their classmates to a potentially dangerous disease.
diseases to be integral to the mitzvah to maintain good health (shmirat haguf)? Would Jewish law mandate that all schoolchildren be immunized because of possible transmission of life-threatening diseases to their classmates (safek pikuach nefesh d’rabim)? Would there be instances where halacha might recognize the right of an individual to decline vaccinations?

Maintaining Good Health – Shmirat Haguf

In Jewish tradition, one is obliged to safeguard his health, which would include maintaining an appropriate diet, getting adequate sleep and exercise, seeking medical treatment as needed, and avoiding health risks such as drug or alcohol abuse. There is a broad spectrum of opinion in halacha about whether the source of the obligation to safeguard one’s health is biblical, rabbinic, or possibly a combination of both. 16

The most oft-quoted sources are the verses in Deuteronomy: "Only guard yourself and protect your soul..." (4:9) and "And you shall protect your souls exceedingly..." (4:15). Yet, these verses, in context, refer to one’s spiritual health – not directly to one’s physical well-being. Nonetheless, the concept that one is obligated to safeguard his health is universally accepted in Jewish tradition and is codified in halacha.

Rambam underscores the importance of preventive medicine. Indeed, he offers guidance to maintaining good health in Mishneh Torah (De’ot 4: 1). He prefaces his advice with a strong directive: "Since maintaining a healthy and wholesome body is among God’s ways... one should distance himself from things which are detrimental to it, and accustom himself to things which are healthful and healing...." In his medical writings, Rambam declares:.... "Medicine is an indispensable wisdom in every time and place, not only

during illness, *but also during times of health* (italics added)...”

There were many things that the Sages forbade because they may endanger one's life... and anyone who violates these prohibitions and says “I will put my life in danger or I don't care [about this ruling],” receives lashes [as rabbinically mandated]. Among the items: a man should not put his mouth over a flowing pipe and drink, nor should he drink from a river or pond at night, lest he swallow an undetected leech; nor may one drink from exposed water, lest a snake drank from it [and deposited its venom].

This rabbinic legislation was enacted to prevent direct exposure to potentially life-threatening dangers; other rulings addressed serious hygienic concerns, such as the admonition against putting coins in one's mouth. The Ramo cautions: "one should be most careful to avoid anything which may place him in danger for [we treat matters of] mortal danger more stringently than [those of other] prohibitions, and we are more concerned about potential threats to one's health than we are about possible violations of Jewish law.”

What is the threshold of potential danger to one's health which should concern us?

Rabbi Moshe Feinstein observes that nowadays, we may drink water without any concern that it might have been exposed to snake venom. He writes that even in the talmudic era, drinking such contaminated water was a "remote possibility," which in other areas of Jewish law, would not

18. Mishneh Torah, Rotzeach 11:5-6; Shulchan Aruch Choshen Mishpat 427:9; Shulchan Aruch Yoreh De'ah 116:5.
trigger a prohibition. However, Rabbi Feinstein maintains that wherever there is a confirmed life-threatening risk to life, albeit small, the Sages took preventive measures.\textsuperscript{20}

The question then arises: Is there any confirmed level of life-threatening risk in being immunized? As has been noted, there is no evidence of life-threatening allergic reactions from MMR inoculations, while allergic reactions from flu vaccinations are extremely rare. Would these rare reactions to immunization meet the threshold of confirmed life-threatening risk to provide dispensation for those who wish to refuse immunizations?

In Jewish law, the 1 or 2 in a million odds of an individual contracting Guillain-Barré syndrome (GBS) from flu immunizations do not meet the risk threshold of concern to refuse immunizations. The halachic precedent for a minimal risk threshold dates back to the 18th century. In 1772, the Duke of Mecklenburg issued a decree forbidding burial of a deceased individual on the same day that physicians determined he had died. He required a three-day waiting period after the establishment of cardiopulmonary death because of the concern – albeit highly remote – that this individual was misdiagnosed and may still be alive. This decree caused great consternation in the Jewish community where burial is generally required within 24 hours after death. Chida (R’ Chaim Joseph David Azulai) asserted that we must bury the deceased within 24 hours after the symptoms of death based on the halachic criteria for pronouncing death. R. Azulai declares "even if he was the one in many tens of thousands who was still alive, there would be no prohibition whatsoever in burying him.... we are not concerned about such a remote possibility – d’l’miuta d’miuta lo haishen."\textsuperscript{21} In this vein, Rabbi Hershel Schachter rules that "if the adverse reaction risk for any given vaccine was in the range of one in

\textsuperscript{20} Iggerot Moshe Orach Chaim II, no. 100.
\textsuperscript{21} Responsa Chaim Sha’al II, no.25.
one million, the concept of *batla da’to etzel kol adam* (lit., his opinion is nullified by the majority view) would be applied to mitigate an individual’s fear which might have prevented him from being vaccinated." 22

**Endangering the Lives of Others**

Individuals who refuse immunization not only place themselves at risk, but may possibly put others at risk by transmitting a contagious disease to their family, friends, and the community at large. Indeed, there is a biblical mandate for one to be proactive in protecting the health and welfare of others: "If you build a new house, you shall make a fence for your roof, so that you will not place blood in your house if one falls from it." (Deuteronomy 22:8). This mandate goes far beyond preventing potential environmental hazards, and extends to avoiding and preventing transmission of life-threatening plagues and virulent diseases: "... one should flee from a city afflicted by a plague, and one shall leave at the beginning of it – not at the end... it is forbidden to rely on a miracle or to endanger one's life in any similar way." 23

The imperative to “flee from a city afflicted by a plague...” was promulgated by Rabbi Jacob Molin, the Maharil. Shortly before R. Molin’s birth, the Black Death pandemic was rampant throughout Europe, killing an estimated 25-60% of its population. In hindsight, the wisdom of the Maharil’s advice to evacuate a city suffering from an epidemic in order to prevent contagion and transmission of disease seems clear.

From the 17th through the 20th centuries, smallpox was the scourge of civilization. Smallpox has been estimated to have

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23. Responsa of Maharil no.35 cited in Ramo, *Shulchan Aruch Yoreh De’ah* 116:5. Rabbi Chaim Palagi discusses the applications of the Maharil’s directive to flee the community at the beginning of an epidemic to the smallpox outbreak of his time.

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killed more people than any other disease in history. In the 20th century alone, approximately 300 million people died from smallpox. Thanks to the efforts of the WHO (World Health Organization), this disease has been eradicated, and since 1972, there have been no immunizations in the United States against the disease.

In 1796, Dr. Edward Jenner created the first vaccine to combat smallpox when he inoculated an unexposed individual with cowpox, thus creating immunity to the disease. Jenner’s medical breakthrough, however, was not without risk. Immunity was achieved by removing infected fluid from one who suffered a mild form of smallpox and, by puncturing the skin, putting it into the bloodstream of an unexposed person. In the early years, in particular, a number of unexposed individuals who were inoculated contracted smallpox and died. This raised concerns at the time about whether the small risk of contracting smallpox from the inoculation was worth the benefit of immunity. Rabbi Abraham Nasich, who lost two children to smallpox, wrote a book devoted to the permissibility of inoculation. In Rabbi Nasich’s work, Aleh Terufah, published in 1785, he articulates a strong position to permit smallpox inoculations. A major authority of that era, Rabbi Yisrael Lipschitz, in his commentary on the Mishnah, Tiferet Yisrael, writes: "it appears to me that inoculations are permissible... Even if one out of a thousand die as a result of the inoculations, there is a far [greater and] more imminent danger should one naturally contract the disease than the remote danger of dying as a result of the inoculation..."


25.R. Lipschitz, Tiferet Yisrael, Yoma 8:3. It should be noted that though R. Lipschitz tolerated the risk of "1 out of 1000 who may die as a result of the
Contemporary Applications

Would Jewish law require a healthy individual to be immunized, when there is no threat of an epidemic or where he would not be exposed to a very vulnerable population, such as school children or patients in healthcare facilities who are clustered together in close quarters for extended periods of time? In other words, would one be obligated to put himself at any risk when there is no apparent or immediate risk to others?

There is no doubt that the regular protocol of childhood immunizations prevents disease from the child and in the general population. However, there are parents who are fearful of possible dangers about immunizing their children.... Rabbi Yehoshua Neuwirth ruled that though, as a result of this fear, “we may not compel parents to have their children vaccinated [when they have concerns about any risks to their health], we are obligated to strongly urge them to vaccinate their children.”

This ruling leads to a Catch-22 dilemma: if, for example, a statistically significant number of healthy children are not vaccinated, then diseases such as measles and mumps, may very well re-emerge as serious public health threats. Thus, the question remains: Are we collectively obligated to be vaccinated [where health risks are miniscule (e.g., a severe allergic reaction to the vaccine or a one in 1 million possibility of contracting Guillain-Barré syndrome (GBS)], in order to provide herd immunity to protect ourselves and others from future epidemics?

inoculations,” when weighed against the far greater risks of many dying in an epidemic, in contemporary medicine, this level of risk would not be acceptable.

26. Nishmat Avraham, Choshen Mishpat 427:3 (5). It should be noted that Rabbi Neuwirth was not addressing the issue of whether parents have a right to refuse vaccinations for their children when they are mandated by the government.
Jewish law has critical concerns about preventing or avoiding possible life-threatening risks, particularly those which affect the community, and they are not limited to clear and imminent dangers, but extend to those which may not be immediate. Consequently, while an individual who refuses a vaccination may not present any clear and imminent danger to himself or others, he may still be obliged to be vaccinated for the sake of the greater good of the community. In halachic terms, even an extremely low level of risk which might not present a life-threatening danger to an individual is of far greater concern when applied to the community (safek pikuach nefesh d’rabim).

Halacha’s profound concern about even the most remote life-threatening danger to the larger community was clearly demonstrated in a 1992 ruling by Rabbi Shlomo Zalman Auerbach. R. Auerbach was asked whether an autopsy should be performed on an infant who died within hours after receiving a routine inoculation against a viral liver infection. The Ministry of Health requested a post-mortem examination of the baby to determine if the cause of sudden death was in any way related to the inoculation. Rabbi Auerbach maintained that though the public health threat was highly remote, the autopsy must be conducted. He stressed that in such matters of life and death, we must be painstakingly careful, so that under no circumstances would our laxity in taking precautions lead to the death of a single person.27

27. M. Halperin "The Laws of Saving Lives, The Teachings of Rabbi S.Z.Auerbach," Assia – Jewish Medical Ethics 3:1 (1997) pp.44-49. In a February 12, 2012 e-mail communication to the authors, R. Halperin proposed that we classify those who refuse to be inoculated into two categories:

1. An individual who refuses to be inoculated during a life-threatening epidemic could be considered a "rotzeach b’grama" (indirect homicide), and, consequently, would be held culpable by the heavenly court.

2. An individual who refuses to be inoculated and, consequently, could be transmitting a non-life-threatening disease which causes pain and suffering to the infected could be considered a "mazik," (one who
Beyond the concern for any possible public-health dangers, Rabbi Yosef Shalom Elyashiv maintains that routine immunizations are an essential personal obligation in order to maintain good health (*shmirat haguf*). R. Elyashiv submits that it is incumbent upon parents to assure that their children are vaccinated because immunizations are the accepted and standard medical practice:

The question was put to Rabbi Elyashiv, who ruled that the parents should accede to immunization despite their concerns. When asked if the reason behind this ruling was the issue of fairness and the obligation to share responsibility, Rabbi Elyashiv indicated that it was; his reason was that since immunization of children is normal practice throughout the world, one should follow that normative course. In fact, Rabbi Elyashiv went so far as to assert that failure to immunize would amount to negligence. Refusing childhood immunizations on the basis of unsubstantiated fears of vaccine side-effects is irresponsible and out of order halachically. The danger of precipitating epidemics of measles, poliomyelitis and other diseases with potentially devastating complications is far more real than the dangers attributed to vaccines on the basis of anecdotal claims. Until objective evidence to the contrary accrues, the halachically correct approach is to do what is normal. In addition, a legitimate government’s legislation concerning standards of medical conduct adds weight to their halachic acceptability.28

The "unsubstantiated fears of vaccine side-effects," which Rabbi Elyashiv terms "irresponsible," refers to the popular notion among some parents that the MMR vaccine is responsible for autism – a claim which has been thoroughly

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discredited by all medical authorities. R. Elyashiv’s declaration that parents who fail to immunize their children are guilty of negligence has an early precedent, dating back to the smallpox epidemic. A number of rabbinic responsa required parents to remove their children from dangerous locations where there is an outbreak of a contagious disease, and parents who failed to do so would be guilty of a grave sin. 29 In reference to the government’s authority to mandate vaccinations, Rabbi Hershel Schachter asserts that "where vaccines are mandated by the state, such as in the case of immunization before entering school, one would be obligated to be immunized based on the concept of dina d’malchuta dina [the law of the land is the law]." 30

IV. Conclusions:

1. The medical benefits of mandatory immunizations clearly outweigh any potential risks. High levels of herd immunity resulting from effective immunization programs confer protection upon society at large and have eradicated many serious diseases. Mandatory vaccination protocols fit into the general scientific model that it is a public health imperative to perform a procedure or implement a policy which is overwhelmingly positive for the health and well-being of the community, with the most minimal, if any, real danger to an individual or to the community at large. While the actual degree of benefit (i.e., lives saved, improved health, decreased morbidity and mortality) is difficult to quantify, mandatory


30. Ibid, 22, p.99. Rabbi Eliezer Waldenberg in his Tzitz Eliezer, 15:40, declares that "it is clear and simple that the government, whose primary concern should be the health of the community, is not only able but even obligated [to take necessary measures]. This leaves little doubt that in the view of this leading posek, accepting vaccination would be an imperative." Rabbi A. Cohen, "Vaccination in Jewish Law", The Journal of Halacha and Contemporary Society, LIX (2010) pp. 111-112.
immunizations would certainly save more lives, reduce morbidity and are extremely cost-effective health measures.

2. It seems that the landmark Jacobson case, which upheld the rights of States to impose compulsory vaccination laws, applies to those living or working with any vulnerable population group, from infants to the sick and frail elderly. Thus, there appears to be a "compelling state interest," in protecting the health of children by requiring school-age children to be properly immunized in order to be admitted to school.

Major poskim, based on both the right and obligation of government to protect public health (dina d’malchuta dina and safek pikuach nefesh d’rabim), support mandatory childhood immunizations and influenza vaccinations, providing there are no medical contraindications.

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