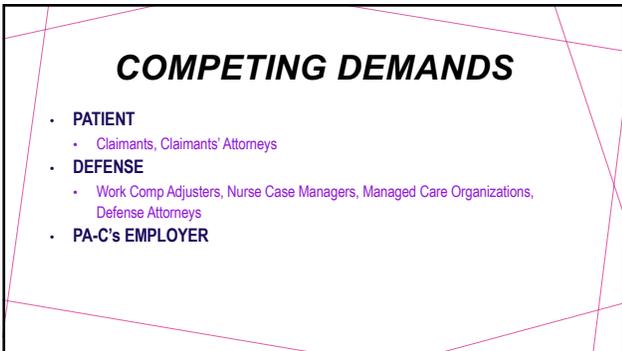




1



2



3

CAUSATION

The no-fault workers compensation system was designed to be A safety net, ensuring that injured workers receive prompt medical care and partial wage replacement for injuries that "Arise Out Of" their employment. Consequently, legal causation and medical causation are not interchangeable.

4

CAUSATION: REQUIRED DEGREE OF CERTAINTY

- Legal Definition Of "Reasonable Degree Of Medical Certainty"
 - CORRECT: Is It Probable?
 - 50.1% probability
 - "More Likely Than Not"
 - INCORRECT: Scientific Standard For Certainty (p Value)

5

CAUSATION: REQUIRED DEGREE OF CONTRIBUTION

- Legal Definition Of "Cause"
 - Acute Injuries – sudden onset
 - Cumulative / Overuse Injuries – gradual onset
 - Sequela Injuries – aftereffect or consequential onset

6

CAUSATION: REQUIRED DEGREE OF CONTRIBUTION

- Legal Definition Of "Cause": **Any Condition For Which Employment Was One "Substantial" Contributing Factor, Even If There Are Other Factors**

"A cause is proximate if it is a substantial factor in bringing about the result. It only needs to be one cause; it does not have to be the only cause."

Blacksmith v. All-American, Inc. 290 N.W.2d 348, 354 (Iowa 1980) (internal citations omitted).

7

CAUSATION: REQUIRED DEGREE OF CONTRIBUTION

- Legal Definition Of "Cause": **Material Aggravation Of A Pre-existing Condition:**

"It is, of course, well settled that when an employee is hired, the employer takes him subject to any active or dormant health impairments incurred prior to this employment. If his condition is more than slightly aggravated, this resultant condition is considered a personal injury within the Iowa law."

Ziegler v. U.S. Gypsum Co., 106 N.W.2d 591, 595 (Iowa 1960).

If an individual has an injury or condition that is "materially aggravated, accelerated, worsened or lighted up," by their employment, then that employment is deemed to be a substantial factor in causing the injury or condition.

Rose v., John Deere, 76 N.W.2d 756, 761 (Iowa 1956).

8

CAUSATION: REQUIRED DEGREE OF CONTRIBUTION

- Legal Definition Of "Cause": **Sequela**

"The employer is liable for all consequences that naturally and proximately flow from the accident."

Otlham v. Scofield, 266 N.W. 480, 482 (Iowa 1936).

9

**MEDICAL "CARE"
UNDER IOWA CODE
§85.27**

10

**MEDICAL "CARE" UNDER
§85.27**

- Employer / Insurance Carrier Has An "Affirmative Obligation" To Pay For All Reasonable And Necessary Medical "Care" "Services" "Supplies" "Appliances" and "Prosthetics", Which Must Be:
 - Prompt
 - Reasonably suited to treat the injury
 - Without cost to the injured worker
 - Without undue inconvenience to the injured worker

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**MEDICAL "CARE" UNDER
§85.27**

- Definition of Medical "Care" "Services" "Supplies" and "Appliances"
 - "The term 'care' in medical context means 'prevention or alleviation of a physical or mental defect or illness.'"
 - Manpower Temp. Servs. v. Sisson, 529 N.W.2d 259, 262 (Iowa 1995) (internal citations omitted).
 - "Appliances are defined as any other artificial device used to provide function or for therapeutic purposes. Appliances which are for the correction of a condition resulting from an injury ... are compensable under Iowa Code section 85.27."
 - Iowa Administrative Code Rule 876-8.5

12

MEDICAL "CARE" UNDER §85.27

- **Definition of Medical "Care" "Services" "Supplies" and "Appliances"**
 "[A]n expense falls within the scope of section 85.27 if it covers the cost of a device that replaces a function lost by the employee as a result of the employee's work-related injury. We reject the employer's contention that an appliance must be necessary for medical care."

Stone Container Corp. v. Castle, 657 N.W.2d 485, 491-92 (Iowa 2003).

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MEDICAL "CARE" UNDER §85.27

- **Medical "Care" "Services" "Supplies" and "Appliances": Routine**
 - Crutches, walkers, canes, slings
 - Office visits
 - Prescription medications (includes compounded topical pain creams, even if not FDA approved)
 - Diagnostics
 - Labs
 - Surgery
 - Physical, speech and occupational therapy
 - TENS units and supplies
 - Pain management
 - Mental health treatment / counseling / EDMR
 - All categories of specialty treatment

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MEDICAL "CARE" UNDER §85.27

- **Medical "Care" "Services" "Supplies" and "Appliances": Catastrophic Injuries**
 - Wheelchairs / power scooters
 - Wheelchair accessible housing / home modifications
 - Wheelchair accessible transportation / van with wheelchair lift or converted to hand controls
 - Laptop computer
 - Hospital bed
 - In-Home nursing services

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MEDICAL "CARE" UNDER §85.27

- Medical "Care" "Services" "Supplies" and "Appliances": Outside the Box
 - Orthopedic bed
 - Lift Chair
 - Whirlpool / hot tub
 - Gym membership
 - Acupuncture
 - Massage therapy
 - Chiropractic care
 - Service or Emotional Support animal
 - Botox injections (for headaches)
 - Drug rehab (e.g. sequela of narcotic addiction)

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MEDICAL "CARE" UNDER §85.27

- Medical "Care" "Services" "Supplies" and "Appliances": Duration

"Since 1973, workers have been entitled to unlimited lifetime medical benefits for compensable injuries pursuant to section 85.26(2)."
Huntzinger v. Moore Business Forms, Inc., 320 N.W.2d 545, 547-548 (Iowa 1982).

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EMPLOYER'S CHOICE OF CARE UNDER §85.27

- Iowa Is An "Employer Choice" State:

"For purposes of this section, the employer is obligated to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care."
Iowa Code §85.27(4)
- Only Applies If The Employer / Insurer Is Accepting Compensability And Paying For The Care

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EMPLOYER'S CHOICE OF CARE UNDER §85.27

- The Employer / Insurance Carrier Chooses ("Authorize") The Provider
 - Affirmatively select
 - Acquiesce to treat selected by the injured worker and a treatment relationship is established
 - Referral from an authorized treator to another treator makes the second treator authorized by operation of law:

"A referral to another doctor does not require the employer's consent or the workers' compensation commissioner's approval."

Pirelli-Armstrong Tire, Co. v. Reynolds, 526 2 N.W.2d 433, 435 (Iowa 1997).

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EMPLOYER'S CHOICE OF CARE UNDER §85.27

- Qualified Right:

"Our supreme court has held that an employer has only a qualified right to control treatment."

Pella Corp. v. Franks, 759 N.W.2d 813 (Iowa Ct. App. 2008); citing W. Side Transp. v. Cordell, 601 N.W.2d 691, 693 (Iowa 1999).

"If the treatment provided by the employer is not prompt, not 'reasonably suited to treat the injury,' or is unduly inconvenient to the employee, the commissioner has authority to order the alternate care."

R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 195 (Iowa 2003)

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EMPLOYER'S CHOICE OF CARE UNDER §85.27

- The Employer / Insurance Carrier **CANNOT** Interfere With The Independent Medical Judgment Of The Authorized Provider

"An employer's right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated or other matters of professional medical judgment."

Berns v. CRST, File No. 5034602 (Alt. Care 8/27/12) citing Assman v. Blue Star Foods, File No. 866389 (Declaratory Order, 5/18/88).

21

EMPLOYER'S CHOICE OF CARE UNDER §85.27

- The Employer / Insurance Carrier **CANNOT** Interfere With The Independent Medical Judgment Of The Authorized Provider

"An employer's failure to follow recommendations of an authorized physician in matters of treatment is commonly a failure to provide reasonable treatment. ... The right to choose the care does not authorize the employer to interfere with the medical judgment of its own treating physician."

Berns v. CRST, File No. 5034602 (Alt. Care 8/27/12) citing Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care 1/31/94).

22

EMPLOYER'S CHOICE OF CARE UNDER §85.27

- The Employer / Insurance Carrier **CANNOT** Interfere With The Independent Medical Judgment Of The Authorized Provider

"The right to choose the care means the right to choose the provider, not the treatment modalities recommended by the provider. Employer cannot disregard treatment recommendations of authorized treating physician, even if a consulting physician disagrees with those recommendations."

Berns v. CRST, File No. 5034602 (Alt. Care 8/27/12) citing Cahill v. S & H Fabricating & Engineering, File No. 1138063 (Alt Care 5/30/97); Hawxby v. Hallen Materials, File No. 1112821 (Alt Care 2/20/96).
Leitzen v. Collis, Inc., File No. 1084677 (Alt Care 9/9/96).

23

EMPLOYER'S CHOICE OF CARE UNDER §85.27

- The Employer / Insurance Carrier **CANNOT** Interfere With The Independent Medical Judgment Of The Authorized Provider

"Defendants are not allowed to disturb claimant's entitlement to medical care by changing the authorized treating physician."

Barkett v. Com-Force, File No. 1199960 (Arb. 1/16/01)

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ALTERNATE MEDICAL CARE UNDER §85.27(4)

- Expedited Proceeding Held Within 10 Days Of Petition Being Filed
- Useful When Employer / Insurance Carrier:
 - Delays or refuses to authorize recommended treatment (e.g. surgery, diagnostics, PT, prescriptions, return visits)
 - Delays or refuses to authorize referral to a specialist
 - Is interfering with independent professional judgment
- Only Available When The Employer / Insurer Admits Liability For The Work Injury – Documentation Affirming Causation Is Important

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WORK RESTRICTIONS

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TEMPORARY RESTRICTIONS

- Why Are They Important?
 - Enable the patient to recover
 - Protect the patient from further injury
 - Affects injured workers' entitlement to temporary workers' compensation benefits
 - Employer is required to provide modified work to accommodate restrictions
 - If the employer cannot accommodate restrictions, then the employer must pay the injured worker temporary workers' compensation benefits
 - Frames parameters of search for new employment

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PERMANENT RESTRICTIONS

- **Why Are They Important?**
 - Protect the patient from reinjuring themselves
 - Affects injured workers' entitlement to permanent workers' compensation benefits
 - Creates incentive for the employer to make permanent work accommodations, as keeping the injured worker employed with the same wages or earning reduces their obligation to pay permanency benefits
 - ADA implications
 - Frames parameters of search for new employment
 - Helps courts legally assess permanent disability

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RESTRICTION DOS

- **Provide All Medically Appropriate Restrictions**
 - List all functional limitations that apply in a generic work environment AND current job-specific tasks
 - It is then up to the employer and injured worker to determine whether the employer can accommodate the medical restrictions, or the injured worker should remain off work
- **Acquire An Understanding Of The Actual Tasks The Injured Worker Must Perform (Beyond The Written Job Description)**
- **Obtain The Injured Workers' Personal Experience Performing The Job**
 - Can assist in making recommendations to neutralize physical or psychosocial obstacles to recovery

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RESTRICTION DON'TS

- **Provide Restrictions Which Only Consider The Injured Workers' Current Job Position**
 - Employee currently in a sedentary job that does not require prolonged standing or heavy lifting
- **Release The Injured Worker To Full-duty Work With No Restrictions Unless Medically Appropriate For Them To Do Anything and Everything From The Standpoint of The Work Injury**
 - Employer / insurance carrier pressuring for a full duty release
 - Employee has been "permanently" moved to a lighter-duty job
 - Employee has been terminated

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**RESPONDING TO
COMPETING DEMANDS:
PRACTICAL POINTERS**

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**PRACTICAL POINTERS:
GETTING PAID**

- Iowa Code §85.27(4):
“If the employer chooses the care, the employer shall hold the employee harmless for the cost of care until the employer notifies the employee that the employer is no longer authorizing all or any part of the care and the reason for the change in authorization.”

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**PRACTICAL POINTERS:
GETTING PAID**

- Iowa Code §85.38(2):
“If an employer denies liability under this chapter, chapter 85A, or chapter 85B, for payment for any medical services received ... and the employee is a beneficiary under either an individual or group plan for nonoccupational illness [or] injury ... the nonoccupational plan shall not deny payment for the medical services received ... under the plan on the basis that the employer’s liability under this chapter, chapter 85A, or chapter 85B is unresolved.”

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**PRACTICAL POINTERS:
CAUSATION OPINIONS**

- **Apply The Legally Correct Causation Standard:**
 - No Matter Who Asks
 - Even If The Correct Questions Are Not Asked
 - Even If You Personally Don't Agree With The Legal Standard

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**PRACTICAL POINTERS:
CAUSATION OPINIONS**

- **Don't Get Cute:**
 - Don't say a work injury did not "cause" a degenerative condition, when the correct legal question is whether work was one "substantial factor" in "materially aggravating, accelerating, worsening or lighting up" the condition, causing it to become symptomatic
 - Don't blame an injury on something which occurred in the past if there has been a substantial interval of time without any medical treatment or reported ongoing symptoms
 - Don't say a work injury caused a "temporary" aggravation of a pre-existing degenerative condition if the patient was asymptomatic before the work injury, and has been symptomatic ever since the injury

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**PRACTICAL POINTERS:
USE INDEPENDENT MEDICAL
JUDGMENT**

- **Your Medical Judgment Is Your Own**
 - A Patient, Nurse Case Manager, Managed Care Organization, Adjuster or Attorney cannot tell you how to practice medicine
 - Order the "care" (including services, appliances, diagnostics and referrals) that you think is medically appropriate, and let the insurance company / attorneys fight about whether the insurance carrier must pay for it
 - Order the temporary and permanent restrictions that you think are medically appropriate, and let the attorneys fight about the legal implications

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**PRACTICAL POINTERS:
USE INDEPENDENT MEDICAL
JUDGMENT**

- Adequate Documentation Helps Avoid Treatment Delays And Being Drawn Into Bickering Between Insurance Carriers / Attorneys
 - Include your opinions on causation, restrictions, and need for specific medical care (and why) in your office notes and treatment orders

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**PRACTICAL POINTERS:
USE INDEPENDENT MEDICAL
JUDGMENT**

- Adequate Documentation Helps Avoid Treatment Delays And Being Drawn Into Bickering Between Insurance Carriers / Attorneys
 - Document all patient reports of pain / symptoms in your office notes
 - Include symptoms in adjacent body parts (other than the limited body part you have been "authorized" to treat), particularly if:
 - It could explain the etiology of symptoms (differential diagnosis), or
 - Is being overused to compensate for the injured body part
 - Include reported sequela conditions (e.g. mental health difficulties from chronic pain)

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**PRACTICAL POINTERS:
USE INDEPENDENT MEDICAL
JUDGMENT**

- Don't Let Anyone Put Words In Your Mouth
 - Responding to check box letters
 - Convenient but can be misleading
 - Read carefully before checking and signing
 - Don't be afraid to respond with a dictated letter which addresses the issues in language you are comfortable signing

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**PRACTICAL POINTERS:
AFFECTIVE EMPATHY**

- **A Positive PA-C / Patient Relationship May Help An Injured Worker Cope With And Be Motivated To Overcome Injuries, Pain, And Impairment**

Kelley JM, Kraft-Todd G, Schapira L, et al. The influence of the patient-clinician relationship on healthcare outcomes: a systematic review and meta-analysis of randomized controlled trials. *PLoS One* 2014;9(4):e94207. Available at: <https://doi.org/10.1371/journal.pone.0094207>.

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**PRACTICAL POINTERS:
AFFECTIVE EMPATHY**

- **Injured Workers Are Often Forced To Deal With More Complicated Problems Than Just Healing From The Injury Itself:**

"The costs of workplace injuries are borne primarily by injured workers, their families, and taxpayer-supported components of the social safety net. Changes in state-based workers' compensation insurance programs have made it increasingly difficult for injured workers to receive the full benefits (including adequate wage replacement payments and coverage for medical expenses) to which they are entitled. Employers now provide only a small percentage (about 20%) of the overall financial cost of workplace injuries and illnesses through workers' compensation. This cost-shift has forced injured workers, their families and taxpayers to subsidize the vast majority of the lost income and medical care costs generated by these conditions."

OSHA. Adding inequality to injury: the costs of failing to protect workers on the job. Washington DC: U.S. Department of Labor; 2015. p. 2. Available at: https://www.osha.gov/Publications/inequality_mitchell_june2015.pdf.

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**PRACTICAL POINTERS:
AFFECTIVE EMPATHY**

- **Injured Workers Are Often Forced To Deal With More Complicated Problems Than Just Healing From The Injury Itself:**

- Injured workers often are treated with suspicion by employers, adjusters, and physicians. Their injury is questioned. Their motivation is questioned. Their integrity is questioned.
- Injured workers commonly report difficulty paying bills (eg, rent, mortgage, utilities, car payment, and groceries). Their temporary disability checks (wage replacement checks while recovering from an injury) are held up for weeks or months "pending further investigation," or are underpaid, or are not paid on time, or are not paid at all.

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**PRACTICAL POINTERS:
AFFECTIVE EMPATHY**

- **Injured Workers Are Often Forced To Deal With More Complicated Problems Than Just Healing From The Injury Itself:**
 - Injured workers endure repeated and protracted treatment delays. Initial delays come from employers and adjusters investigating whether to accept an injury as compensable. Additional delays occur while waiting for the adjuster to preauthorize the recommended treatment or because a nurse case manager (NCM)

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**PRACTICAL POINTERS:
AFFECTIVE EMPATHY**

- **Injured Workers Are Often Forced To Deal With More Complicated Problems Than Just Healing From The Injury Itself:**
 - Injured workers report being told by physicians that they are receiving inferior or less extensive medical treatment because they were injured at work (eg, "I won't operate on injured workers, because studies show they don't have good outcomes"; "I would normally order X treatment, but work comp insurance won't pay for it"; or "I have only been authorized to treat your arm, and am not authorized to evaluate your neck to see if that is the source of the symptoms in your arm").

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**PRACTICAL POINTERS:
AFFECTIVE EMPATHY**

- **Injured Workers Are Often Forced To Deal With More Complicated Problems Than Just Healing From The Injury Itself:**
 - Injured workers are scrutinized or criticized for not returning to work or reaching maximum medical improvement within an expected number of days specified in a one-size-fits-all disability manual. This occurs regardless of whether the carrier has delayed authorizing diagnostics, therapy, surgery, or other treatment.
 - The nature, extent, existence, and persistence of an injured worker's pain, symptoms, and functional limitations are mistrusted or even dismissed, because of the unrelenting pressure on physicians to return them to work as soon as possible, by a for-profit insurance industry intent on cost containment.

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**PRACTICAL POINTERS:
AFFECTIVE EMPATHY**

- **Injured Workers Are Often Forced To Deal With More Complicated Problems Than Just Healing From The Injury Itself:**
 - Some employers, supervisors, and even coworkers, however, place pressure on injured workers to exceed the medically imposed restrictions or to obtain a release to return to full duty work earlier than indicated (eg, imply their job is in danger, tell them to "man up", complain they are slowing production and ruining "production bonuses"; or complain they are ruining the safety record and need to return to full duty so "safety bonuses" will be paid).

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**PRACTICAL POINTERS:
AFFECTIVE EMPATHY**

- **Injured Workers Are Often Forced To Deal With More Complicated Problems Than Just Healing From The Injury Itself:**
 - Sometimes employers cannot modify an injured worker's normal job to accommodate restrictions, and as an alternative, they place the patient in a make-work position. These positions can be legitimate, but can also be punitive (eg, scrubbing toilets and urinals and emptying feminine hygiene boxes, working in an unheated room, or assigning a single mother to a night shift when she has no child care) or pointless (eg, sitting in a designated room all day doing nothing or tearing the edges off dotmatrix computer paper).

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**PRACTICAL POINTERS:
AFFECTIVE EMPATHY**

- **Injured Workers Are Often Forced To Deal With More Complicated Problems Than Just Healing From The Injury Itself:**
 - These negative experiences can be frustrating and difficult, particularly for injured workers with less innate resiliency.
 - Exceeding medical restrictions, returning to work too soon, and treatment delays may result in prolonged recovery time or sequelae / overuse injuries to another body part.
 - These adversities can also lead to increased human distress, disturbed sleep, and further complications from mental health sequela.

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**PRACTICAL POINTERS:
ATTORNEYS CAN HELP**

- Advocating For Treatment Recommended By The PA-C
- Filing Alternate Medical Care Proceeding When Treatment or Referrals Are Not Being Authorized
- Addressing Return To Work Issues And Barriers
- Encouraging Injured Workers
- Addressing Payment Issues
- Answering Questions On Legal Causation Standards

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PRACTICAL POINTERS:

A treating PA-C's legal, moral, and ethical duties to a patient do not change, simply because a patient was injured at work.

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