Rabbinic Consultations: The Case for Specialist Rabbis

We are confronted on a daily basis with choices that require us to consult others before making a decision. We may call a lawyer for advice on a legal issue or an accountant for advice on our taxes. We do this because although we may be very good at what we do, no one person knows everything and it is helpful to be guided by a professional who deals with the issue at hand on a regular basis. If one has a sink that is leaking or an electrical outlet that is malfunctioning, one might ask an electrician or plumber for advice, and will likely follow the advice if it sounds reasonable. When it comes to issues regarding our health-and specifically issues that have significant impact on life-and-death situations-we likely consult with a physician.

Interestingly, in serious medical situations, many observant Jews will seek a consultation with a rabbi for advice as well, to ensure that the medical decision they are making is in accordance with Jewish law and ethics. Jewish law is based on the will of God as transmitted through the Bible and understood by our sages. Therefore, all decisions a Jew makes must be in accordance with this law. The law, however, can at times be ambiguous or difficult to apply to modern medical issues. We try our best to extrapolate from what was written by our sages, which often leads to differing views on what Jewish law would prescribe in different medical situations. It is surprising, however, that even in situations where the vast majority of rabbis are in agreement with what the law should be, the vast majority of laypeople believe otherwise. This is not because they disagree with the rabbinic judgments; rather it is often because they are unaware of them. Rulings on medical issues do not get published in everyday books that are found in the synagogue, and rumor becomes the most efficient medium to spread incorrect concepts.

In my practice, I have noticed three possible causes as to why a patient may receive improper advice from his or her rabbi regarding medical decision-making. It is important to note that I have had many positive experiences with the interaction between rabbit, doctor, and patient; however the cases below are meant to illustrate the times the system fails. Although the current system often does work, and provides an excellent service to both doctors and patients, there are still too many times when it does not. The purpose here is to evaluate why some situations are not handled properly and how we can learn from our past mistakes for the benefit of the Jewish community in the future.

The first issue is simply not knowing the law. Often, what the general public believes to be the law, is not actually the law. Consider the following scenario: A Jewish man is in a car accident and is brought to the hospital and placed on a respirator because he is not breathing on his own after hitting his head. The remainder of the body is intact, his heart is still beating, blood is flowing through the veins, and all organs are functioning well. A neurologist performs an exam and determines the person to be brain dead. The doctor recommends removing the respirator and all intravenous fluids and sustenance, which will inevitably cause the breathing to stop, leading to cardiac arrest and the death of the other organs. If one took a poll of the general community, one
would likely find that many people incorrectly believe that according to Jewish law this person is still alive and the machines cannot be turned off. Most rabbis have accepted that brain death is equivalent to death in Jewish law and that in this case the machines should be turned off. The Chief Rabbinate of Israel (both Ashkenazic and Sephardic) has therefore legislated it into Israeli law and once brain death is determined, all medical intervention should cease, despite a continuing heartbeat, and the body should be buried as soon as possible (ASSIA - Jewish Medical Ethics, Vol. I, No. 2, May 1989, pp. 2-10). The only intervention permissible at this point would be to harvest the viable organs. Leaving the brain dead body on a respirator or continuing to manipulate the body with medical intervention is considered disrespectful to the body and is against Jewish Law (Shulhan Arukh, Yoreh Deah 339:1). It is unclear to me why, although the majority of rabbis have ruled one way, many laypeople believe the other. This often leads to a situation when in an attempt to follow Jewish law, one will actually be transgressing the law by simply not knowing the ruling of the Chief Rabbinate and going on assumptions based on what popular opinion says the law is.

A second problem that arises is when we seek a rabbinic consultation and are only presented with one view of the law and are advised accordingly. When seeking a consultation, one not only seeks the opinion of the person they are consulting with but often expects to be informed of different opinions on the matter and then advised based on the personal views of the consultant. This holds true in many fields of consultation. However, when seeking a rabbinic consultation, rabbis often present the law based on one view without presenting the other opinions available. At times this advice may be following only one view of the law while differing from the majority view. In medicine, there are times when there is disagreement among the experts regarding the best treatment. A responsible doctor will present both sides to the patient and may even explain why he personally believes one view to be preferable to the other. But it would not be appropriate to present the case as having only one solution that all agree on. The same holds true for rabbis. If there is more than one acceptable opinion on the matter, the person who is coming for a consultation expects to be given all the information available. This is especially true when a rabbi gives advice based on a sole opinion, which disagrees with that of the majority. Even if the rabbi chooses to follow the view of the minority position, he should at least inform the patient that there is a majority view that disagrees. This situation usually arises when most people know of the minority view and it is therefore easy to accept when told to them by the rabbi as it conforms to what they in any case thought to be the law.

An example of this situation is the issue of abortion. Again, if one were to poll the average Orthodox Jew on the acceptability of abortion in Jewish Law, the majority would plainly state that the fetus is a life and it is therefore forbidden to terminate the pregnancy according to Jewish law. Some may go so far as to state that it may even be tantamount to murder. Although this is the correct Catholic view, it does not accord with Jewish law. There is essentially no sage who suggests that the fetus is considered a life and aborting it would be considered murder. This would mean that if that were the case, then someone would deserve the death penalty for performing an abortion, since there would be no difference in status before or after birth. In actuality, none of the early sources of Judaism from the Bible through the Mishna and Talmud make any mention of forbidding abortion. On the contrary, it seems from the Torah that if one caused another women to abort against her will, he simply pays a fine (Exodus 21:22). This is not to say we encourage wholesale abortions at anytime in pregnancy for any purpose, but the majority of rabbis do allow abortions in early pregnancy (some allow within 40 days of conception which is the equivalent of about the eighth week of pregnancy while others allow up to three months from conception which is about the 15th week of pregnancy) for a host of different reasons including medical or psychological stress and the need to abort after a rape or adulterous union. Again, the Chief Rabbinate of Israel, both Ashkenazic and Sephardic, follow the majority view and have ruled as such in Israel. Interestingly, Rabbi Eliezer Waldenburg, a highly respected Ashkenazic rabbi has allowed abortions even in the seventh to ninth month since there is no real source within Jewish Law for only allowing it up to 40 days or
three months (Tzitz Eliezer 13:102). These are arbitrary numbers that do not have any significant biological basis. With this introduction one can understand how problematic this can become should someone get improper advice from her rabbinic consultant. Imagine the young girl who is raped, or the married woman who was raped or had an affair that results in pregnancy and goes to her rabbi for advice. I have seen cases of rabbis who advise her that she must continue the pregnancy since abortion is a transgression of Jewish law and hence the will of God. Without providing all the information, this young girl will now have to care for this child her whole life and will always be a reminder of the horrible way she conceived. The married woman will give birth to a mamzer who will be forbidden to marry an ordinary Jew. All this could have been avoided if the woman simply had received the proper consultation.

We see similar problems when dealing with the issue of abortion for a baby with a genetic malformation. Many rabbis have permitted abortion in these situations; even if it is not assured that the baby will be born with a defect but only has a high probability of that likelihood. Different rabbis have varying opinions about when and under what circumstances an abortion is permissible. The most lenient view is that of Rabbi Shaul Yisraeli (Amud Hayemini 32). He permits abortion to prevent potential psychological stress to the mother or the potential child. He goes so far as to rule that even if the sole problem is a genetic malformation that will only affect his looks, an abortion is permitted as it may cause others to look at him in such a way that would produce psychological stress. He states that there is no greater pain than this and he reminds us that in Jewish law, emotional pain is considered even more serious than physical pain.

This is very different from the view held by Rabbi Moshe Feinstein. Although Rabbi Feinstein recognizes the importance and need for premarital testing for Tay Sachs, he unfortunately, did not go one step further. He does write that when one’s health is potentially in danger, and a genetic test can avert or alleviate that danger, the test must be taken. He therefore discourages carrier couples from marrying since this will lead to a 25 percent chance at each pregnancy of having a child with Tay Sachs (a debilitating progressive disorder that gradually leads to loss of mental and physical function, and at the peak of the symptoms the child goes blind, has seizures, and suffers in a hospital bed as the parents look on helplessly). This is why he appropriately supports premarital testing and admits the need to avoid giving birth to a child with Tay Sachs. However, situations have arisen where premarital testing was not done, or where testing may have been done but the couple felt a strong desire and commitment to each other that they decided to get married in any case. In these situations, they must make a choice on how to proceed with childbearing. They can risk having children with Tay Sachs, or they can opt to perform prenatal testing while the mother is in early stages of pregnancy, so that if it’s found that the baby has Tay Sachs they can abort the pregnancy, within the appropriate time frame as defined by Jewish law, thus saving the future child and the family from this pain. Rabbi Feinstein ruled that families in this situation must go through with the pregnancy, thereby creating a child that is destined to pain and suffering. This ruling seems to contradict his usual mode of requiring us to use medical technology in order to preserve and improve quality of life. What is most surprising is that according to traditional Judaism there is no law against performing abortions even on a healthy baby found in any of the early sources of Jewish law. Rabbi Feinstein forbade the abortion not on legal grounds, but on philosophical grounds. He felt that we are not in a position to play God, and we can always hope for a miracle that this baby’s genes will somehow miraculously change and he will not have the disease. This is again surprising as it seems to contradict what we know from the Talmud, that in general we do not rely on miracles and specifically in pregnancy we are taught by our sages that a baby's genes cannot change and therefore it is improper to pray for the gender of the baby once this has already been determined (Berakhot 60a, Shulhan Arukh Orah Hayyim 230:1). Rabbi Feinstein also allows and even requires one, to "play God" when it comes to other areas of medicine and treatment, but mysteriously not in this situation.
In addition to this philosophical issue, Rabbi Feinstein defends his position based on a mystical tradition. According to one view, a soul cannot achieve complete perfection until it has been placed in a body and has been born. In order to assure that this fetus's soul (if it has one) is able to enter the world to come, Rabbi Feinstein requires a mother to carry the pregnancy to term. Rabbi Eliezer Waldenberg took issue with Rabbi Feinstein in a heated written debate (Tzitz Eliezer 14:100). He argued that we do not even know if that mystical concept is correct as it is just one opinion, and that even if that were correct, who gave us the obligation to assure that every soul is born and goes to the afterlife, or even the right to purposefully continue a pregnancy that would ultimately lead to the pain and suffering of the future child and the family? It should be noted that although Rabbi Waldenberg allowed abortions in situations such as these even into the ninth month of pregnancy, most rabbis have adopted stances allowing abortions only in the first trimester at various time points. There is no rabbi who has forbidden abortion outright in all circumstances. Although the Catholic religion did forbid abortion in all circumstances as they deemed the fetus a full human life, it is clear that Judaism has never held this approach, as the fetus does not have full human status before delivery. Since the fetus is not an independent human life, and is simply a part of the mother, it should be treated as any other body part that is ill and requires surgical intervention. It is common knowledge that finding the best possible mate is a difficult task. With Rabbi Waldenberg's approach, even if we discourage Tay Sachs carrier couples from marrying, we at least do not have to ban it completely, and in circumstances where the potential marriage is beneficial for the couple, we are able to allow the marriage and still prevent suffering of future offspring. Again, we can now understand the situations that have arisen where a woman was pregnant with a Tay Sachs baby and went to her rabbi for a consultation who only informed her of Rabbi Feinstein's view without disclosing other opinions.

Another common problem is when a rabbi is consulted regarding issues he may not be familiar with and/or may not have full knowledge of. A scenario that has occurred in my practice several times is when a rabbi is consulted and he does not seek out or is not interested in having all the information. As an example, a child has ADHD and has significant difficulty in both his Judaic and secular studies to the point that he is failing and is not progressing academically. This often leads to poor self-esteem and lack of self-confidence. In a situation such as this I have recommended a trial with a stimulant medication that has been found to effectively correct the chemical imbalance, thereby allowing the child to succeed academically. In addition to academic improvement these children typically improve their overall quality of life. This is secondary not only to their improved education but also to improved confidence and self-esteem. These children are sometimes quite impulsive and can often experience physical injury due to their symptoms as well. The decision on whether or not to treat is done only after fully evaluating the child and receiving information from several sources, including the school, on how these symptoms are affecting this particular child.

One of the most common medical questions asked of rabbis regards circumcision. One such question pertains to possibly delaying the circumcision due to jaundice. The common decision
among rabbis and mohalim is to delay the circumcision based even on moderately elevated levels of bilirubin and jaundice. There is no medical reason to delay the circumcision in these cases and one is therefore delaying the circumcision, in these situations, unnecessarily. Medically, circumcisions are done routinely in these situations without adverse events, and there is therefore no justification to delay the circumcision. Within this category, is also the question of metzitzah. In brief, after the circumcision is complete, there is a tradition that the mohel sucks some blood out from the incision site. For convenience this was done with direct suction from the mohel's mouth without a barrier. This procedure was done for medical reasons that are no longer valid. On the contrary, it is currently medically beneficial not to perform this procedure at all, especially without a barrier, as there is risk of infection from the procedure. This is especially true in situations where the mohel may be infected with the herpes virus and may transmit this to the child. Unfortunately, doctors are rarely consulted prior to the procedure, and rabbis are asked to make the decision on whether this procedure should be performed and how it should be performed. Without the proper precautions, we have seen many cases of children being infected and developing seizures. This is sometimes a permanent condition caused by this procedure. It seems ironic that a procedure that the rabbis instituted to protect our children is now having the opposite effect; yet rabbis who are not trained in the specialty of infectious diseases can not make a sound decision without consultation with an expert in the field.

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In the modern world we are very concerned and are careful regarding who we consult regarding our physical health decisions. When we have a general concern we are comfortable asking our local general practitioner physician for advice. However, when we have a specific concern we would never only consult with a generalist but will make every effort to ask a specialist in the field who deals with those issues often. Even with all that, we will often still seek a third or fourth opinion from other respected specialists in the field who have proven their depth of knowledge in the subject. Unfortunately the vast majority of people do not afford the same importance to their religious and spiritual decisions and well-being. Similar to physicians, we have many generalist rabbis who have made a career around helping the masses. They are available for all general religious needs from attending a circumcision to attending the funeral. These rabbis are much needed and fill an important role in the communities' lives. Some work from the pulpit, some as teachers in our schools, and some simply offer advice in their free time from whatever other career they are simultaneously pursuing. However, these generalist rabbis cannot be expected to be experts in every single area of Jewish Law and ethics. We expect too much from our rabbis. Even in the time of the Talmud, we find statements of rabbis admitting they are expert in the laws of isur v'heter (forbidden and permitted matters) but not hoshen mishpat (financial law) for example. The semikha system developed at that time even incorporated different examinations for the different categories of Jewish law. There were three general categories at the time: laws for daily living, business law, laws regarding permitting first-born animals (these are known as Yoreh Yoreh, Yadin Yadin, and Yatir Yatir). Rabbis would only advise people in areas of law within which they received their certification. Today, just as the body of knowledge in medicine has made it impossible to master every area in depth, the same holds true for the rabbinate.

In addition to the Bible and Mishna, which the rabbis of the talmudic period had to be experts in, we have 2,000 more years of literature that rabbis need to be knowledgeable about when making their rulings. In addition to this enormous body of religious literature, before rendering a decision, the rabbi needs to fully understand the medical, financial, technological, etc. issues at hand at well. It is almost impossible for one person to be able to master all this in a lifetime, especially with today's rapid advancements in science and technology. How can a rabbi decide laws regarding Internet transactions on Shabbat without a complete understanding of the intricate details of the
network and the way the financial transactions occur, even if he were a full expert in Jewish business law? Today that is simply not enough. How can a rabbi decide if a genetically engineered fruit or animal can be kosher without having both a deep understanding of kosher laws, and of genetic engineering? Similarly, how can a rabbi make a decision regarding euthanasia, brain death, organ transplantation, genetics, abortion, medical Shabbat laws, and so forth, without having a full mastery of biology, physiology, and the physics and technology that comprise the respirator, the heart-lung machine, the electroencephalogram? It is simply not reasonable or appropriate to expect all this from every generalist rabbi.

One option is for a rabbi to have available a group of experts he trusts in certain fields who also have a strong understanding of Jewish law and whom he can consult when needed. An ideal option that has emerged is specialist rabbi. Many rabbis have taken upon themselves to become specialists in a particular field. There are rabbis who are particularly knowledgeable about Jewish law regarding end-of-life issues, transplant issues, medicine on Shabbat issues, bankruptcy law, Jewish law regarding technological issues, and so forth. Unfortunately the majority of community members will approach their generalist rabbi with all these questions, leading to an answer, which at times may produce unintended and unfortunate consequences. People would rarely go to their generalist physician for a consultation regarding their advanced-stage brain tumor. It would be inappropriate to expect a complete answer from the generalist. Rather the generalist should refer the patient to a neurosurgeon and/or neuro-oncologist for the proper advice. We should treat our religious health with at least the same level of importance and expectations, and when dealing with a specialized issue, a specialist rabbi should be consulted.

One such example that is often encountered is prenatal testing for Duchene Muscular Dystrophy. Duchene is a devastating disorder in boys who begin as healthy children, but by toddler years have difficulty walking, by teenage years require the use of a wheelchair, and by their late teens require use of a ventilator for respiratory support. This condition leads to death in early adulthood. Throughout this period of motor and physical decline, the patients are cognitively intact and have a full understanding of what is in store for them. This disorder is caused by a genetic mutation on the X chromosome. Every father has one X and one Y chromosome, while every mother has two X chromosomes but no Y chromosome. The sons will all inherit the Y chromosome from their father and either of the mother's two X chromosomes, while daughter with all inherit their father's X chromosome and either of the mother's X chromosomes. When a child has a mutated X chromosome in a certain region, this causes Duchene Muscular dystrophy as described above. These boys rarely have children, as they die so young. Girls however have two X chromosomes, so that even if one is defective the other can almost completely compensate for it. Therefore an adult woman may be a carrier of the disorder, yet can still lead a full healthy life (possibly with some mild weakness). When a couple give birth to a child who is found in early childhood to have Duchene Muscular Dystrophy, she will be counseled that half her male children (the ones that inherit the defective X from her) will have the disease, while the other half will be healthy. In addition, half her daughters will be carriers (the ones that inherit the defective X from her) like she is, and will be in the same situation as she is when they get older. The parents at this point have to make a serious decision that affects the remainder of their life. They can either not have any more children (and this decision is very different for a couple where the first child was found to have Duchene compared to when it is their fourth child) or to continue building their family. If they continue to build their family they have a 25 percent chance of giving birth to another son who will have the disease (and suffer and die young) and a 25 percent chance of having a daughter who is a carrier and will have to make these same decisions in adulthood.

One option available to them is to perform genetic testing during the early stages of pregnancy to determine if the fetus is a boy or a girl and if it has the defective chromosome. This affords the
parents the option of aborting the fetus in the early stages of pregnancy and then trying again. This will lead to a healthy family that can continue to grow and fulfill their dreams and religious and spiritual goals. Although this last option appears to be the most obvious choice for many, it is highly underutilized in the Orthodox Jewish community. The main reason for this is the issue described in the prior paragraph. When facing this decision, the family will often ask either their local generalist rabbi or in some communities the rebbe of the entire community for advice and guidance. These rabbis are then expected to make these decisions and rulings without a complete understanding of the situation, the medical information and technology available, all the Jewish laws involved and the overall ramifications of their decisions on the family. Some of the worst cases I have witnessed included a family that was aware of the diagnosis, but was advised by their rabbi that they have a religious obligation to procreate no matter what the situation and must simply have faith in God. This unfortunately left the family with three affected sons, two carrier daughters, and two healthy children. To make matters worse, the eldest sister was not informed of the family genetic condition and was married without informing the groom. They had two affected children before she came to a neurologist, where she was finally informed of the genetic situation, and that all the suffering that her two children would go through over the next 20 years could have been easily avoided, had her mother received the appropriate advice from her spiritual leader. Luckily this young woman was more open to help, and I was able to show her that using current technology, she can be tested in such an early stage of pregnancy that would allow her to abort the affected fetuses within her acceptable window for early abortion.

This true event is only one of dozens in which I have been personally involved, and there are obviously many more in which I have not been involved. It is unclear to me (as the rabbi refused to discuss the issue despite my sincere effort at a respectful discussion) why this particular rabbi, and others make such unfortunate decisions in these life-changing situations. It may be that they are not experts in the laws of abortions, where the vast majority of rabbinic authorities allow at least early (first trimester or 40 days) abortions in these types of situations; it may be that they misunderstood the situation and its ramifications caused by a lack of communication with the physician; it may also be a lack of familiarity with modern medical breakthroughs that are literally occurring daily, that they were not able to come to a more sympathetic decision. How many people have asked their rabbi for advice but were referred to a specialist rabbi instead? It seems to occur very rarely. It is human nature for the rabbi to feel the pressure of coming up with the solution to the problem himself. Many doctors behave the same way and will try to answer a patient's questions to the best of their ability, even if they are not experts in the field. This is simply human nature. What is important is not whom to blame, the laypeople for expecting too much of their rabbi, or the rabbis for not referring the laypeople to a specialist rabbi. Rather, the important issue at hand is how to fix a broken system that doesn't want to be fixed. Rabbi Yosef Caro ruled that someone who is not an expert in a particular field is not permitted to give medical advice or treatment-and if he does he can be considered a murderer (Yoreh Deah 336:1). The Aruh haShulhan adds that according to halakha, one must be licensed in the field of question and approved by the state (in whichever governing body has jurisdiction) to offer such advice. These rules apply to doctors and all the more so to rabbis who may not have such training or certification.

At what point do we decide to stand up to our leadership and demand a better system? How much suffering must continue in vain before we fix this broken system? There is a current concept based on a misunderstood passage in Pirke Avoth that is held in high regard, which is "Ase Lekha Rav," make for yourself a rabbi (Avoth 1:6). This is commonly understood today as stating that every Jew must pick one rabbi and always follow that rabbi. It is considered inappropriate to ask a rabbi other than your own a question of Jewish law. This is absurd and has never been the way our ancestors operated. This new rule, of only asking one rabbi every type of question, is not founded in halakha. Even the rabbis of the Talmud understood that some rabbis had expertise in business law, agricultural law, marital law, etc. and specific rabbis had differing authority based on their area of
expertise. Why is it that we expect a rabbi who may have not even studied basic biology to understand the intricacies of complex genetics? The majority of doctors, who went through rigorous medical training, still do not comprehend cutting-edge medical genetics. It wasn't until 1953 that Watson and Crick famously described the structure of DNA and it wasn't until many years later and even until very recently that we are beginning to understand how to test and manipulate genes. My grandfather, Dr. Albert Moghrabi, for example, a first-class physician, studied in medical school in the 1940s, prior to the discoveries of Watson and Crick. Although he is an expert in general medicine and has kept current in his knowledge of genetics, he admits not to be an expert in genetics and would refer to a specialist for genetic counseling.

It is important to realize that there is no one that is "at fault" here. Both the rabbis and the community want what is best for our physical and spiritual health. However, it is the current system that is failing, as it is not structured to keep up with developments of modern life. I believe the best way to address these issues is to have the rabbis, laypeople, and doctors sit down together to openly discuss ways to fix the system. It can't be stressed enough that the problem does not stem from the rabbis, the laypeople, or the doctors. Rather, it stems from the defective interaction between these three groups that leads to the problems mentioned above. As a start, one possible solution may be to publish a book listing both generalist and specialist rabbis in different fields so that one can easily be referred to the appropriate authority who can handle the question for which they are seeking guidance. This is a simple and effective way to help both the community, and the rabbis who are asked questions that are outside their expertise. Doctors can also use this resource to direct their patients to appropriate authorities, and rabbis would also have a resource open to themselves to assure what they are doing is in accord with Jewish law. Many doctors already have a specialist rabbi that they consult; this would provide a list of rabbis in different specialties as well. This may also lead to training programs where rabbis are specifically trained in different fields of medicine so that they can have a better understanding of the situations they are being asked to advise. It would be helpful to have some rabbis attend a neurology clinic, or a cancer clinic, or an intensive care unit once per week or for a six-month training period. We need the appropriate leaders to organize this with our local hospitals and yeshivot. For every case mentioned above where there was inappropriate advice, I can name ten cases where the interaction between the rabbi, the patient, and myself was invaluable. In many of these high-stress situations, open dialogue with rabbis complements the medical treatment by encouraging and supporting the patient from a religious standpoint. This engenders more confidence in the doctor and the treatment, leading to better outcomes for the patient. Without a rabbi's involvement, a religious patient may be scared and untrusting of the modern treatments. A rabbi who has the medical knowledge and spiritual leadership can support the treatment and the patient in ways the doctor never could. It is time that we demand the same level of treatment of our religious and spiritual well being that we demand for our physical and medical well-being. In this time of health-care reform, it is appropriate to look into rabbinic-care refinements as well.

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