

Bulletin



growing stronger together

120 YEARS

MIGA anniversary

On the 21st of December MIGA marks 120 years of service to the healthcare profession. It is a significant milestone and provides an opportunity to contemplate our roots, to celebrate the relationships we have nurtured and to reflect on the values that have sustained us.

With the medical profession, we have navigated significant changes in passing decades, growing strong in an evolving healthcare environment. What has remained constant is our commitment to, and appreciation of those whom we serve. Our connection with you is all-important to us. Our commitment is genuine. Our thanks go to you, our members, policyholders and all key stakeholders for your ongoing support and confidence in us. Over the next 12 months we will celebrate with you the achievements of our shared past as well as our future together.

To mark the occasion we recently held our 120th Anniversary Charity Gala Ball. We would like to thank our sponsors and all those attending the Ball who came together in the spirit of service and support for others to raise funds for Beyond Blue. Their tireless work provides much needed assistance to people living with anxiety or depression. Support for those experiencing emotionally challenging circumstances is something we are passionate about, particularly within the healthcare profession.

Our Charity Gala Ball was made possible because of the significant financial and other support we received from our sponsors, many of whom have supported our business over a long period of time. We gratefully acknowledge their commitment and support of the event.



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December 2019

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Midwifery risk management



Mandy Anderson
CEO & Managing Director



With Christmas fast approaching it is a time of celebration. At MIGA we are also fortunate to be celebrating 120 years of service. It is a significant milestone.

Reflecting on medical practice in 1899, it is a world away. It is however clear that the decision which founded our organisation also showed the forward thinking nature of the profession. This has not changed.

In those 120 years, technology and the way medicine is practised have changed significantly, the benefits of which are enjoyed by us and our communities. The increased expectation this creates also means that the protection, understanding and support provided to healthcare professionals by MIGA has never been in more demand.

We look forward to continuing to deliver on the ethos of support and protection that founded our organisation and to being here to assist you, *Always*.

From all of us at MIGA, I would like to wish you and your family a joyous festive season and a safe and prosperous New Year.

Merry Christmas,
Dr Andrew Pesce
Chairman

Member survey

Thank you to all of our members who recently provided their feedback as part of our 2019 Member Survey. Your views greatly assist us in understanding how you feel about the services we provide and our performance.

The positive and constructive comments received about the support we provide through medico-legal advice and risk education reinforces our commitment to this part of our service delivery. Many survey respondents also wrote favourably about specific team members, enabling us to recognise those individuals for their efforts.

The following are some key findings from doctors in private practice:

Would you recommend MIGA to other doctors?	Yes 98%
Friendliness and helpfulness of our staff	Good to excellent 94%
Expertise of our staff	Good to excellent 88%
How satisfied are you with the quality of the advice and support you received?	Very 88%
How do you rate the quality of MIGA's service overall?	Good to excellent 94%

We are very pleased by the survey results, which show an improvement in almost all areas over last year. Many members took the time to provide detailed comments with their answers. These are invaluable for us as they provide us with insight and in many cases, opportunities for improvement or an alternate perspective that we may not have considered.

There is no time for us to stand still and there are many avenues for us to pursue in improving our services. Thank you for your participation in the survey and for the guidance that your responses provide.

Mandy Anderson
CEO & Managing Director



Opioids

Changes are coming...

Opioids prescribed for the right patient can be an important part of good healthcare. Opioids do however offer significant potential for inappropriate use, morbidity and mortality when not used in the right way.

The opioid challenge

According to the latest Penington Institute figures, there were 904 unintentional overdose deaths involving opioids in Australia in 2017, and opioids are the most common element in unintentional overdose death, trebling in the last 10 years.¹ The Australian Institute of Health and Welfare estimates opioid use was responsible for 1% of the total burden of disease and injuries in Australia in 2015.²



There were **904** unintentional overdose deaths involving opioids in Australia in 2017

Clearly opioids are a significant challenge for Australian governments, healthcare providers and the community. MIGA is involved in a range of projects around ensuring appropriate opioid use, particularly through our advocacy and education.

There are recently announced changes to providing information about and supply of opioids.

New opioid information and distribution changes

The Therapeutic Goods Administration (TGA) has now announced changes to how a range of opioids are distributed in Australia, including

- Smaller pack sizes will be available for immediate-release prescription opioid products – this is of particular relevance in a range of post-operative settings
- Boxed warnings and class statements in the Product Information documents describing their potential for harmful and hazardous use - indications will reinforce that opioids should only be used when other analgesics have proven not to be effective
- Work with opioid sponsors to ensure that safety information is prominently displayed in the Consumer Medicines Information
- Updating indications for fentanyl patches to indicate they should only be prescribed to treat pain in cancer, palliative care and exceptional circumstances.³

These changes follow consultation which MIGA was involved in,⁴ and MIGA has been working with the TGA to understand and explain what these changes mean. Importantly they are sensible and practical initiatives that MIGA supported in consultation, preferable to greater restrictions on prescribing and access, which may unintentionally limit appropriate opioid use.

More broadly, MIGA's ongoing advocacy efforts include

- Involvement in discussions on various real-time prescribing proposals and implementation⁵
- Engagement with the Commonwealth Department of Health on various Medicare initiatives and proposals, such as 'behavioural economics' letters and data matching, which can impact on opioid prescription and use
- Advocating for continued support of the National Prescribing Service MedicineWise initiatives, including Choosing Wisely.

MIGA has recently developed online education modules on both opioid prescribing and medication prescribing more generally through MIGA's online Risk Management Education.



Members can access the module at reo.miga.com.au or email the Risk Team at reo@miga.com.au

Timothy Bowen

Senior Solicitor – Advocacy, Claims & Education

¹ Penington Institute, *Australia's Annual Overdose Report 2019*, available at www.penington.org.au/australias-annual-overdose-report-2019/

² AIHW, Australian Burden of Disease Study: impact and causes of illness and death in Australia 2015 (published 2019) – available at www.aihw.gov.au/reports/burden-of-disease/burden-disease-study-illness-death-2015/related-material

³ More information is available www.tga.gov.au/alert/prescription-opioids

⁴ MIGA's detailed submission to the TGA consultation is available at www.tga.gov.au/sites/default/files/submissions-received-prescription-strong-schedule-8-opioid-use-and-misuse-in-australia-mig.pdf

⁵ See for example MIGA's recent involvement in a Qld Parliamentary inquiry - www.parliament.qld.gov.au/documents/committees/SDNRAIDC/2019/MAPB2019/submissions/018.pdf





Case Study

Terminating an employee for misconduct or serious misconduct? Proceed with caution!

Anita Filleti
Solicitor – Claims & Legal Services



It is common practice for an employer to take steps to summarily dismiss an employee in the event of misconduct or serious misconduct. In fact, most employment contracts permit an employer to do so.

Misconduct or serious misconduct in the workplace includes theft, fraud, dishonesty, offensive behaviour, breaching health and safety rules, damaging property and attending work while under the influence of alcohol or illicit drugs.

No matter how serious an employee's conduct may appear, employers need to be mindful of the steps they should consider taking to avoid facing an unfair dismissal claim, general protections claim, discrimination/equal opportunity claim, breach of contract claim or workers' compensation claim. These steps will often be set out in the employee's contract or the policies, procedures and Enterprise Agreement covering the terms and conditions of their employment.

Even in the face of misconduct or serious misconduct an employee is entitled to procedural fairness in accordance with the principle of natural justice.

Step 1 – Proper Investigation

Firstly, the employer should conduct a proper investigation into the allegations of misconduct or serious misconduct. It is preferable for the investigation to be conducted by a qualified and independent investigator who can consider all of the available evidence and form an impartial view before making findings as to whether or not the misconduct or serious misconduct is substantiated.

During the investigation process, the employee should be permitted to bring a support person

to any interviews or meetings and the employer should also offer them access to an employee assistance program or other support program for counselling if necessary.

It is also acceptable for the employee to be suspended from attending work (at their usual rate of payment) during the investigation process.

Step 2 – Opportunity to Respond

Regardless of how much evidence the employer has before them substantiating the employee's misconduct or serious misconduct, the employee should be given a reasonable opportunity to respond to that evidence and the allegations against them.

The employee should firstly be invited to respond to the evidence and the allegations against them during the initial interview or meeting and within a reasonable period of time after the initial interview or meeting (for example, 7 days after the interview or meeting). This also allows the employee time to obtain representation if necessary.

A court is likely to criticise an employer who does not provide their employee with a reasonable opportunity to respond to the evidence and allegations against them either verbally or in written submissions.

Step 3 – Consideration of Response

The employer needs to carefully consider the employee's verbal or written response to the evidence and allegations of misconduct or serious misconduct.

Again, it is preferable to appoint a qualified and independent investigator to consider the response in order to form an impartial view as to whether the findings of misconduct or serious misconduct can be maintained notwithstanding the employee's response.

Step 4 – Show Cause

Once the employer is satisfied that the findings of misconduct or serious misconduct can be maintained, a show cause letter should be issued to the employee.

The purpose of the show cause letter is to set out the findings of misconduct or serious misconduct and ask the employee to 'show cause' (i.e. explain) why he or she should not be subjected to any disciplinary action.

Step 5 – Termination and next steps

If steps 1 to 4 as outlined above have been followed, an employer should be able to satisfy the requirement that the termination of an employee's contract is not 'harsh, unjust or unreasonable'. This is the standard required at law.

In a recent decision of the Fair Work Commission¹, it was determined that an employee (a hospital security guard) had breached the employer's protocol due to his treatment of an absconding mentally ill patient. The Commission also determined that the employee's misconduct was a valid reason for his termination. The pressing issue however was that the employer had not followed the disciplinary process set out in the employee's Enterprise Agreement and therefore the termination was found to be disproportionate to the misconduct and 'harsh and unreasonable' under the circumstances.

Within a medical practice setting, if the employee is a patient of the practice, terminating the therapeutic relationship between the practice and an employee terminated for misconduct or serious misconduct may also be necessary, particularly in the event that the employee commences legal proceedings against the practice flowing from their dismissal.

Take home message

If you are an employer and considering the immediate dismissal of an employee for misconduct or serious misconduct, proceed with caution and contact our Claims and Legal Services Department for support to avoid exposing yourself to legal proceedings.

¹ Scott v Latrobe Regional Hospital [2019] FWC 5680

Benefit from our experience

As a member of MIGA you have access to our dedicated and expert staff providing a range of services designed to support you in practice

Broad
insurance
cover



Risk
education



Medico-legal
support



Advocacy





Case Study

Privacy update

Emma Cocks
Solicitor – Claims & Legal Services



In September 2019, the Office of the Australian Information Commissioner (**OAIC**) released a “Guide to health privacy” document, which provides a useful summary of “key concepts” in this area and clarifies a number of relevant privacy issues for our members.

The aim of the guide is to assist health service providers to understand their existing obligations pursuant to the *Privacy Act 1988* (Cth). The guide should also be read in conjunction with the Australian Privacy Principles Guidelines.

The key concepts covered in the guide include:

- Key steps to embedding privacy in your health practice
- Collecting health information
- Using or disclosing health information
- Giving access to health information
- Correcting health information
- Health management activities
- Disclosing information about patients with impaired capacity
- Using and disclosing genetic information in the case of a serious threat
- Research.

As highlighted in the guide, the *Privacy Act 1988* (Cth) requires health practitioners to be proactive in establishing, implementing and maintaining privacy processes in their practice. Therefore, we consider it would be prudent for our members to review the guide at this time and ensure you have a current and up to date understanding of the key concepts.

This is an area that continues to be scrutinised and focused on nationally. The Notifiable Data Breaches Statistics Report released on 27 August 2019 confirmed that 245 notifications were made in the period 1 April 2019 to 30 June 2019. Of those notifications, 34% were attributed to human error, 62% to malicious or criminal attack and 4% to system faults. In terms of the kinds of personal information involved in the data breaches across all sectors, 67 notifications related to health information.

Case study

A GP contacted MIGA for advice in relation to a patient who had requested a complete copy of their medical records within 24 hours. A reason was not given for the short timeframe. The GP was concerned about whether the patient had an entitlement to access a complete copy. The GP was also concerned about whether letters written by specialists formed part of the patient’s medical records and if these could be released. In particular, some of the specialist letters had been marked “not to be released for medico-legal purposes”.

The GP was advised that a patient does have a right to access the information in their medical records unless an exception applies, and that the information should be provided in the manner in which it has been requested unless it is impractical or unreasonable to do so.

In these circumstances, it was determined that an exception to access did not apply and the GP was comfortable for the patient to see the information in their medical records. The GP was able to print a

complete copy of all consultation notes, specialist letters and test results for the patient to collect. Upon attending at reception, the patient was asked to provide identification to verify their identity.

The GP was advised that a reasonable timeframe to respond to a request for access to medical records was 30 calendar days, and that a timeframe of 24 hours without any further information as to urgency was unreasonable.

The GP was also advised that the patient has a right to access the information in specialist letters, even if the letter has been marked “not to be released for medico-legal purposes” or “not to be released without the permission of the specialist”.

Although an exception did not apply in this case, it was discussed that there are 10 grounds on which the GP could have refused access to health information pursuant to the *Privacy Act 1988* (Cth), the most common being if it is reasonably believed that giving access would pose a serious threat to the life, health or safety of any individual, or to public health or public safety, or giving access would have an unreasonable impact on the privacy of other individuals.

The GP was aware that there are certain processes to follow in the event that access to information is refused.

If you require further information about your privacy obligations or a patient request for health records, please contact the Claims & Legal Services department at MIGA.

Resources



OAIC – Guide to health privacy

www.oaic.gov.au/assets/privacy/guidance-and-advice/guide-to-health-privacy/guide-to-health-privacy.pdf

OAIC – Notifiable Data Breaches Statistics Report: 1 April to 30 June 2019

www.oaic.gov.au/privacy/notifiable-data-breaches/notifiable-data-breaches-statistics/notifiable-data-breaches-statistics-report-1-april-to-30-june-2019/

MIGA – Health records

www.miga.com.au/education/resources/Health-records/Health-records

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Did you know?

Not only is improving the health of doctors a worthwhile risk management strategy but there is also a clear link between the poor health of doctors and patient complaints.

MIGA offers an online *Doctors' Health* module designed to:

- Highlight the areas of vulnerability or warning signs that might mean you, or a colleague are not coping
- Provide you with some strategies for improving your well-being
- Provide you with links to resources that provide more detailed information or assistance.

Make your health your first priority.

Access the *Doctors' Health* module at reo.miga.com.au



Does your practice need its own health check?

MIGA's Practice Risk Assessment is an opportunity to have a one on one discussion with Megan Sheldon our Education Risk Advisor, to identify gaps in your practice's policies and procedures that may contribute to potential claims and complaints.

Over the past 2 years we have conducted 42 assessments and had some great feedback from our clients who have found it very worthwhile to participate in this activity which we provide at no additional charge to our clients.

Our tool consists of an amalgamation of all the relevant standards relating to health services in Australia including

- Australian Council HealthCare Standards Equip5, 5th edition
- RACGP Standards for General Practice, 5th edition
- National Safety and Quality Health Service Standards
- Australian Privacy Principles
- Australian Health Practitioner Regulation Agency Guidelines

The activity gives practice managers not only an opportunity to discuss each standard, but also guides them through the consequences of not meeting standards.

This personal approach takes each practice set up, which can be unique, into consideration when measuring the impact on the practice. MIGA has many resources that support the doctor and the practice staff to close any gaps and reduce the risk of a claim or complaint.

For many clients the visits have been a great opportunity to have clarity about the risks within their practice. Insurance can be a confusing topic and a face to face discussion is a welcome way to get the personal, specialist advice that MIGA prides itself on.

Our specialist medical practices have also found the experience invaluable and use the one-on-one service to give risk management the attention it deserves.

The most common areas that have been cause for discussion are

- Policies that cover consent including consenting children, adults with diminished capacity and adults with temporarily diminished competence
- Policies relating to chaperones for intimate consultations
- Documentation of complaints in the patient's medical record
- Systems for tracking the return of results and "missed" results from tests and investigations (including imaging)
- Policies relating to prescribing to self, family, friends, staff and colleagues
- Inventories of all medications (including samples) and medical consumables
- Disaster Recovery plans and testing.

Key outcomes for practices have included

1. Identifying that their current insurance arrangements did not cover tenants or contractors
2. Realising that the policy included coverage for employment matters and access to expert advice if they need it
3. Access to MIGA resources that can be used to address the gaps identified
4. Access to the expertise of our staff. Megan is available to assist with all aspects of reducing your practice's risks.



Email megan.sheldon@miga.com.au or call our Risk Management Team

Liz Fitzgerald

National Manager – Risk Services

Is your business prepared for a bushfire?



We hear it all the time – a disaster has ruined lives and businesses. Too often people unfortunately seek comfort in the belief that "it could never happen to me". Yet insurance claims reported tell us otherwise. They remind us that businesses suffer losses every day.

Some business owners have unrealistic views about how they'll cope if the unthinkable happens. Businesses are often surprised at just how much they're impacted when a disaster occurs. This is why planning for a disaster is vital. Once something happens, the time to prepare has gone.

All businesses need to be realistic about what can happen and be proactive in putting risk management strategies in place.

Matters to consider when preparing

- Understand your risk of a bushfire based on location and current weather warnings
- Know the safest route out of your local area
- Understand bushfire danger ratings
- Follow and adhere to bushfire warnings when issued
- Have a plan (and rehearse it) for what to do in the event there is a bushfire. This plan includes but isn't limited to:
 - Being ready to leave early before you see signs of fire, allowing for how fast fires can travel
 - An evacuation plan which needs to consider not only staff but any patients or other visitors who may be on the premises
 - An emergency items kit which is packed at all times and includes all emergency contact phone numbers, mobile phone chargers and a first aid kit
 - Shelter options if you're unable to leave
- Be sure all staff are involved in preparing the business for a bushfire
- Understand what you're insured for in the event of a fire; contact your insurer if this needs clarification or updating.

Bushfire preparation resources

Each state's country or rural fire services have a range of resources to assist business and individuals prepare for and cope with a bushfire. Utilise these resources to ensure you're as prepared as you can be.

ACT esa.act.gov.au/actrfs

NSW rfs.nsw.gov.au

NT secure.nt.gov.au/prepare-for-an-emergency/bushfires

QLD ruralfire.qld.gov.au

SA cfs.sa.gov.au

TAS fire.tas.gov.au

VIC cfa.vic.gov.au

WA dfes.wa.gov.au/safetyinformation/fire/bushfire

In partnership with Guild Insurance, MIGA Plus Business Insurance can protect you for a range of day-to-day business insurance matters. To find out about how MIGA Plus Business Insurance can help your practice, visit www.miga.com.au/business-insurance, or contact us on 1800 835 808 or at businessinsurance@miga.com.au.

Insurance issued by Guild Insurance Limited ABN 55 004 538 863, AFS Licence No. 233791.

Student recipients of MIGA's Elective Grants announced!

Supporting developing communities



Life is full of choices, and a medical student's decision to help a community in need is a momentous one. It has wide reaching effects, particularly for the individuals and communities who inevitably welcome their skills and assistance with open arms.

MIGA's annual Elective Grants Program seeks to provide financial assistance to these students, and since it began 15 years ago in 2004 we've now supported over 100 students and communities around the world. We are extremely rewarded by the success of the Program over these years, and hope that you too can be proud of the support provided.

This year we had a record level of interest, with applications ranging from participation in health camps on isolated islands of Africa, to placements in the bustling city centres of India, to remote clinics in the heart of the Australian outback. It has been truly inspiring to see the commitment so many medical students have made to global health and their selfless commitment to instigating change.

We are thrilled to announce this year's ten MIGA Elective Grant recipients, each receiving \$1,500 towards their personal elective costs and \$1,500 to provide medical or other aid to the community visited. While a special congratulations is extended to the recipients appearing below, we wish all students travelling on their electives interesting, challenging and rewarding placements.

As electives are completed, reports and photographs from these students' experiences will be added to our website. They're a great resource for students planning electives and inspiring reading for the medical community – we encourage you to review the extensive library at www.miga.com.au/elective-grants-reports.

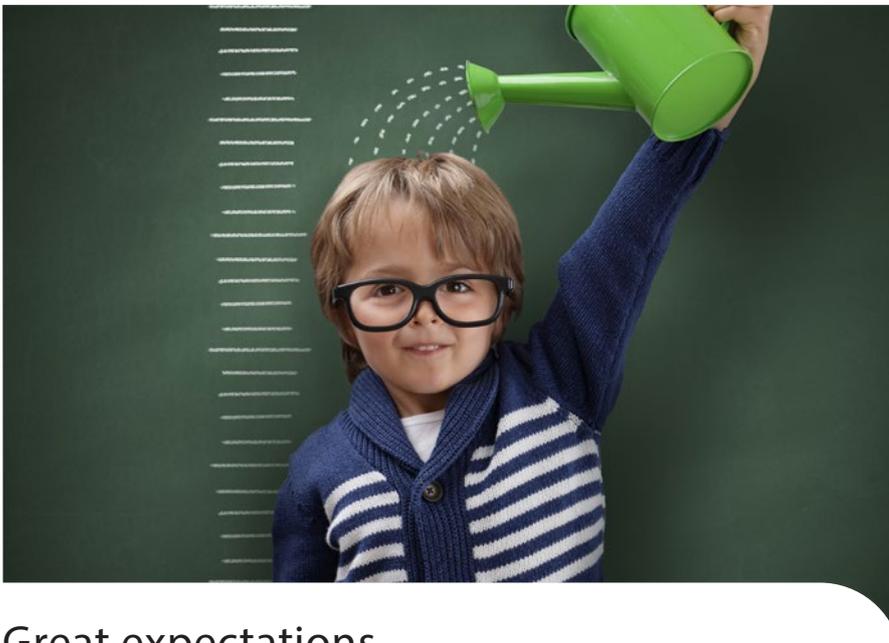
We look forward to continuing our support next year and to releasing details of the 2020 Program to students and universities in coming months.



Grant recipient	Elective organisation and location
Lachlan Davis University of Queensland	Green Pastures Hospital Pokhara, Nepal
Kaspar Fiebig University of New South Wales	Hopitaly Vaovao Mahafaly (Good News Hospital) Mandritsara, Madagascar
Emily Fitt Monash University	Effia Nkwanta Regional Hospital Takoradi, Ghana
Rebekah Kwa University of Sydney	Tupua Tamasese Meaole Hospital Apia, Samoa
Sidonie Matthew University of Tasmania	Simien Mountains Mobile Medical Service Simien Mountains, Ethiopia
Jessica Medland University of Notre Dame (NSW)	Rift Valley General Provincial Hospital Nakuru, Kenya
Jessica Mitchell University of Adelaide	Christian Medical College Vellore, India
Brieana Nolan University of Western Australia	Western Visayas Medical Centre Iloilo, Philippines
Marlee Paterson <i>Indigenous Grant recipient</i> University of New South Wales	Port Moresby General Hospital Port Moresby, Papua New Guinea
Angus Taylor Monash University	Tribhuvan University Teaching Hospital Kathmandu, Nepal



Stephanie Calder
Senior Marketing Specialist



Great expectations Midwifery risk management

Managing and meeting expectations means having as little discrepancy as possible between client expectations and their actual experience. However, this needs to be balanced with maintaining a consistent and flexible approach to your practice that reassures your women that they are cared for as individuals.

Managing client expectations can be a challenging part of providing midwifery services. Not only in terms of what you, as an individual practitioner, can provide but what is required for practising within guidelines and collaborating with others.

Consider these key areas that may create a tension when both parties have different expectations

- The services you provide
- The level of risk that you are prepared to manage
- Your collaboration arrangements and what that means for the woman
- Your availability. Are you available 24/7?
- In what circumstances will the woman see a different midwife in the practice?
- What happens if you are not available for a period of time.

The essentials

- Explore and understand what the client wants to achieve. What the issues are for them?
- Be realistic
- Be clear about what you can provide
- Don't promise what you can't deliver
- Explain when you may need to consult, refer or transfer care
- Clarify responsibilities of all parties involved.

Our workshop, *Managing expectations for midwives*, deals with these issues. Talk to your peers about what they do and don't do. You are guaranteed to go away with new ideas and strategies.

Book now for the *Managing Expectations for Midwives* workshop via reo.miga.com.au or call our Risk Management Team

Liz Fitzgerald
National Manager - Risk Services



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www.miga.com.au

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Letters to the Editor

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