



Lawyers, Legal Consultants

JOURNAL OF LEGAL AND ECONOMIC THOUGHT

Peer-Reviewed Semi-Annual Journal

Published by the Faculty of Law, Benha University

2018 Issue – First Issue

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Contents of the Issue

1	“Organizational Structure for the Formation of Municipal Councils” (An Analytical Study of the Libyan Local Government System Compared with the Local Government Systems in France – Egypt – Jordan) Ibrahim/Hamid Al-Mahdi Dabi	
2	Concealment of Crime in Islamic Jurisprudence: Moral Rights Relating to the Concealment of Crimes and Criminals, the Concealment of Their Evidence, and the Consequences Arising Therefrom in Islamic Jurisprudence – A Comparative Study Ibrahim Ismail Mohammed Ali	
3	Compulsory Enforcement against Pledged Securities Ibrahim Ali Salem	
4	Trading of Securities in the Capital Market Ibrahim Ali Salem	
5	Provisions Governing Lesion in Egyptian Civil Law (A Comparative Study) Dr. Ayman Ibrahim Al-Ashmawy	
6	Strike Action and the Concept of Public Utilities Ahmed bin Hamad bin Aqeel Al-Azizi	
7	“The Nature of the Stay of Compulsory Enforcement” Ahmed Ragab Ali Gomaa Wasel	

8	The Problem of Defining the Crime of Terrorism in International Law and Its Implications for Establishing the Concept of Illegality in International Relations Dr. Ahmed Messaoudia, Lecturer, Class (A) Dr. Amer Griaa, Lecturer, Class (B) Institute of Law, University Centre of Tissemsilt, Algeria	
9	The Legal Framework for the International Protection of the Environment in Rivers of an International Character Dr. Ahmed Messaoudia, Lecturer, Class (A) Dr. Amer Griaa, Lecturer, Class (B) Institute of Law, University Centre of Tissemsilt, Algeria	
10	The Nature of a Contract for the Utilization of a Project for a Fixed Term in Consideration for Its Construction: A Comparative Study Islam Mosaad	
11	Consumer Protection in Contracts of Adhesion Essam Ahmed Hamdy	
12	The Administrative Police Function Abu Bakr Abu Al-Nasr Mohammed	
13	Judicial Means for the Settlement of Disputes Relating to the Law of the Sea Ahmed Abdel Hamid Ibrahim El-Hindawy	
14	The Legal Form of a Real Estate Investment Fund Osama Adnan Al-Halabi	
15	The Role of the Auditor in the Oversight of a Real Estate Investment Fund Osama Adnan Al-Halabi	
16	The Technical Regulation of Value Added Tax (A Comparative Study) Anwar Mohammed Abdulwahab Al-Dulaimi	

17	The Economic Effects of Value Added Tax Anwar Mohammed Abdulwahab Al-Dulaimi	
18	The Nature and Characteristics of the Electronic Contract in Islamic Jurisprudence and Civil Law Al-Gamil Shukri Al-Gamil Al-Sayed Al-Adawy	
19	The Nature of Administrative Decentralization Amir Abdel Nasser Al-Kilani	
20	The Economic and Social Implications of Money Laundering Operations for Developing Countries Belhareth Linda Haram Aarab	
21	The Right of Defence of a Person Held in Police Custody: Between the Formality of Presence and the Question of Unconstitutionality Bouras Abdelkader	
22	The Right to Object under Palestinian Legislation Tamam Youssef Nofal	
23	Methods of Selecting the Head of State in Contemporary Constitutional Systems Tamam Youssef Nofal	
24	The Effect of the Decisive Judicial Oath – A Comparative Study in Islamic Jurisprudence Turki bin Abdullah Al-Tayyar	
25	Disciplinary Authority over Members of Parliament: A Comparative Study Jihad Zuhair Al-Harazin	
26	Disciplinary Guarantees for Members of Parliament: A Comparative Study Jihad Zuhair Al-Harazin	

27	The Right to Data Confidentiality under the Saudi Tax System and the Egyptian Tax System Dr. Jihad Maghazi Shehata	
28	The Constitutional and Legal Framework for Scientific Research in the Kingdom of Saudi Arabia Dr. Jihad Maghazi Shehata	
29	The Bank's Legal Liability for the Confidentiality of Customer Information under the Saudi Legal System (1) Hassan Youssef Matayeh	
30	Security Measures for Addressing Domestic Violence: An Analytical Study Rashid Mohammed Hamad Al-Marri	
31	Human Trafficking Crimes between the International and Regional Levels: An Analytical Study Rashid Mohammed Hamad Al-Marri	
32	Criminal Protection of Women against Violence under Egyptian Legislation (A Comparative Study) Rana Misbah Abdel Mohsen Abdel Razek	
33	The Development of International Criminal Justice El-Sayed Mohamed Zaki	
34	The Positive and Negative Effects of Tourism Saad Mansour Ibrahim Abu Bakr	

35	The Safeguards Established for the Legality of Interception of Telephone Conversations A Comparative Study: Egyptian and Algerian Legislation Cheikh Nadjat	
36	The Clause Prohibiting Subletting A Comparative Study between Positive Law and Islamic Sharia Abdel Moneim Ahmed Khalifa	
37	Protection of Refugee and Internally Displaced Children in Non-International Armed Conflicts Abeer Abdulaziz Al-Buraim	
38	Prohibition of the Recruitment and Participation of Children in Non- International Armed Conflicts Abeer Abdulaziz Al-Buraim	
39	The Concept of Obligation by Unilateral Will in Positive Law and Islamic Sharia (A Comparative Study) Ali Abdul Razzaq Ibrahim Al-Raqam	
40	The Position of Unilateral Will among the Sources of Obligation in Positive Law and Islamic Sharia (A Comparative Study) Ali Abdul Razzaq Al-Raqam	
41	Sexual Exploitation of Women – A Comparative Study – Omar Abu Al-Fotouh Abdel Azim Al-Hamami	
42	The Strategy of Maghreb Economic Integration to Address Global Economic Challenges Dr. wali Niladia	

43	The Role of the Administrative Authority in Achieving Contractual Security in International Construction Contracts Dr. Yasser Mohamed Abdel Salam Ragab Lecturer in Public Law, Faculty of Law – Cairo University	
44	Property Prohibited in Itself: Between Prohibition, Recognition of Financial Value, and Liability under Islamic Jurisprudence – A Comparative Study – Dr. Gamal Abdel Sattar Abdullah Lecturer in Islamic Sharia, Faculty of Law, Benha University	

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 - Supporting the Quality Unit in performing its functions related to scientific activities, or in developing its resources and ensuring their continuity.
 - Expanding scientific publications in a manner that serves society and its development and provides solutions to emerging problems.
 - Taking serious steps toward achieving an international character in the field of scientific research and publication, in a manner that benefits the global ranking of the Faculty and the University.
 - Supporting scientific cooperation with African and Nile Basin countries, which also contributes to reinforcing the international character of the Faculty's scientific activities.

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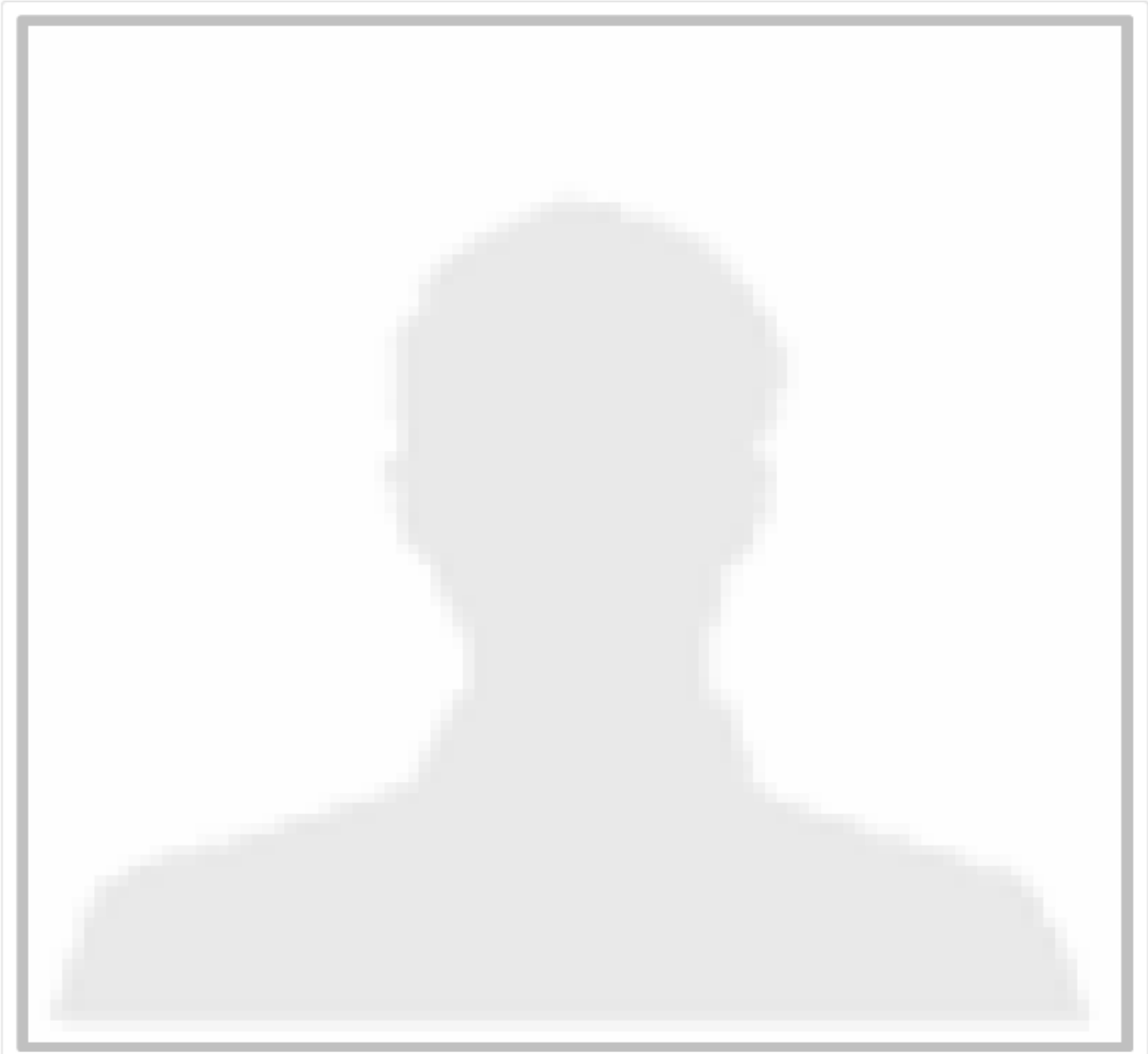
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1. To publish articles, research papers, and academic studies addressing trends in Egyptian, Arab, and foreign jurisprudence.
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3. To publish Islamic, Egyptian, and Arab jurisprudential reasoning, link it to positive legislation, and characterize contemporary issues from an Islamic perspective.
4. To monitor and analyze economic and financial developments, whether in Egypt or abroad.
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6. To introduce the latest Egyptian, Arab, and foreign legal, economic, and Sharia publications and comment thereon.
7. To publish summaries of university theses in law, economics, and Islamic Sharia.
8. To publish academic reports on seminars and conferences concerned with legal, economic, and Sharia studies.
9. To direct and link legal studies in a manner consistent with community development, environmental service, and the region which the University serves.
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11. To address matters of cooperation with African and Nile Basin countries in the fields of research, publication, and scientific activities in their various forms.

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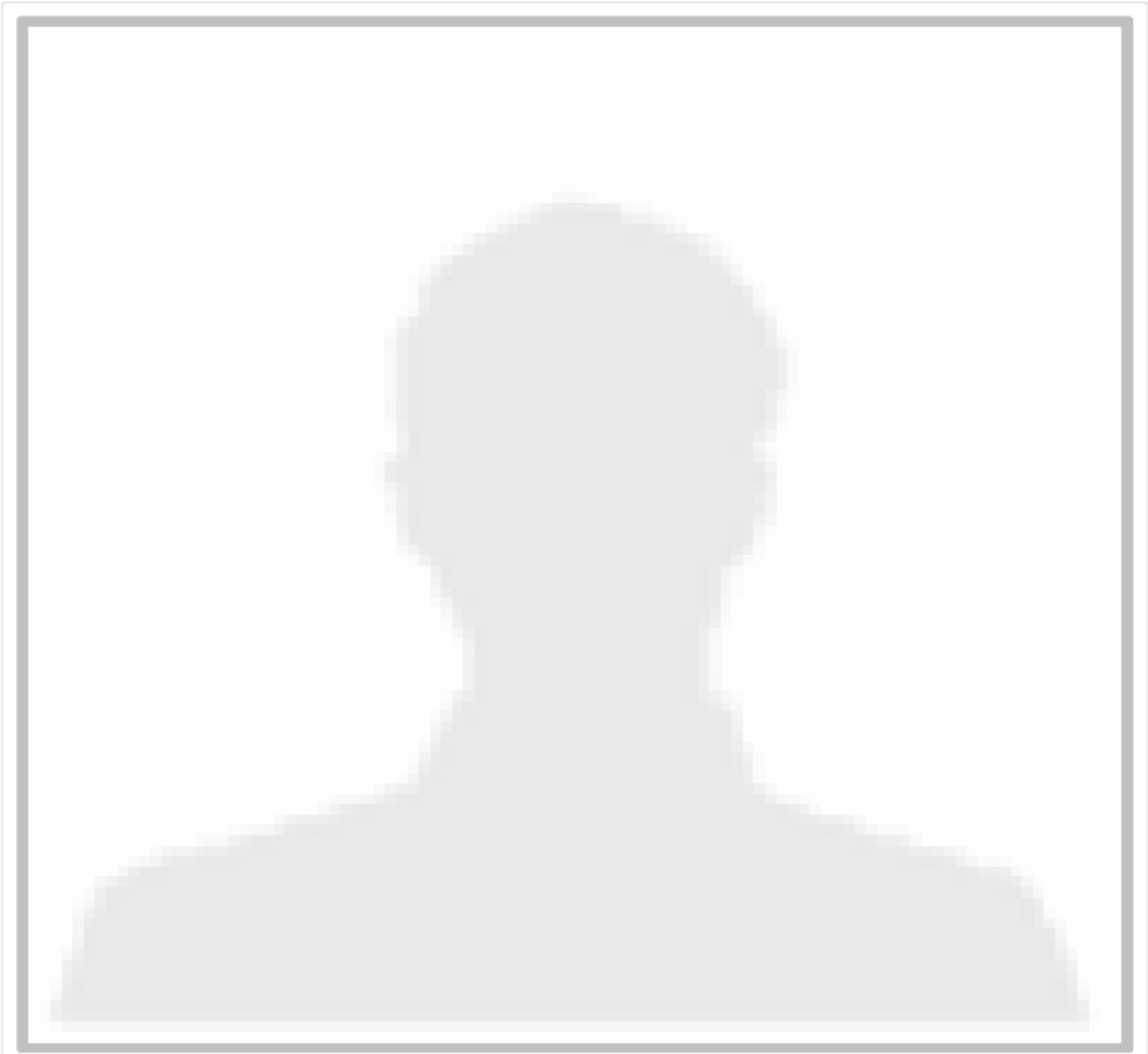
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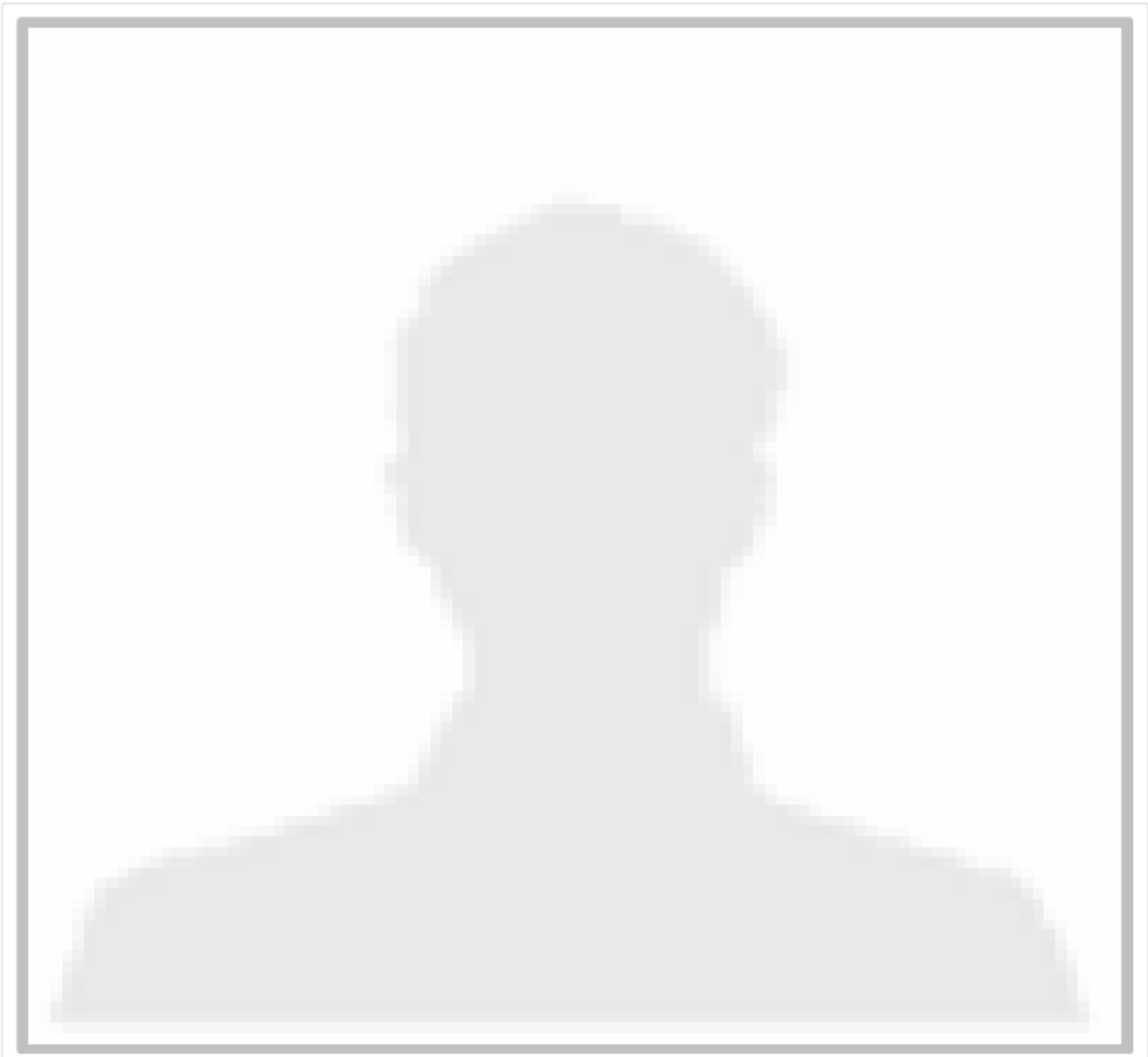
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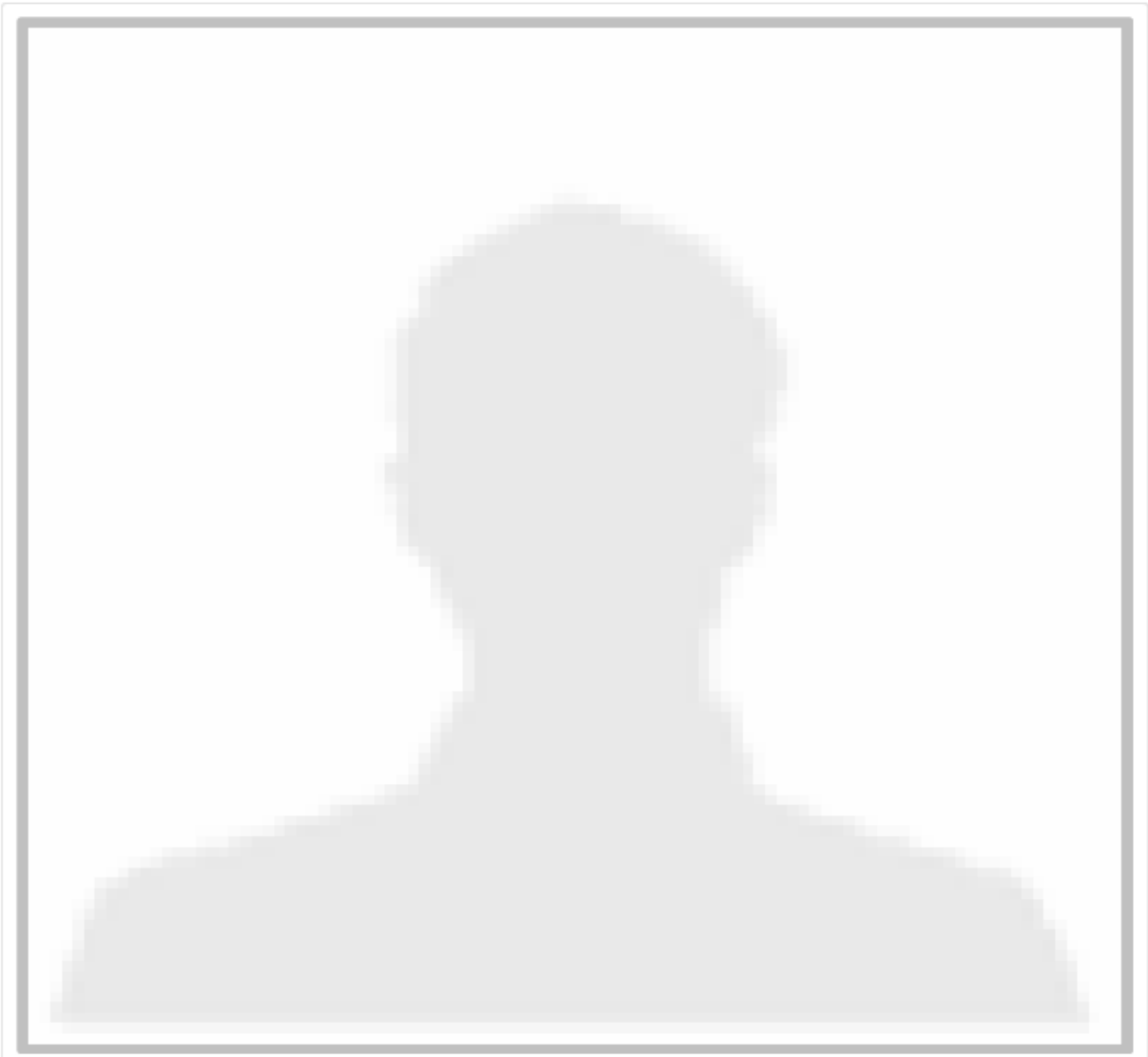
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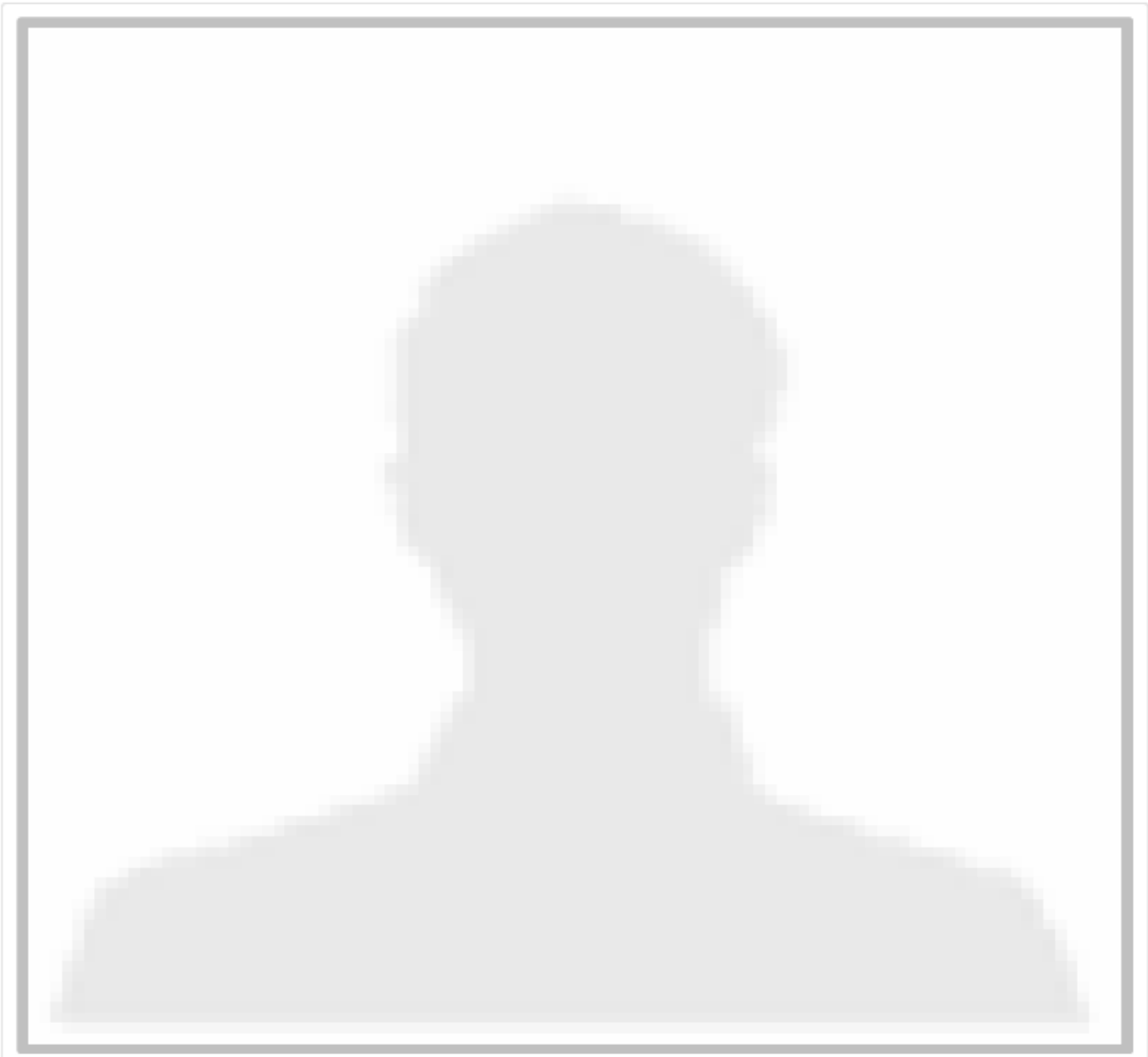


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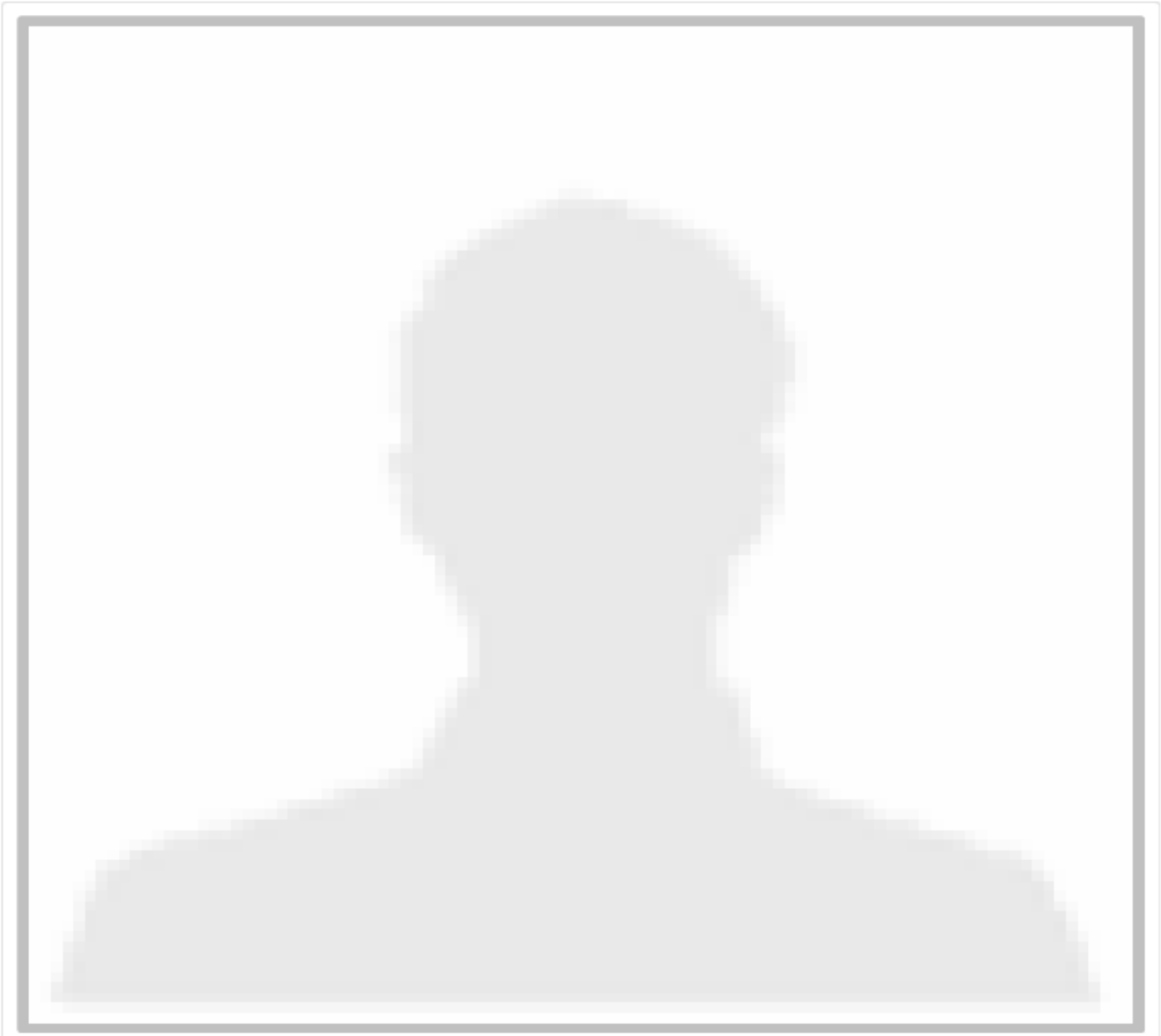


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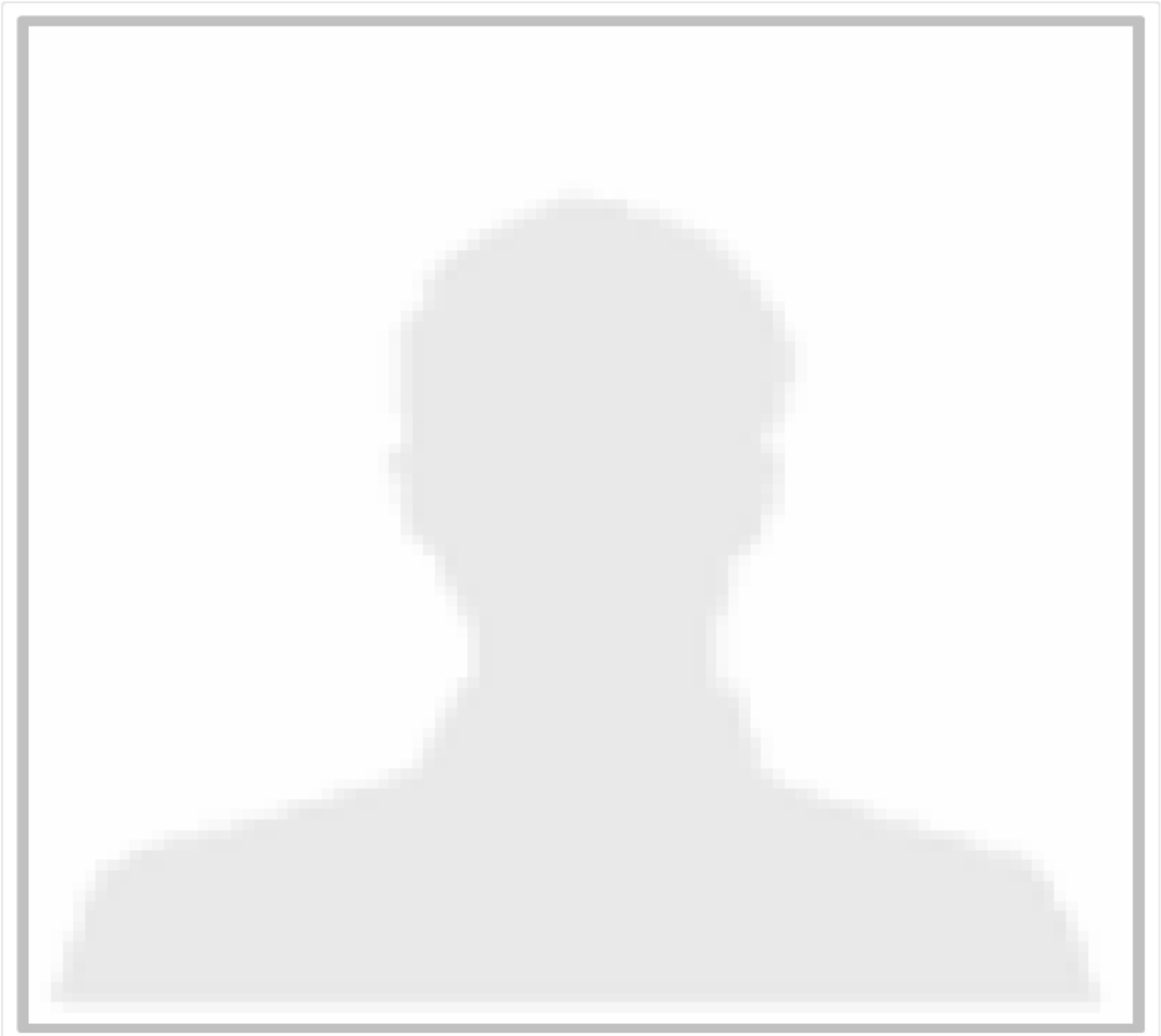


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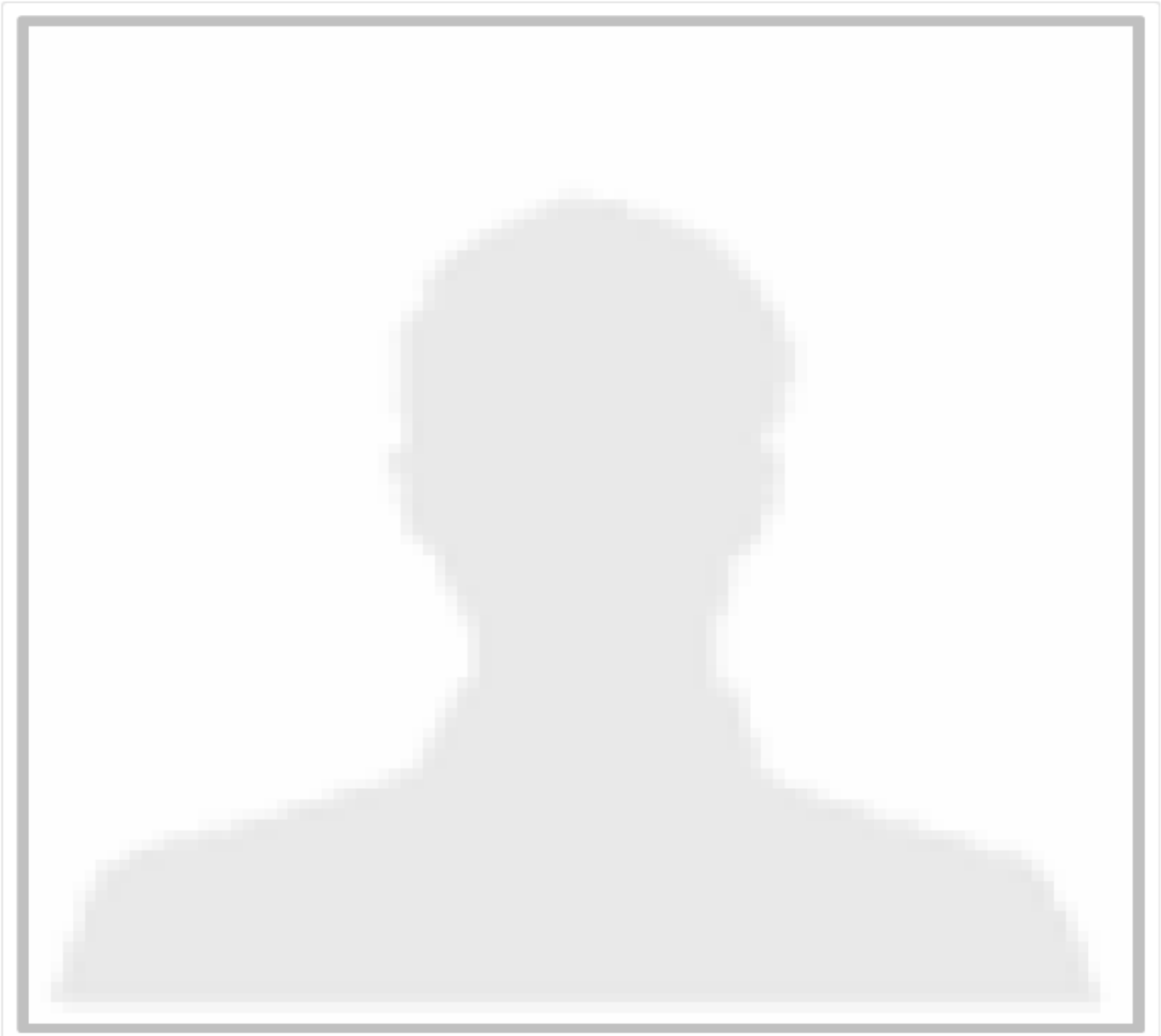


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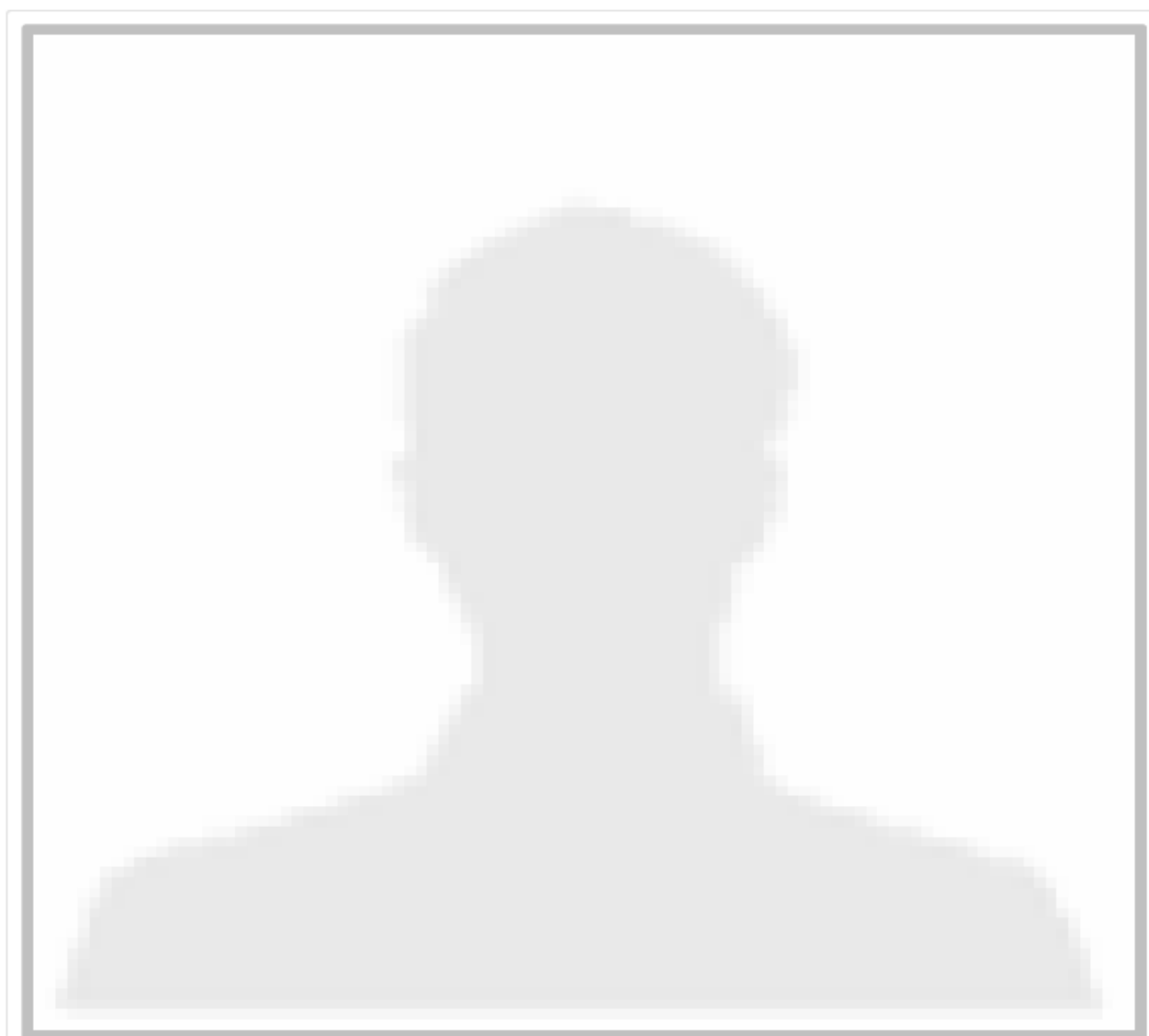
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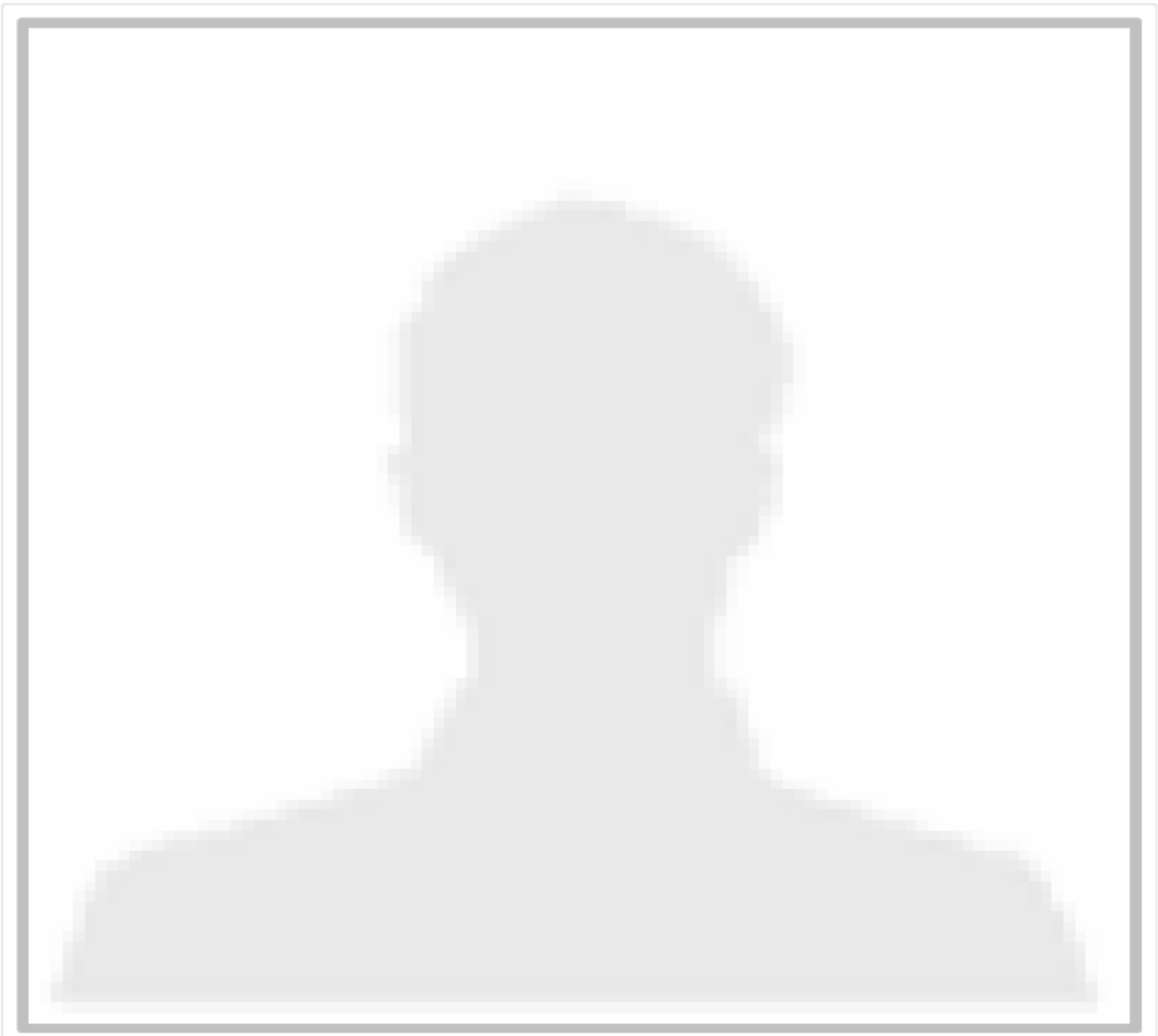


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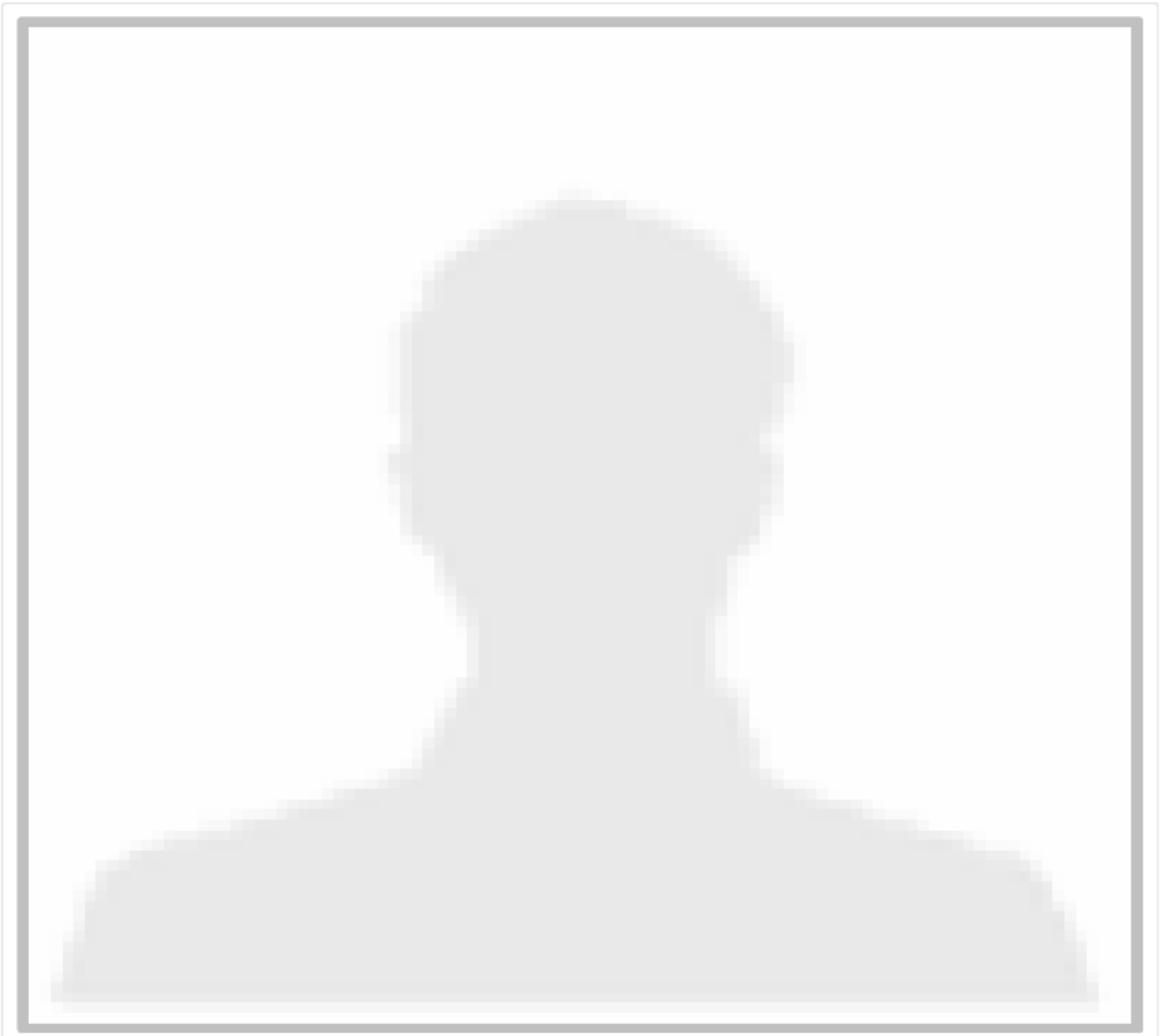
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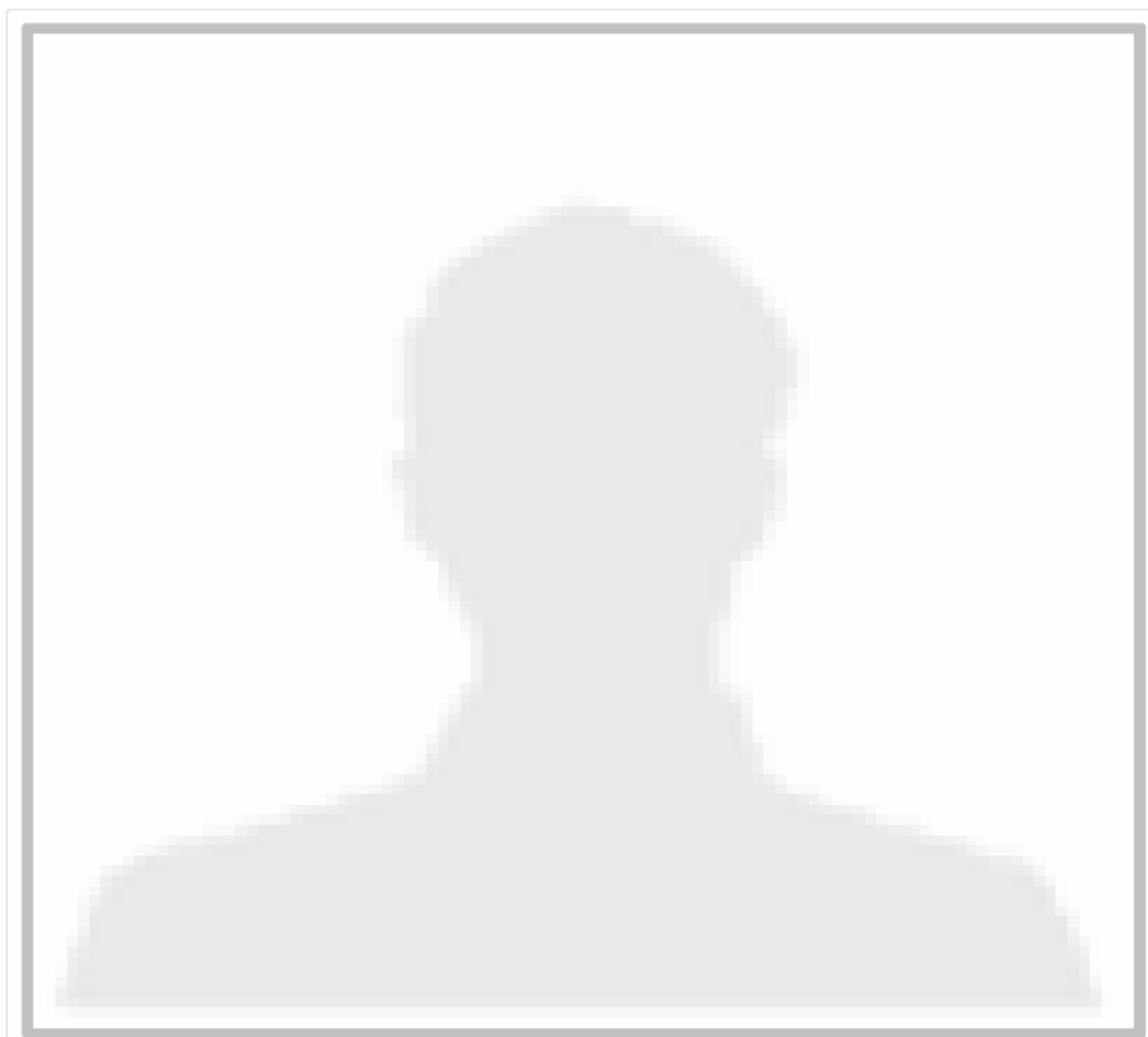
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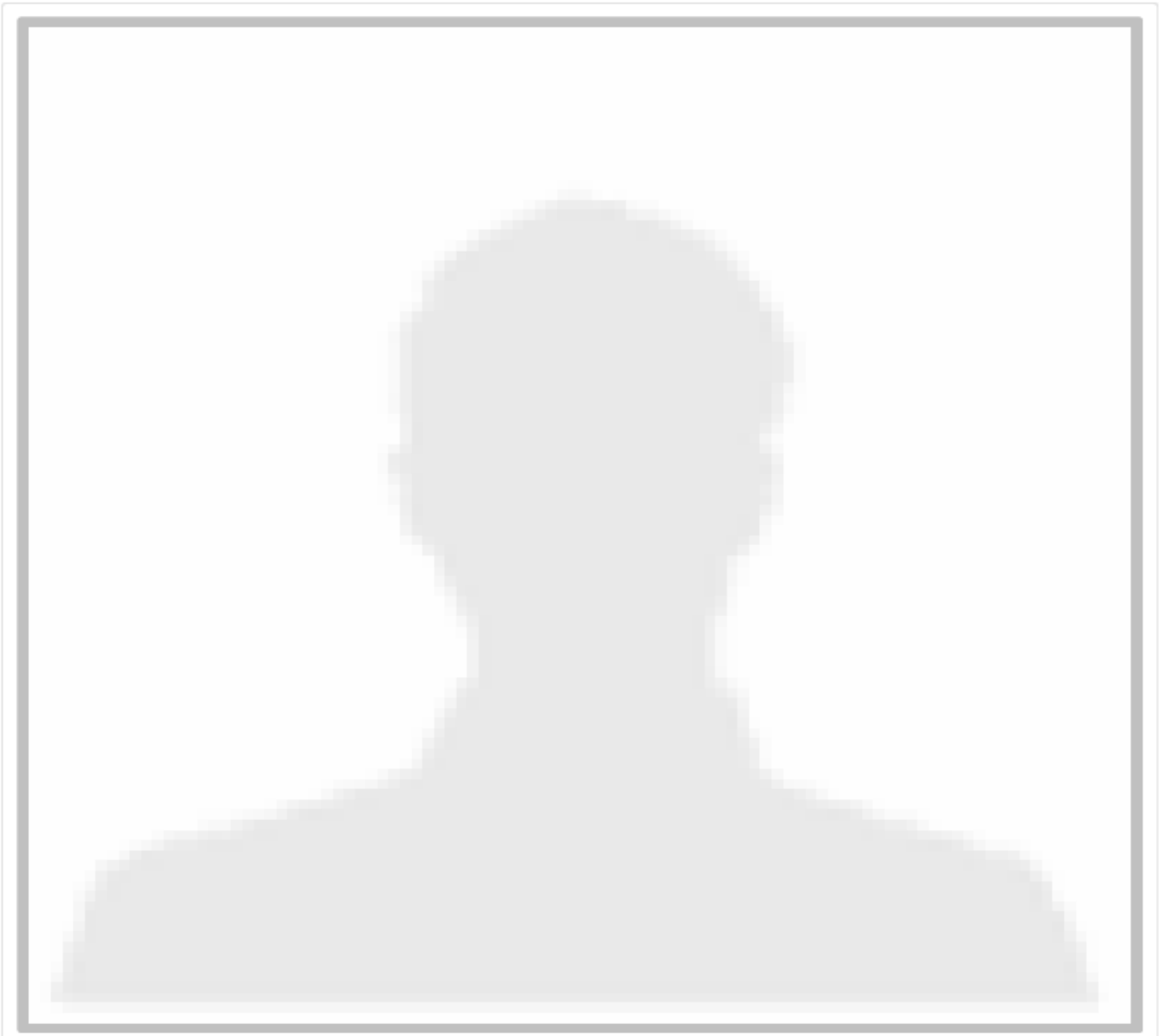
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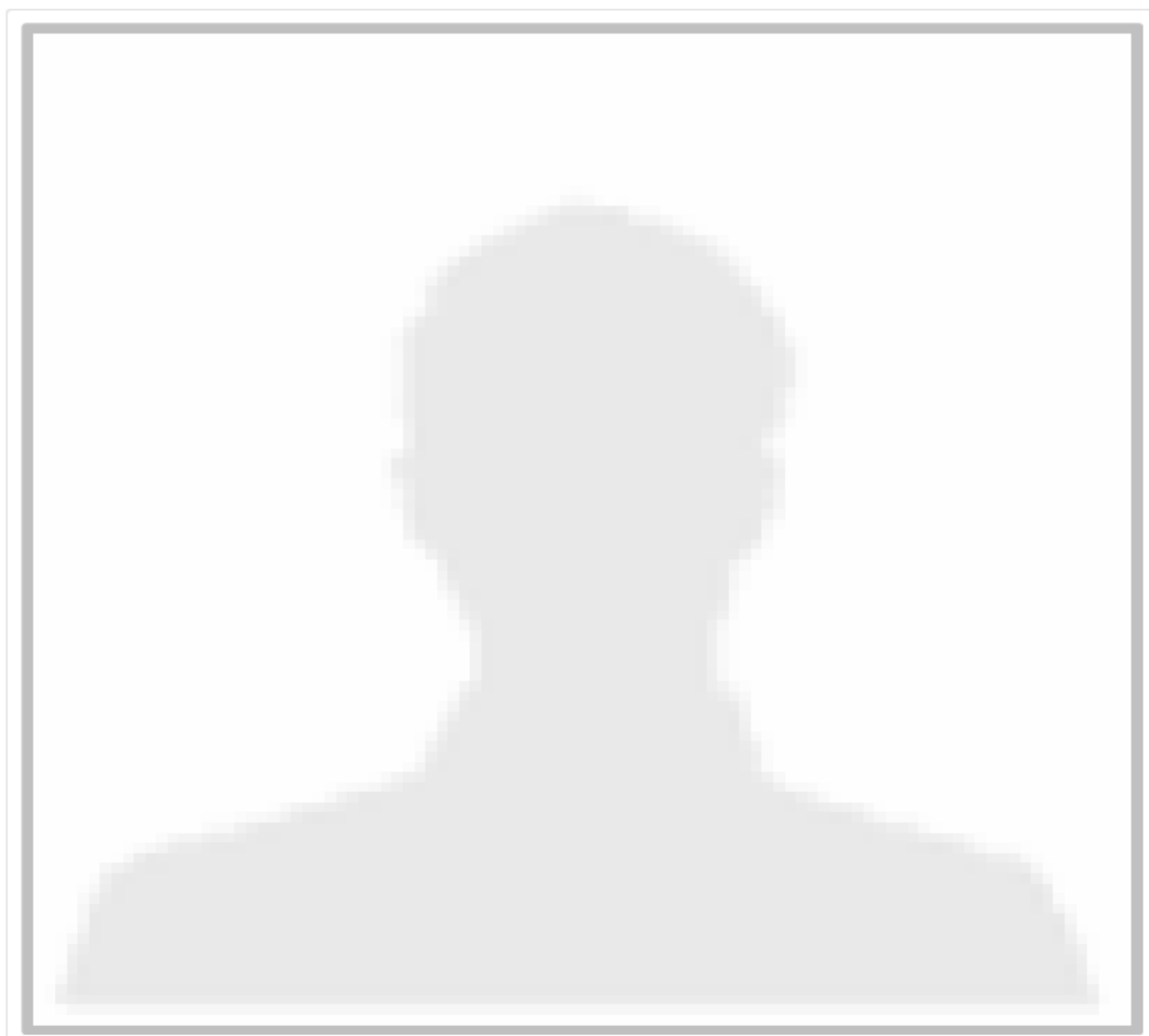
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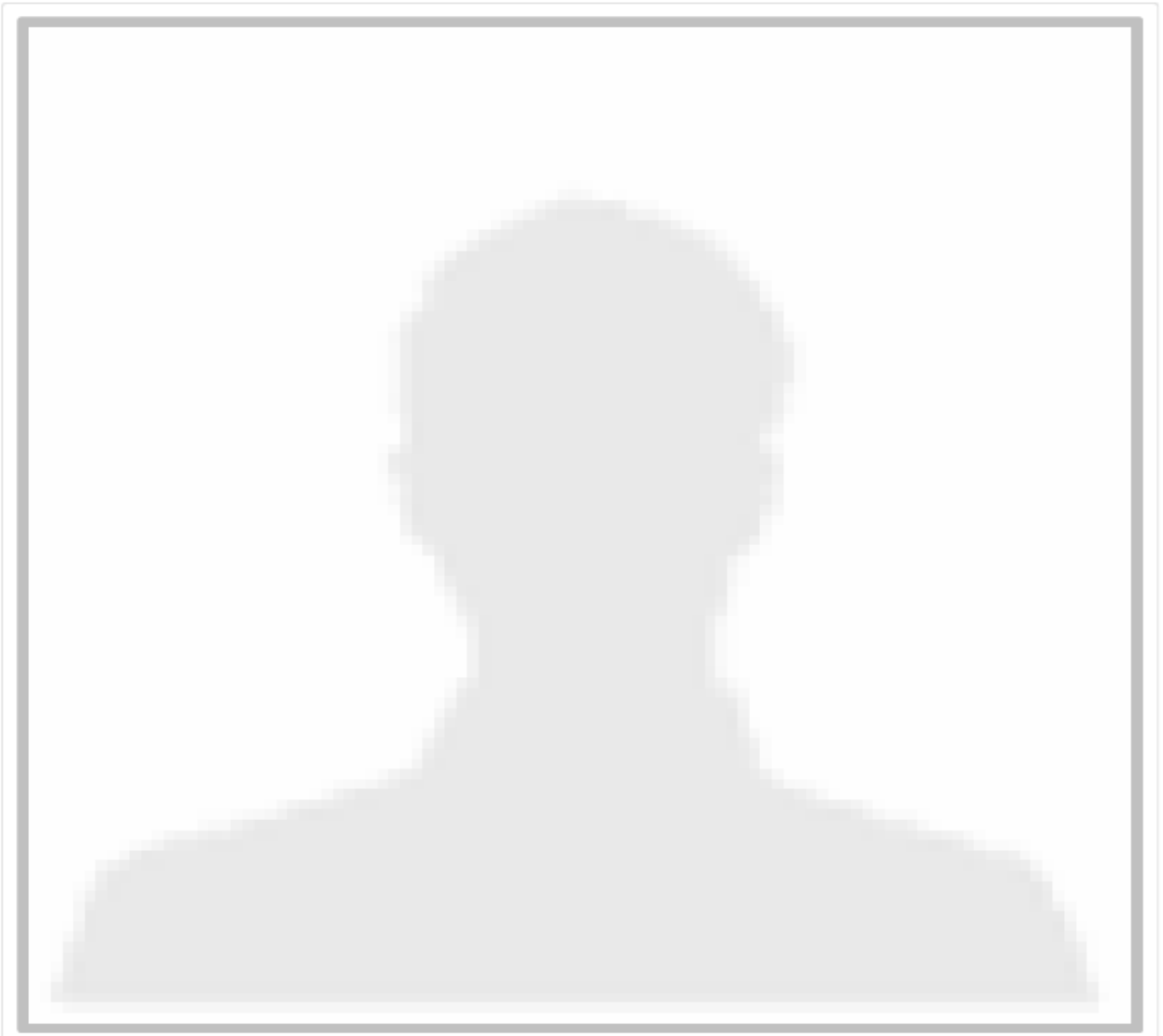
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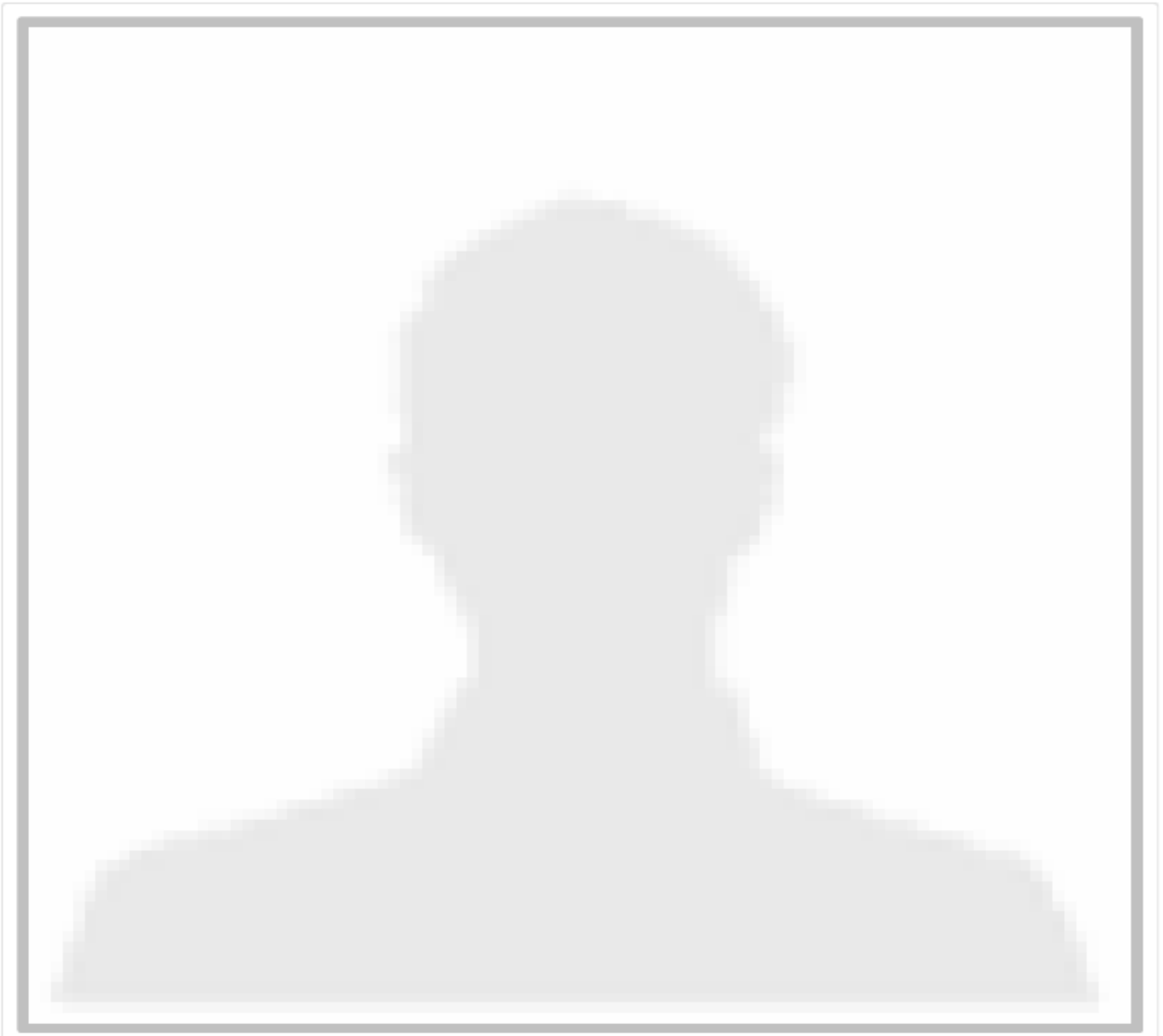
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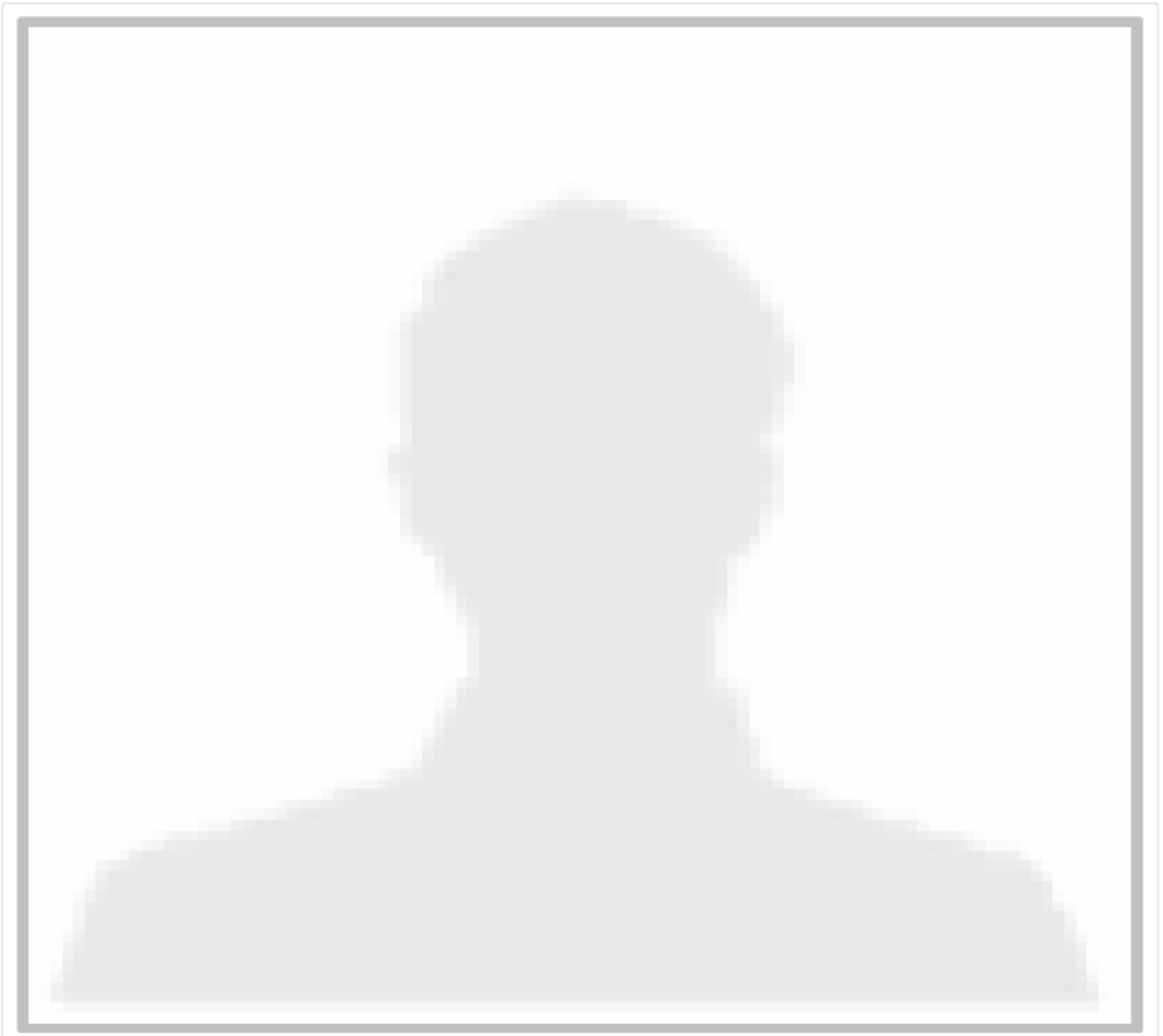
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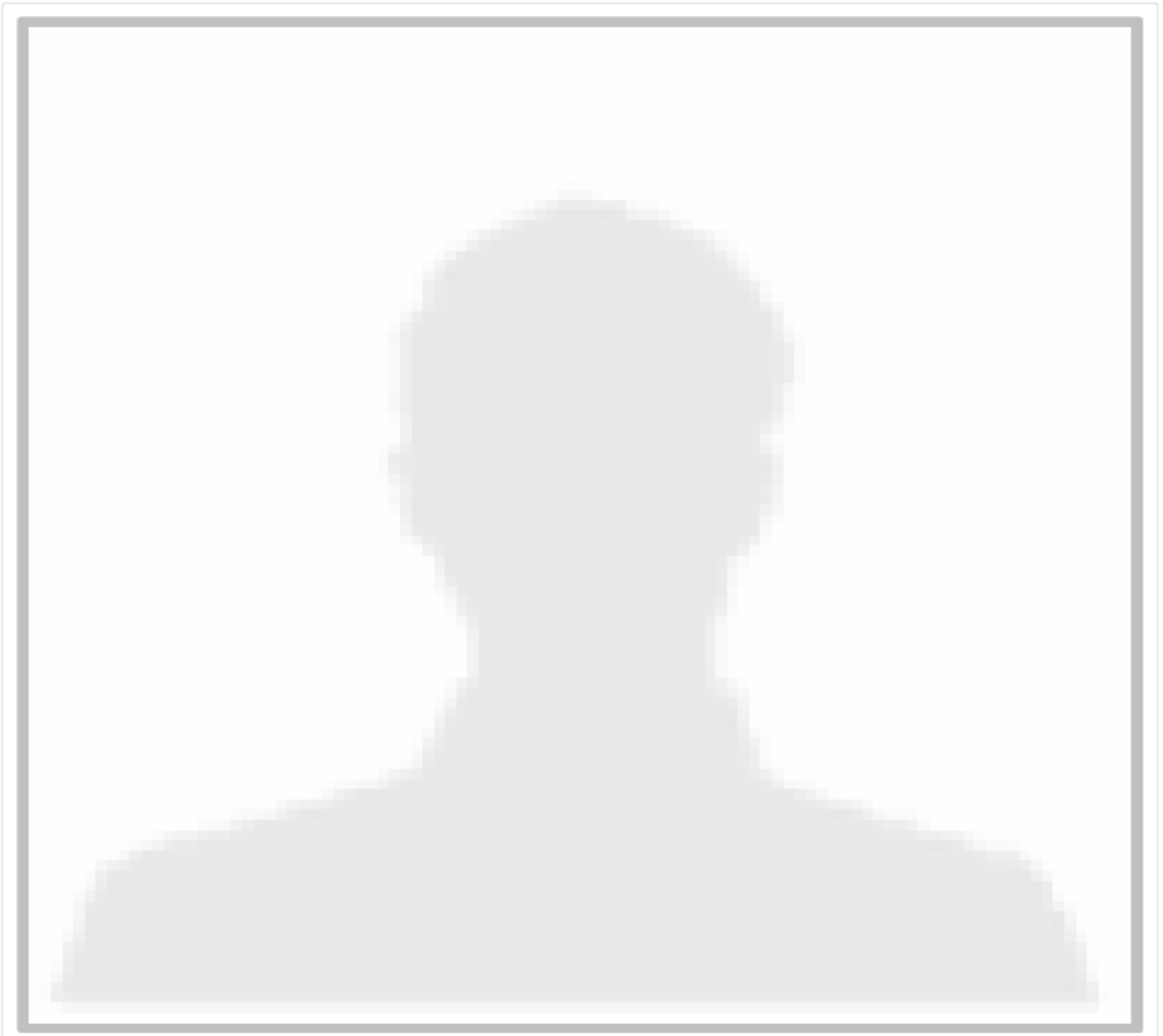
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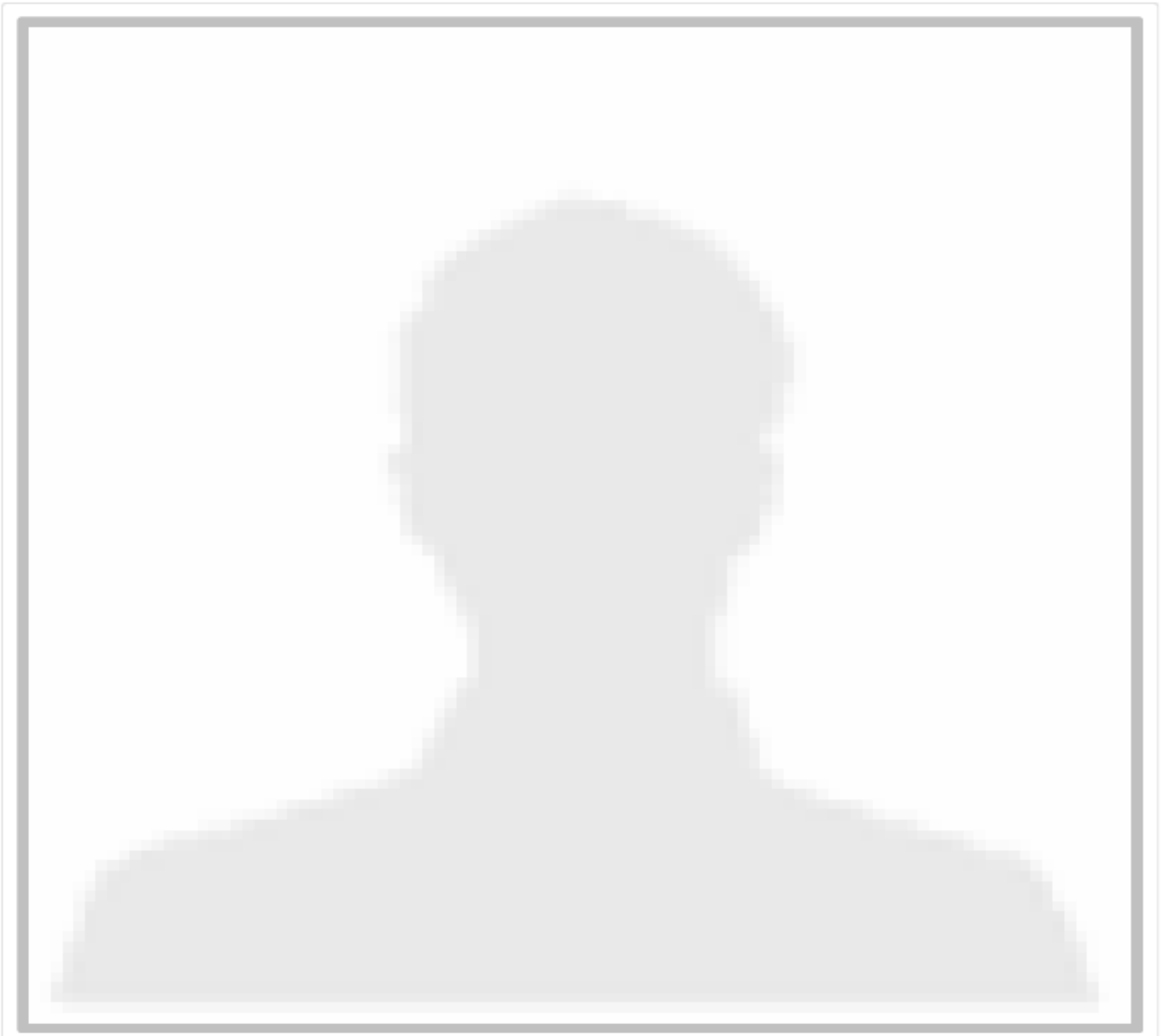
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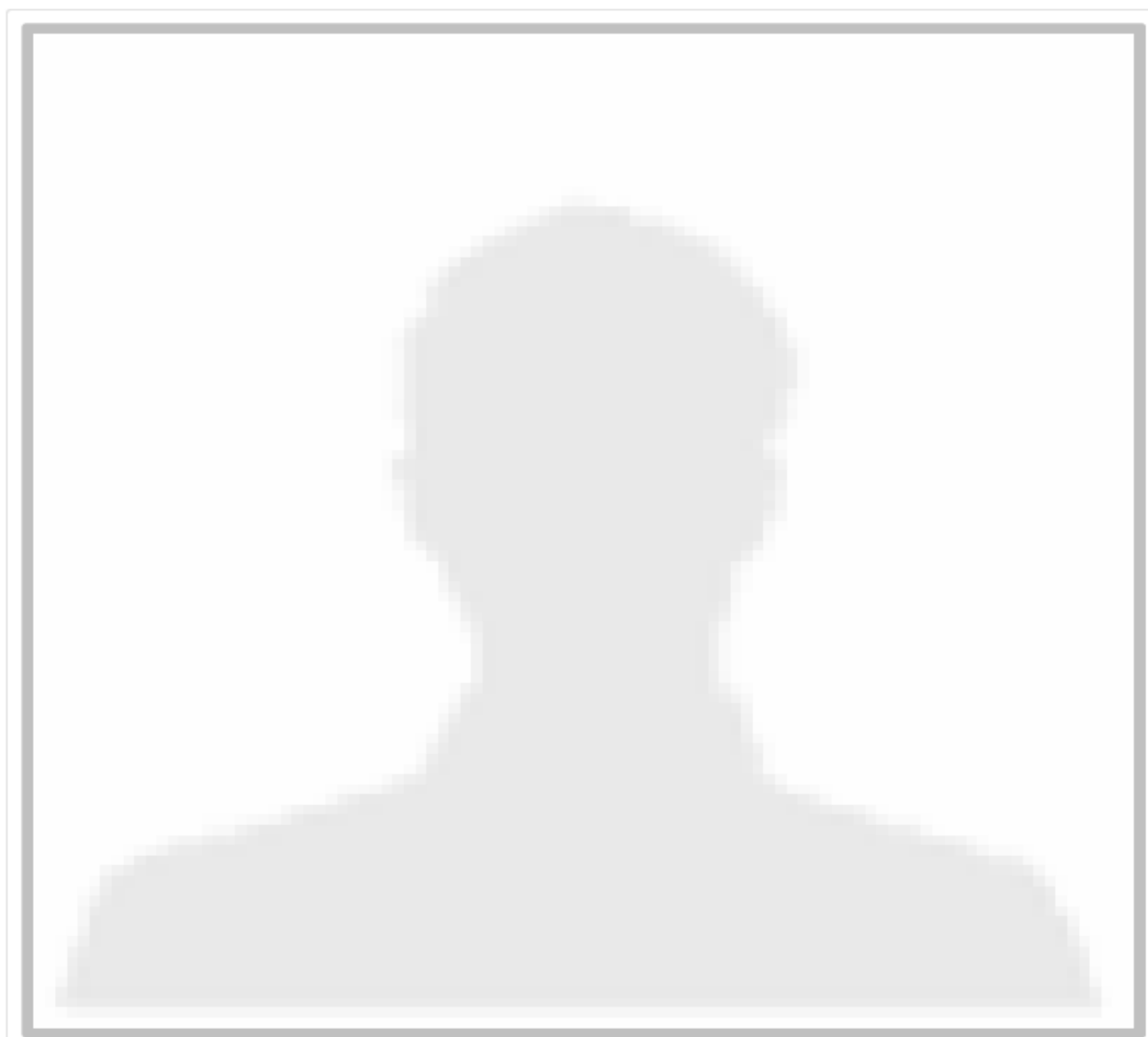
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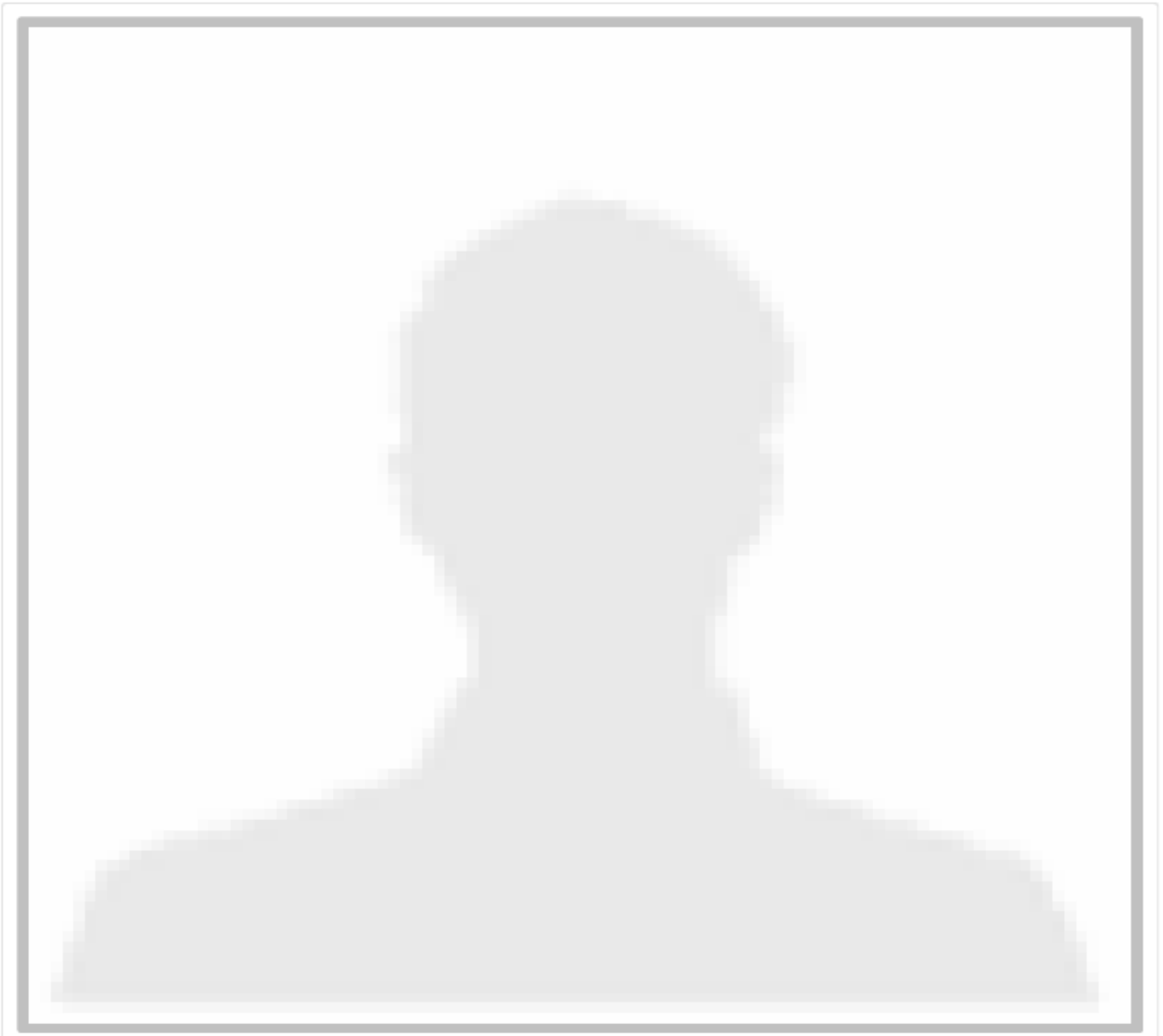
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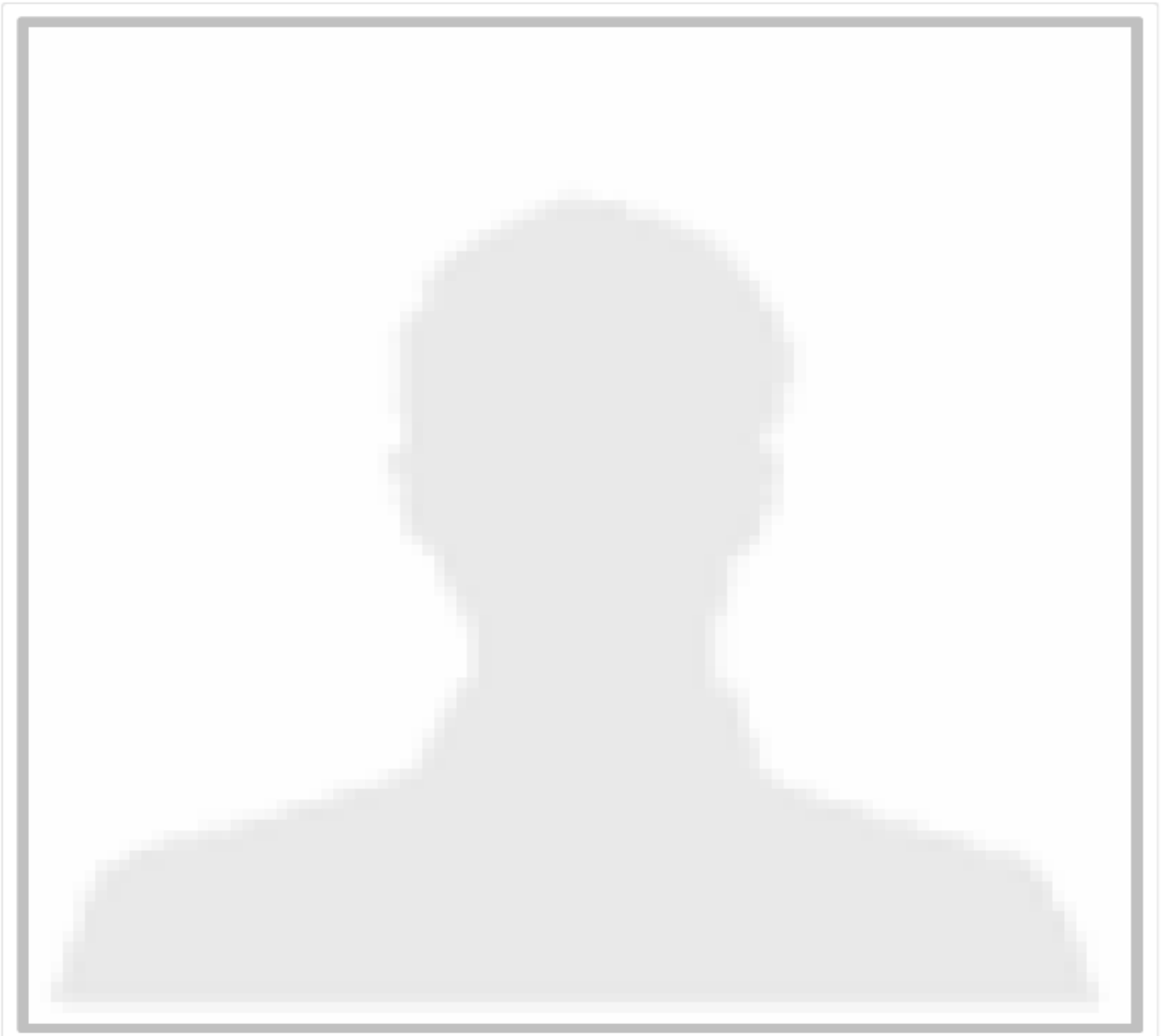
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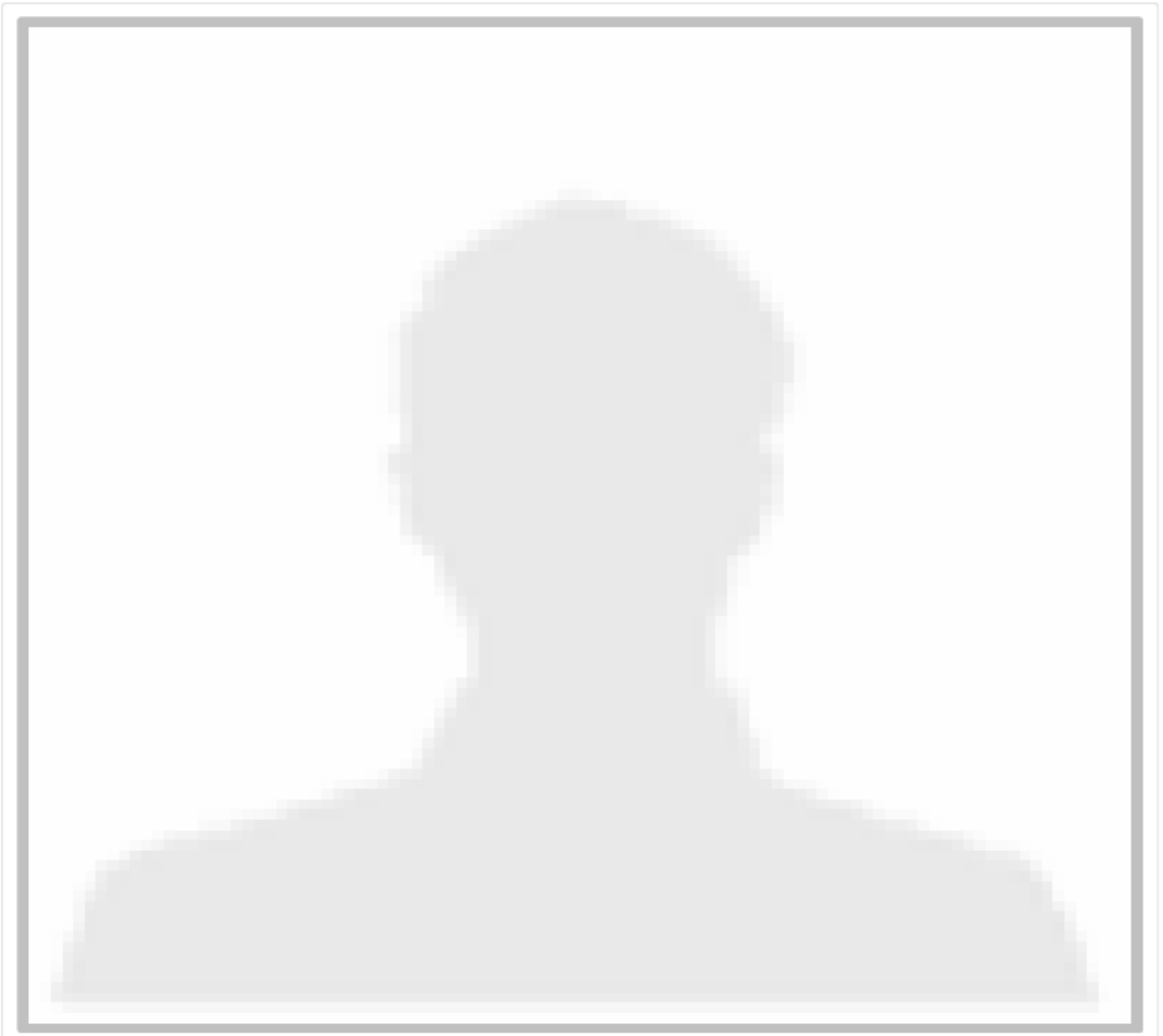
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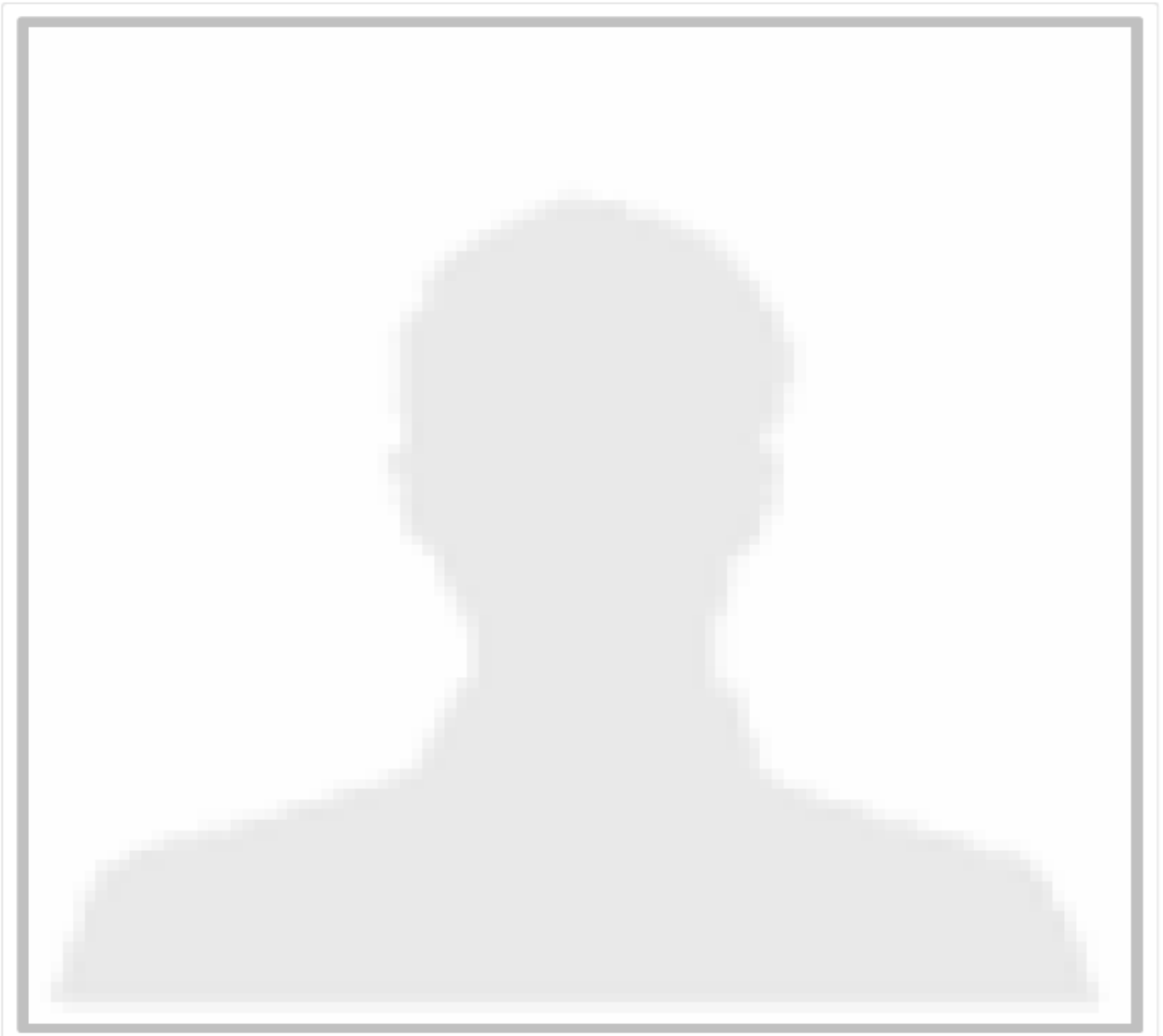
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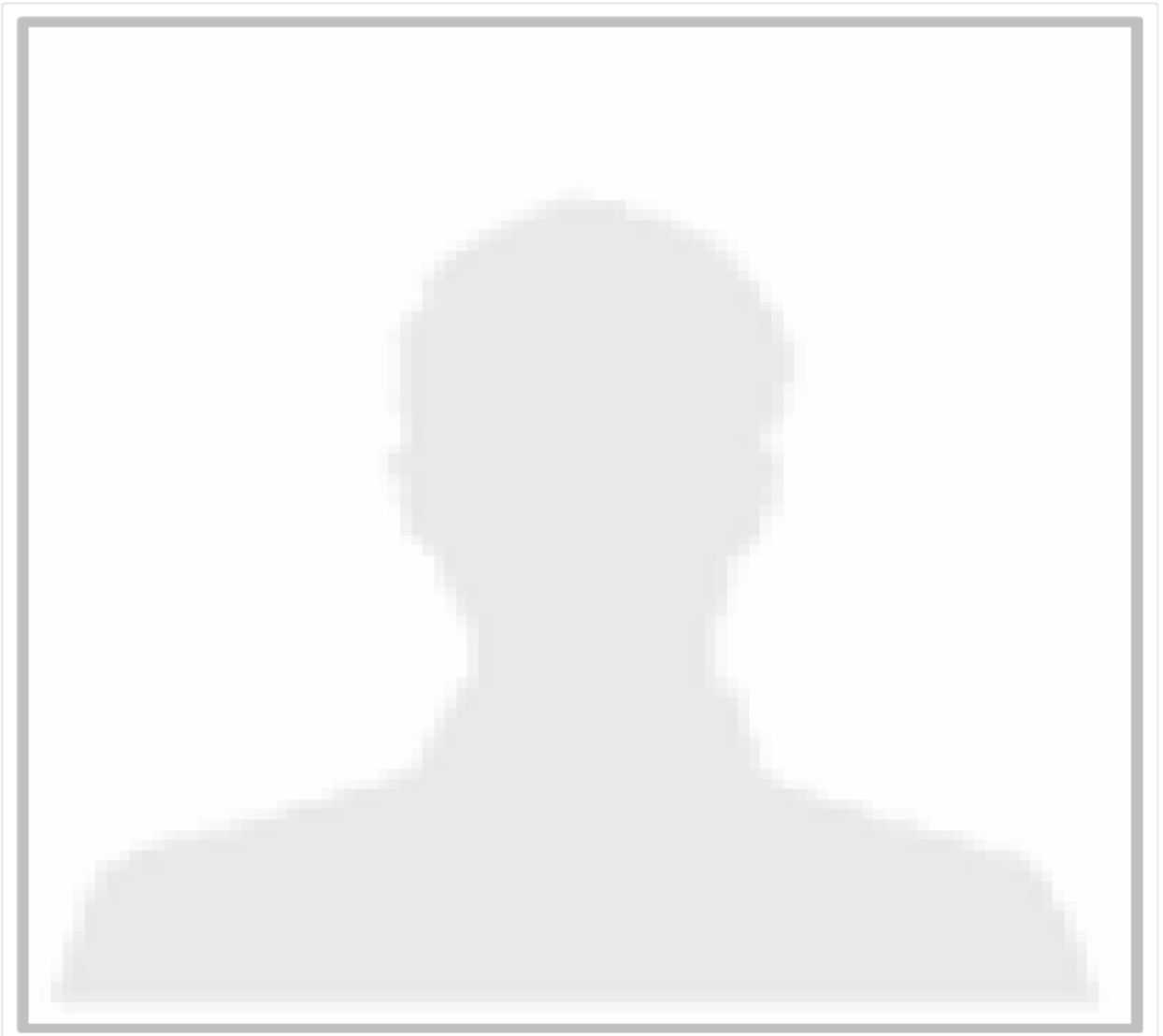
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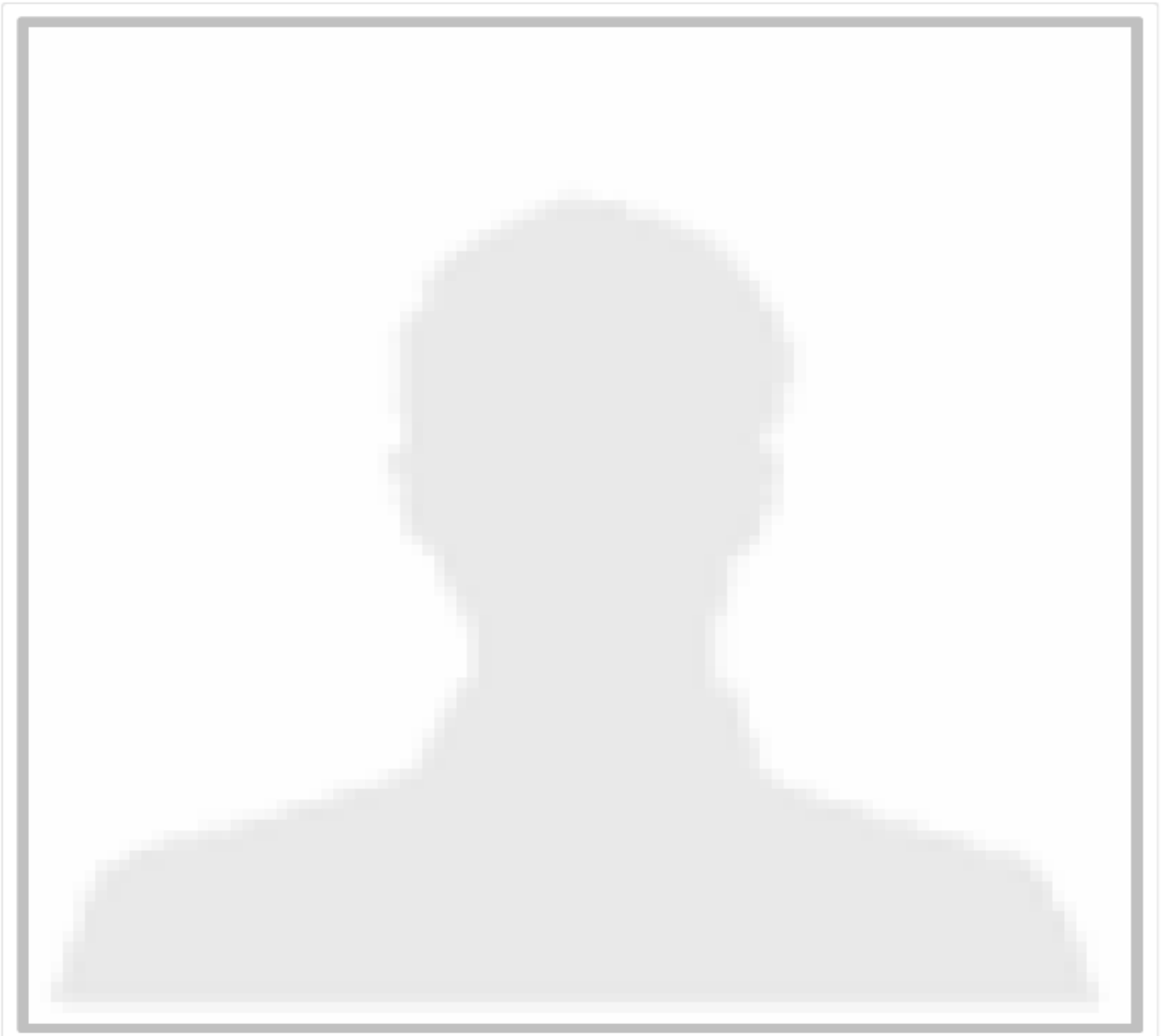
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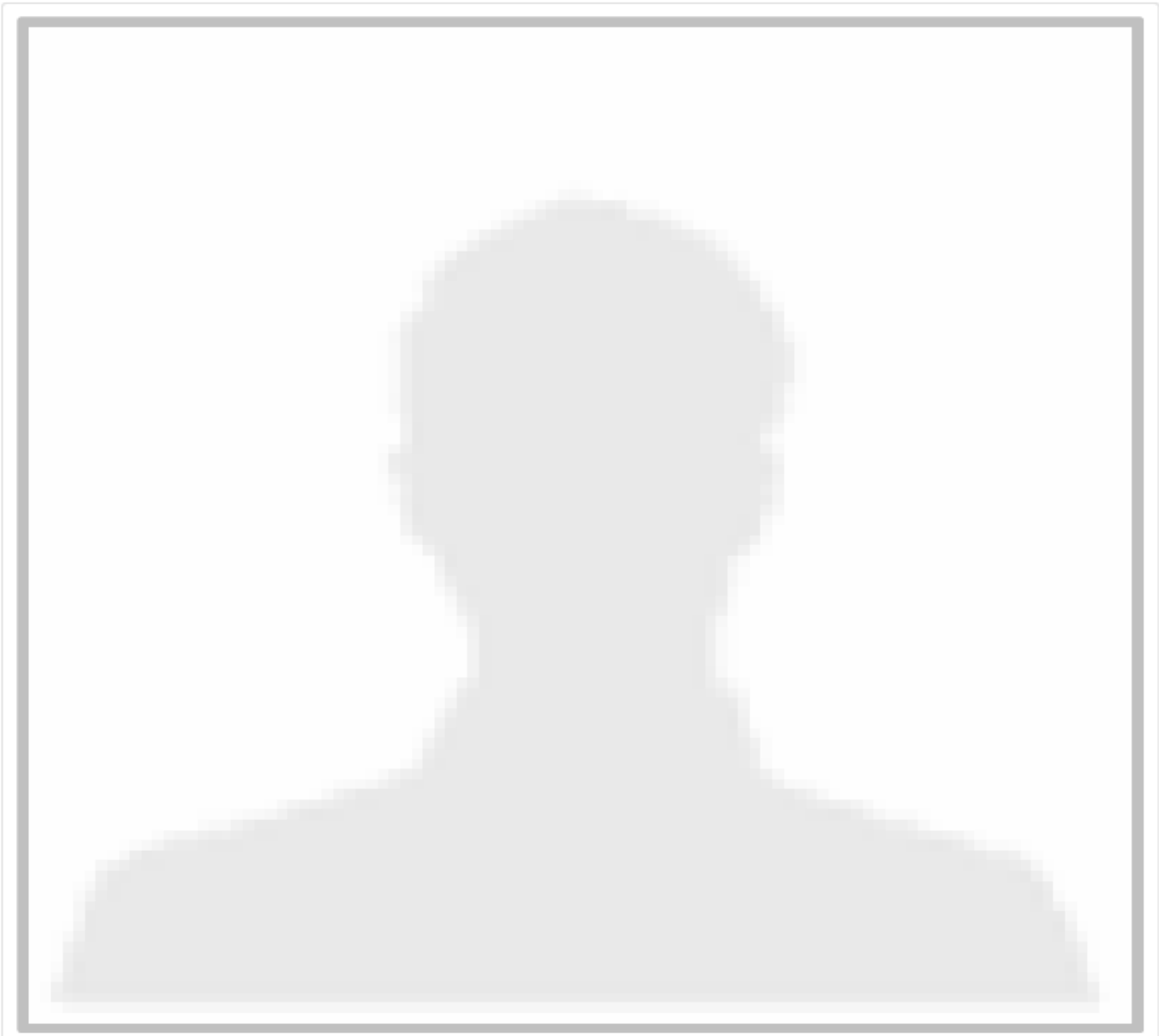
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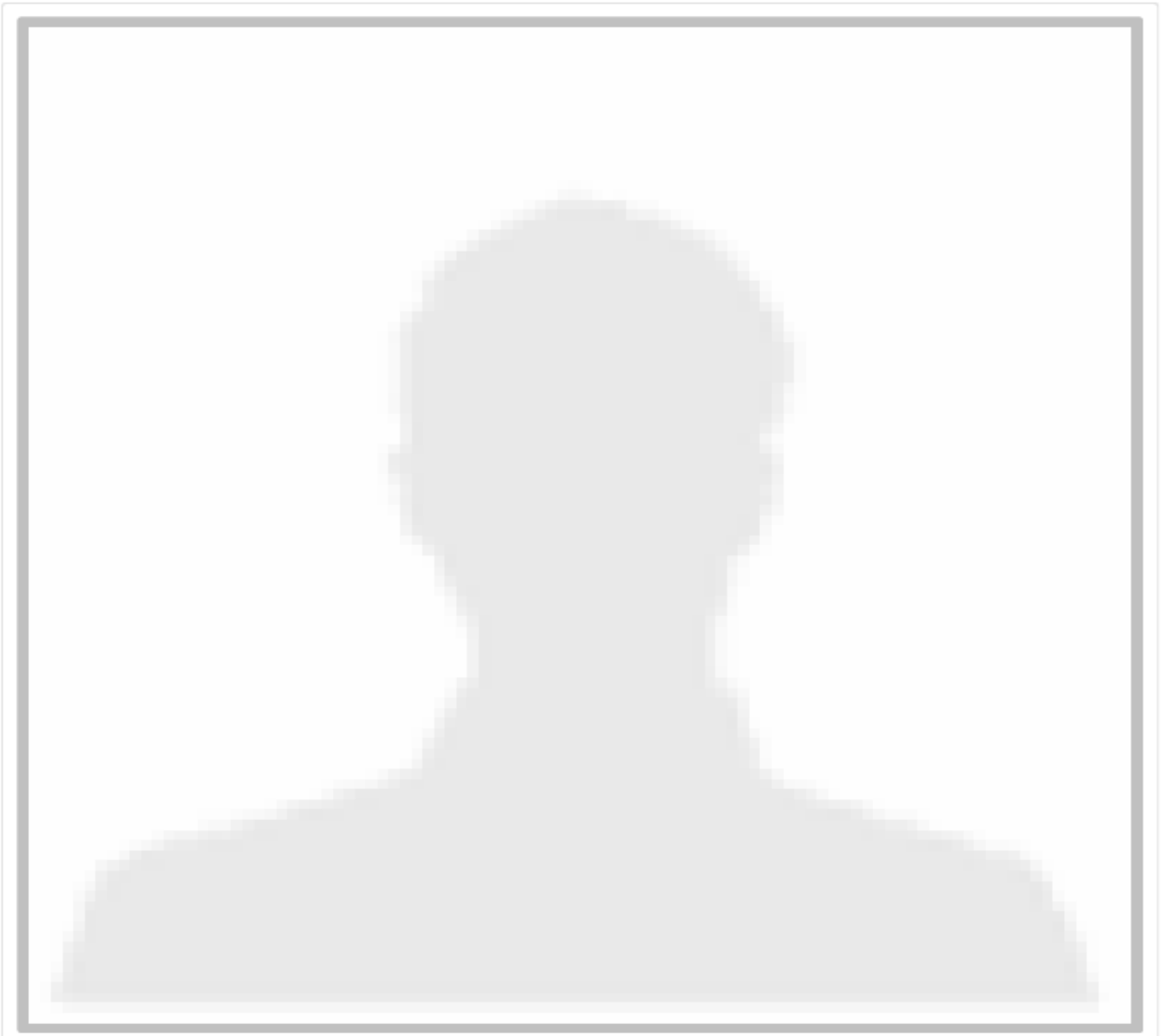
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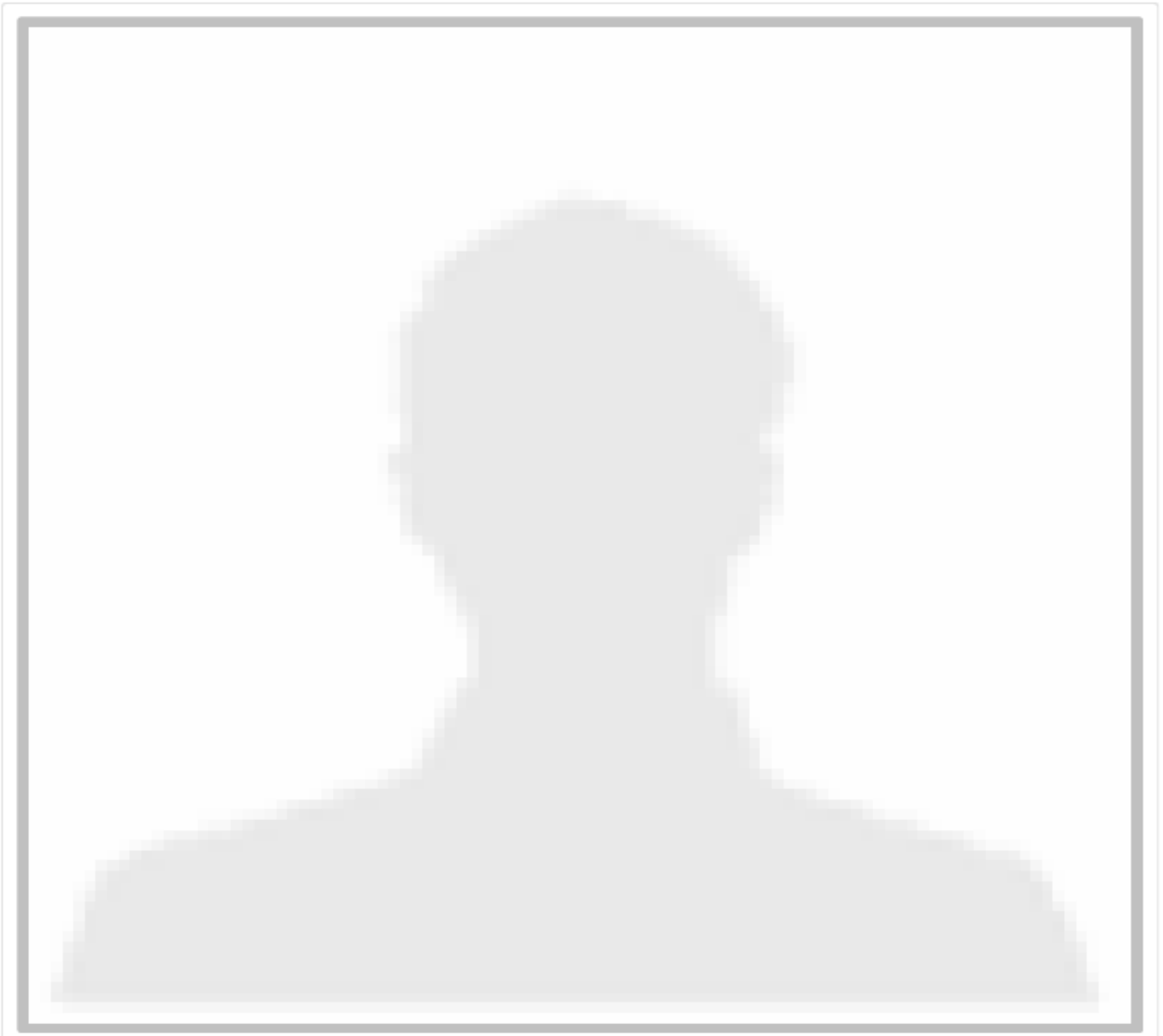
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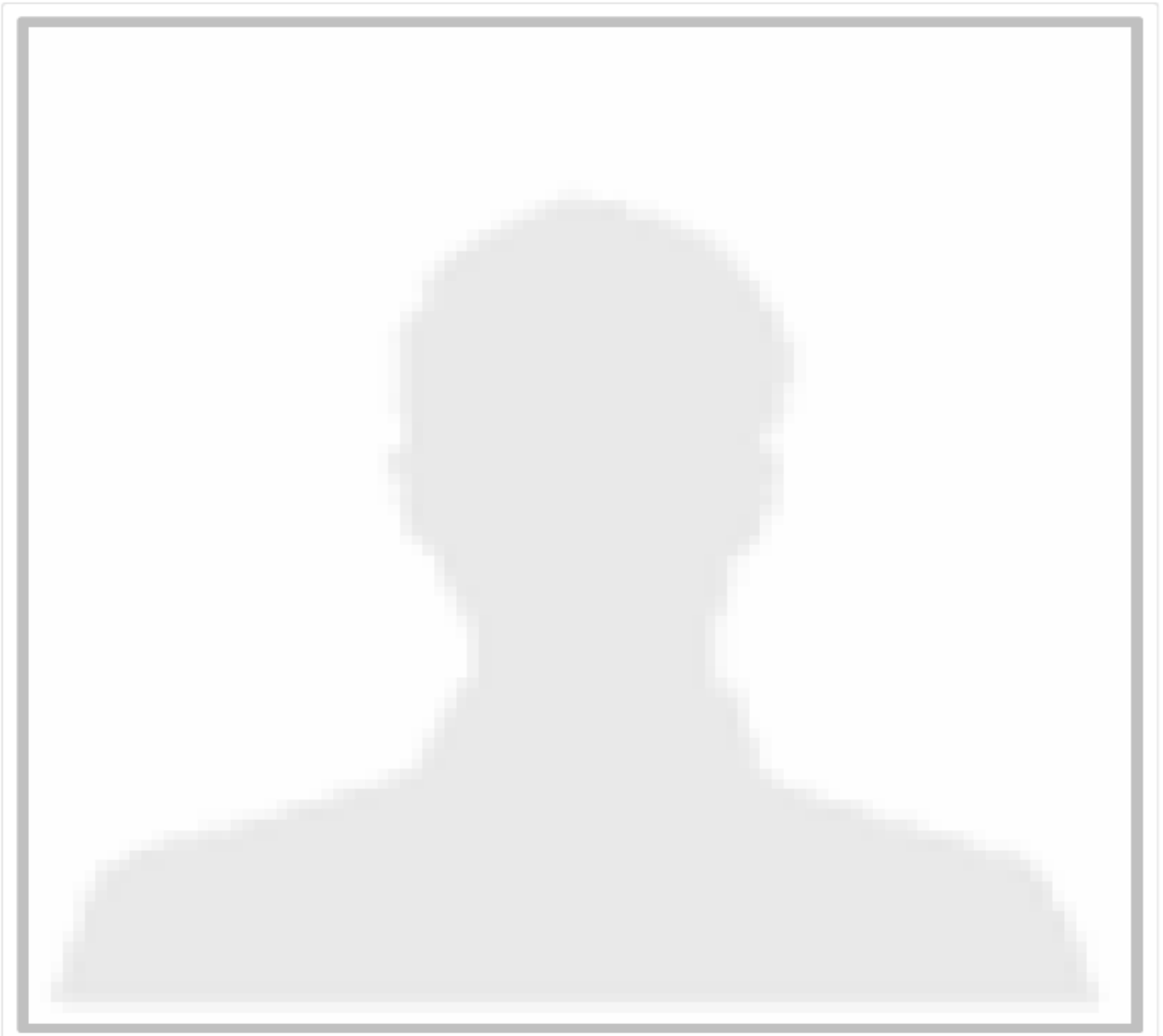
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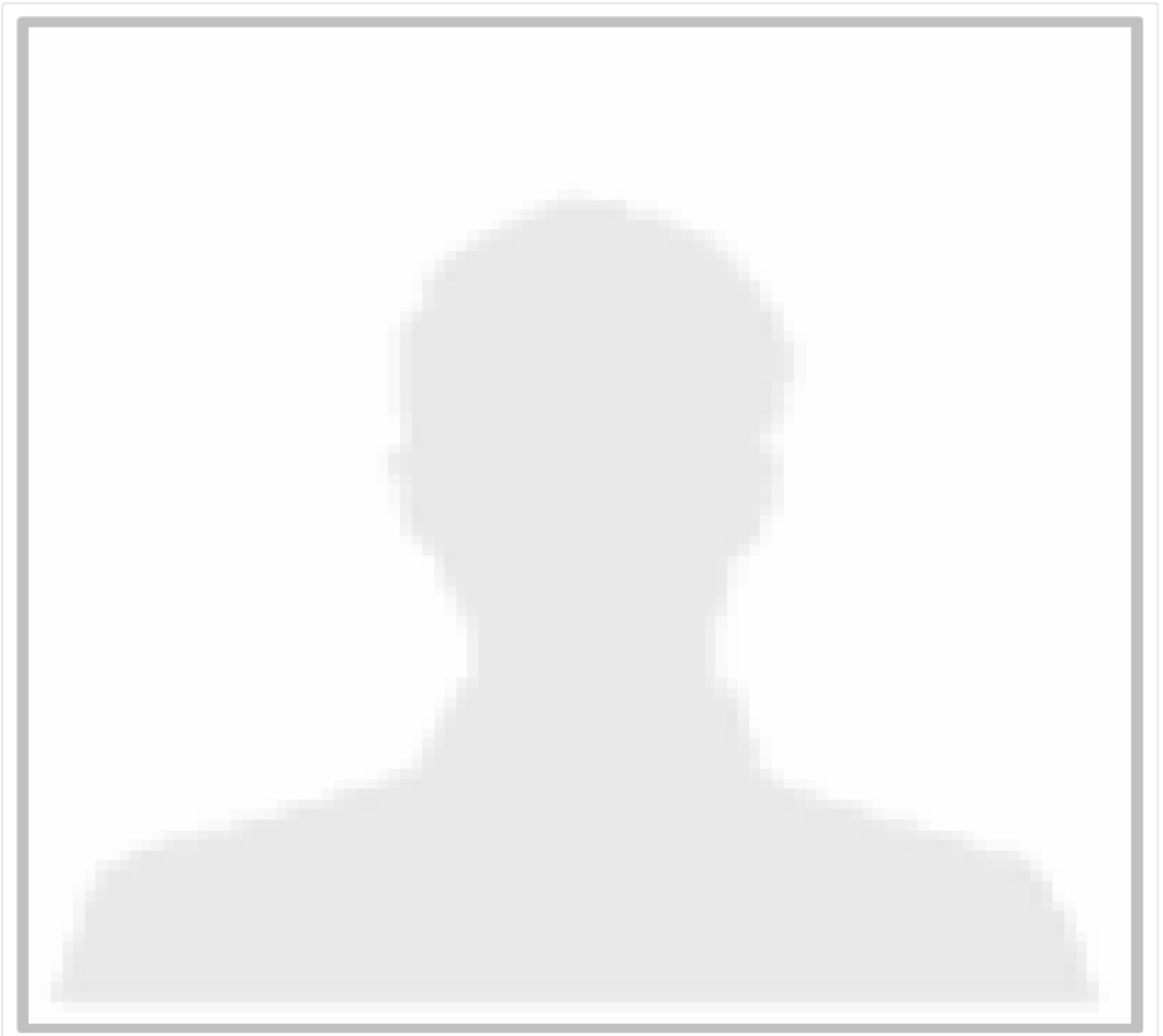
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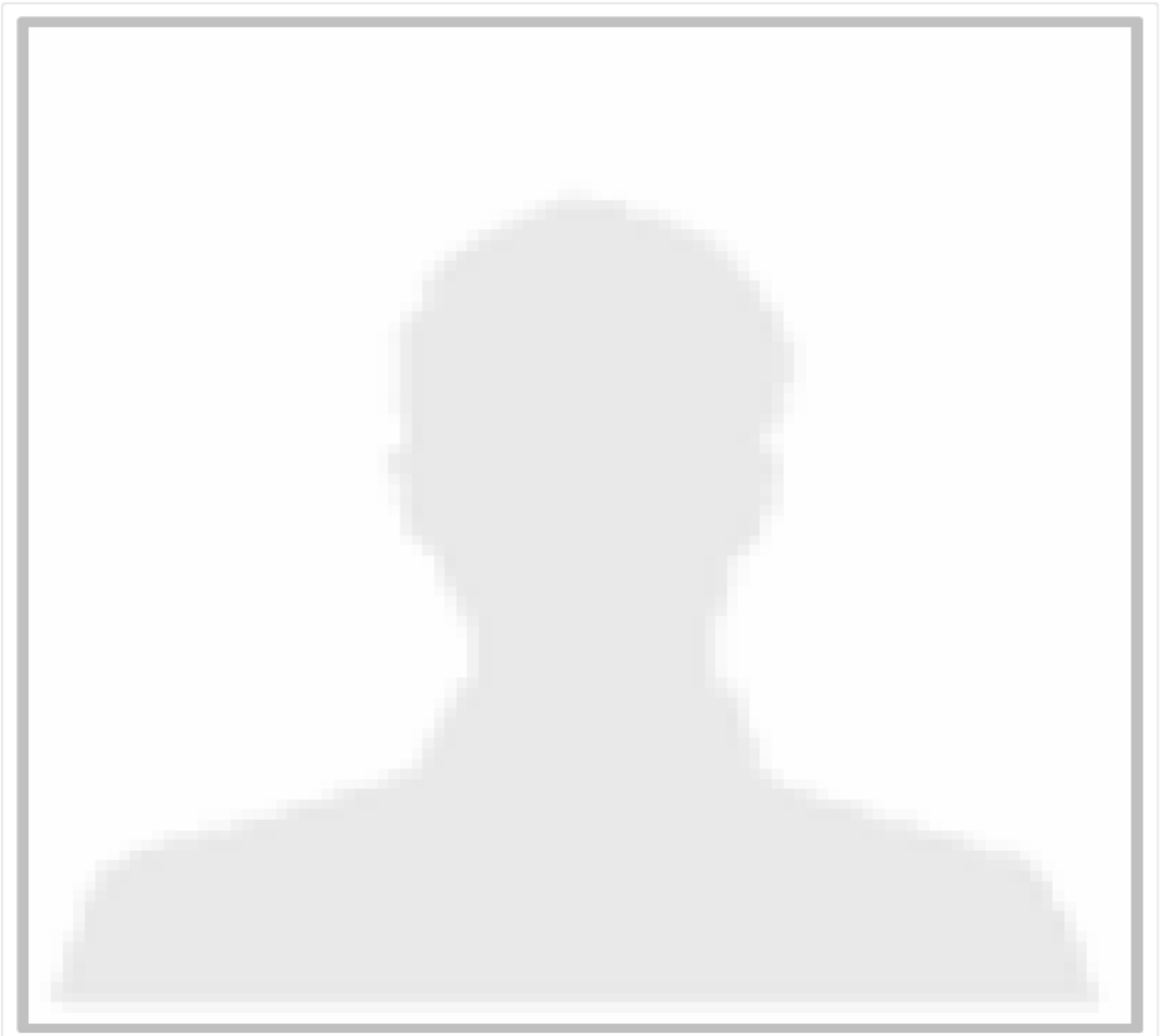
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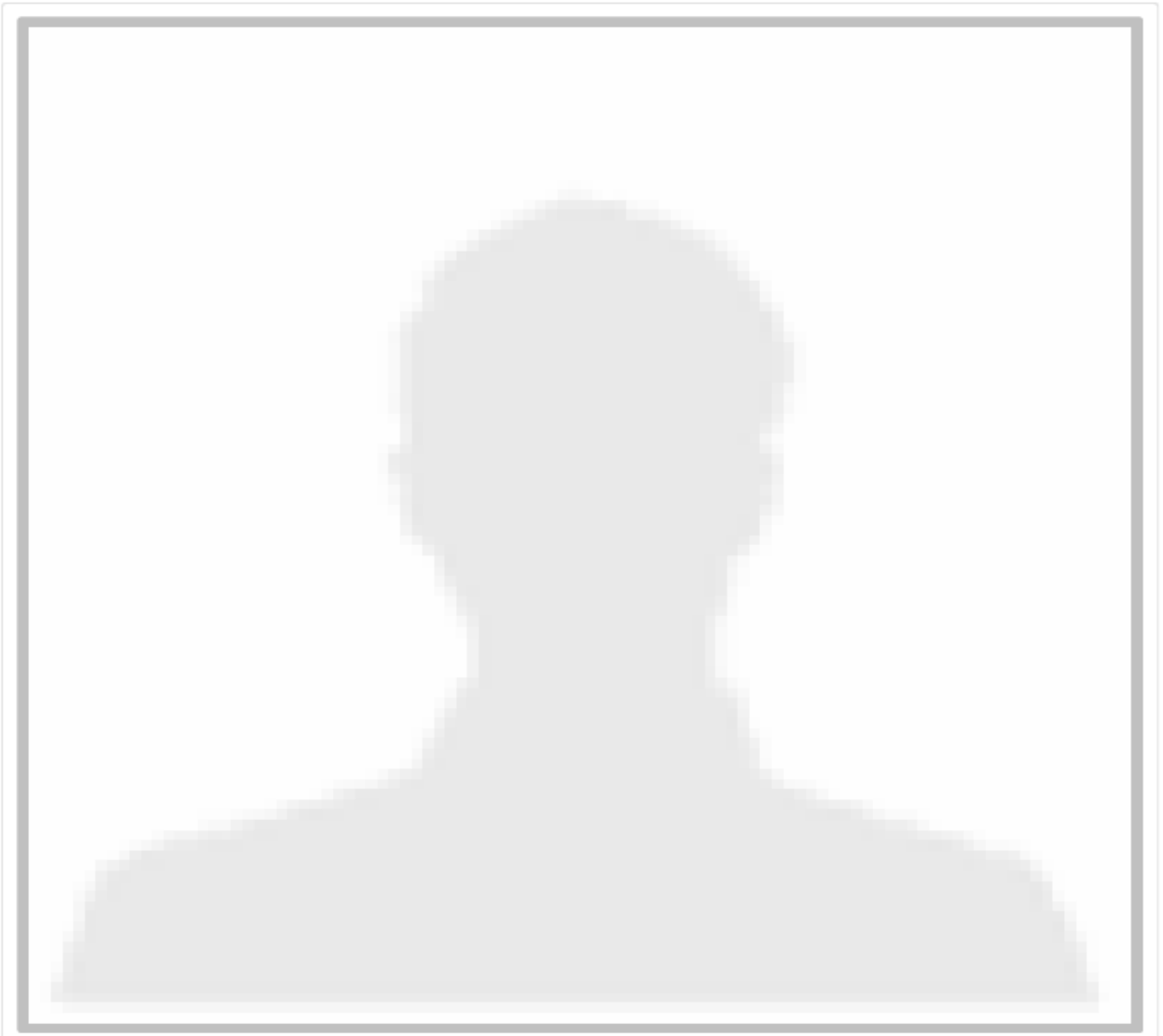
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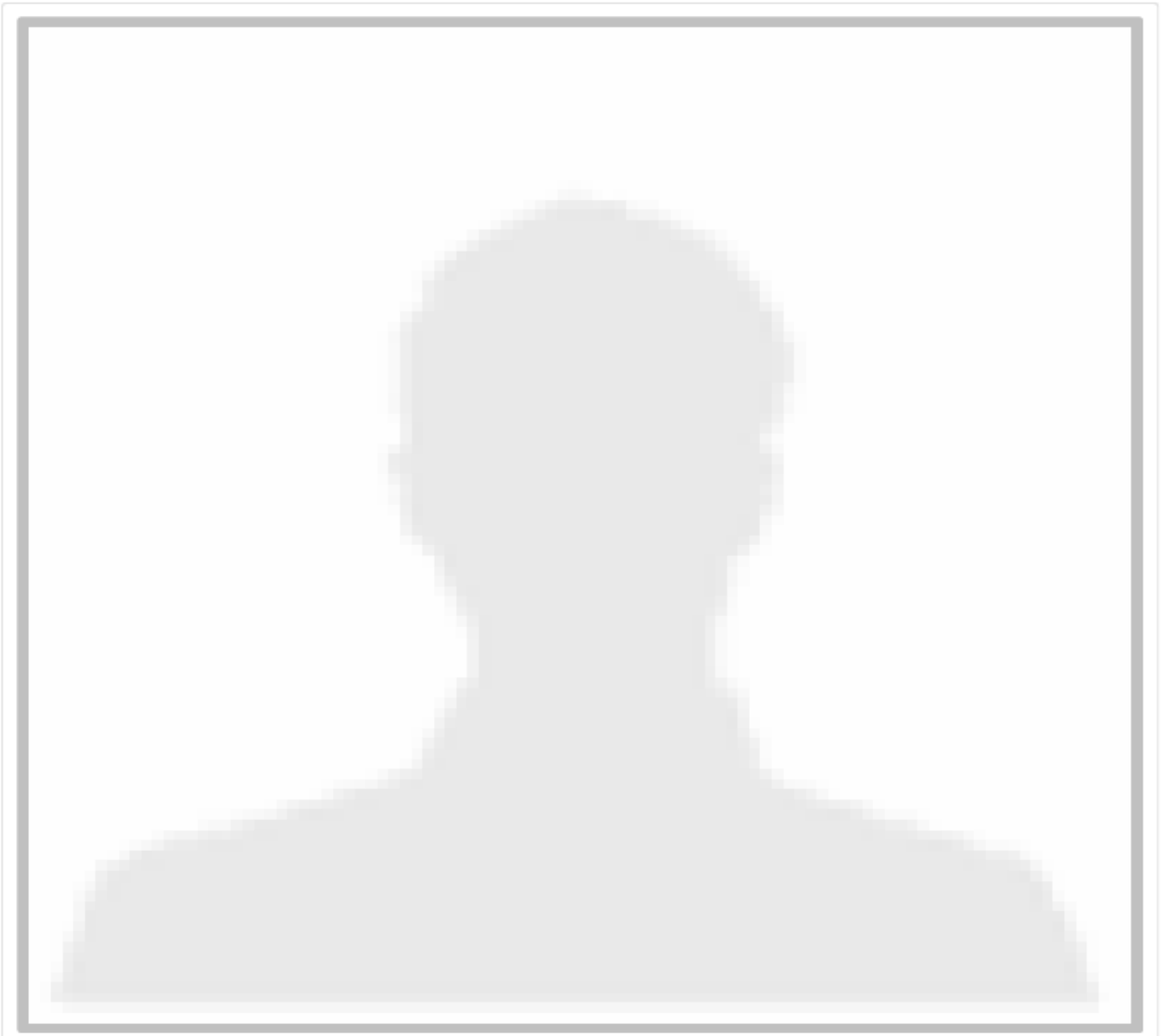
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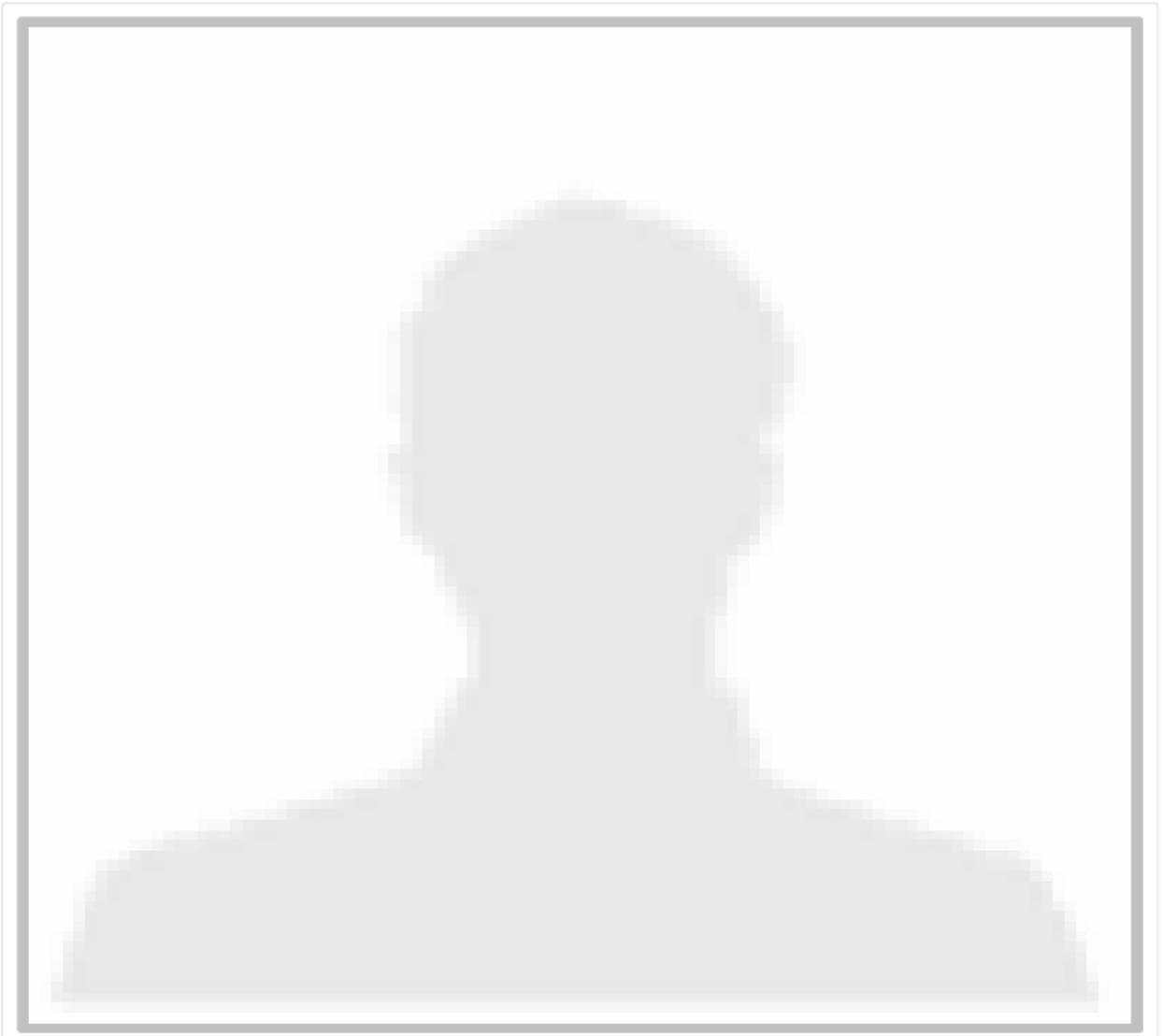
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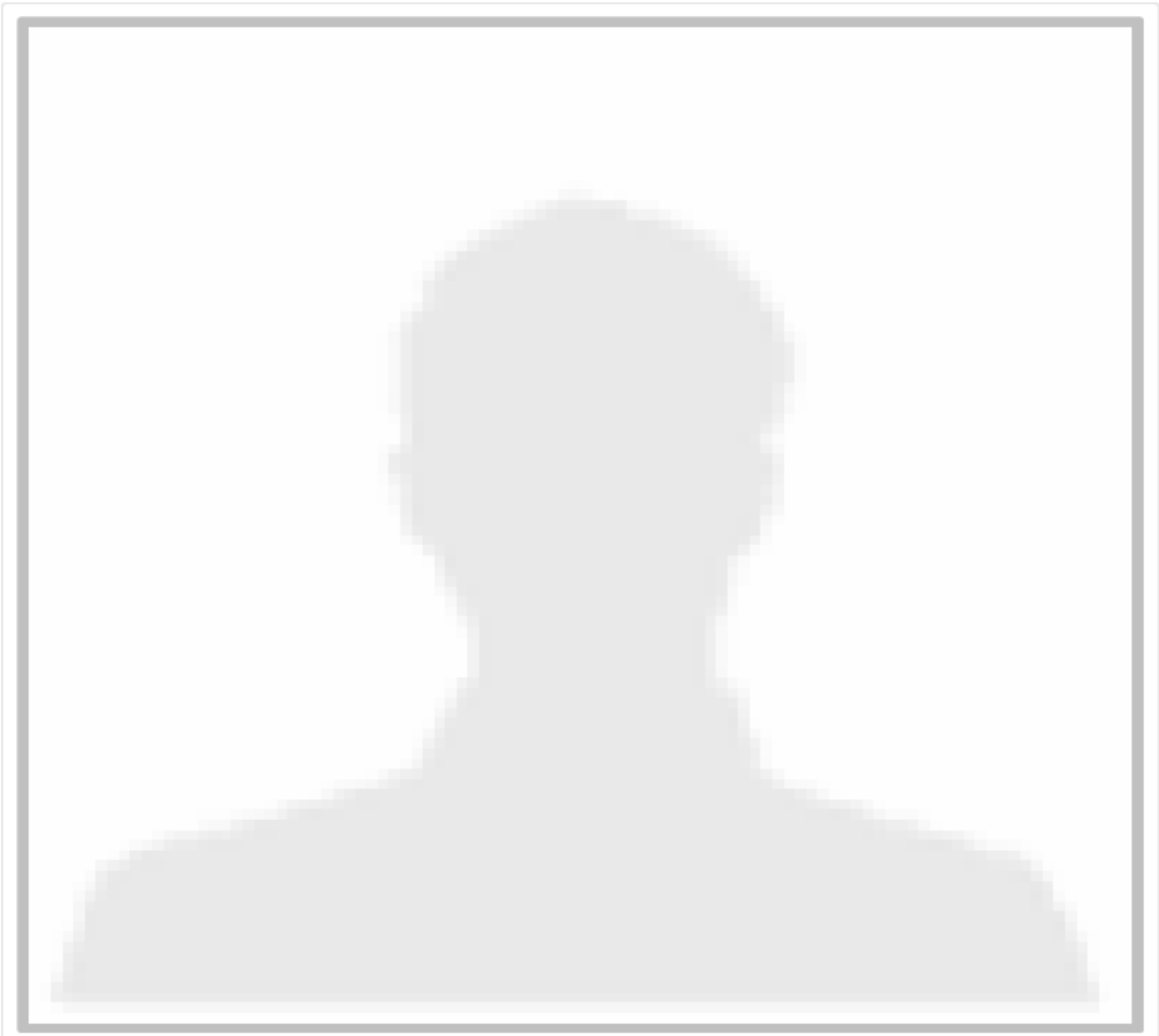
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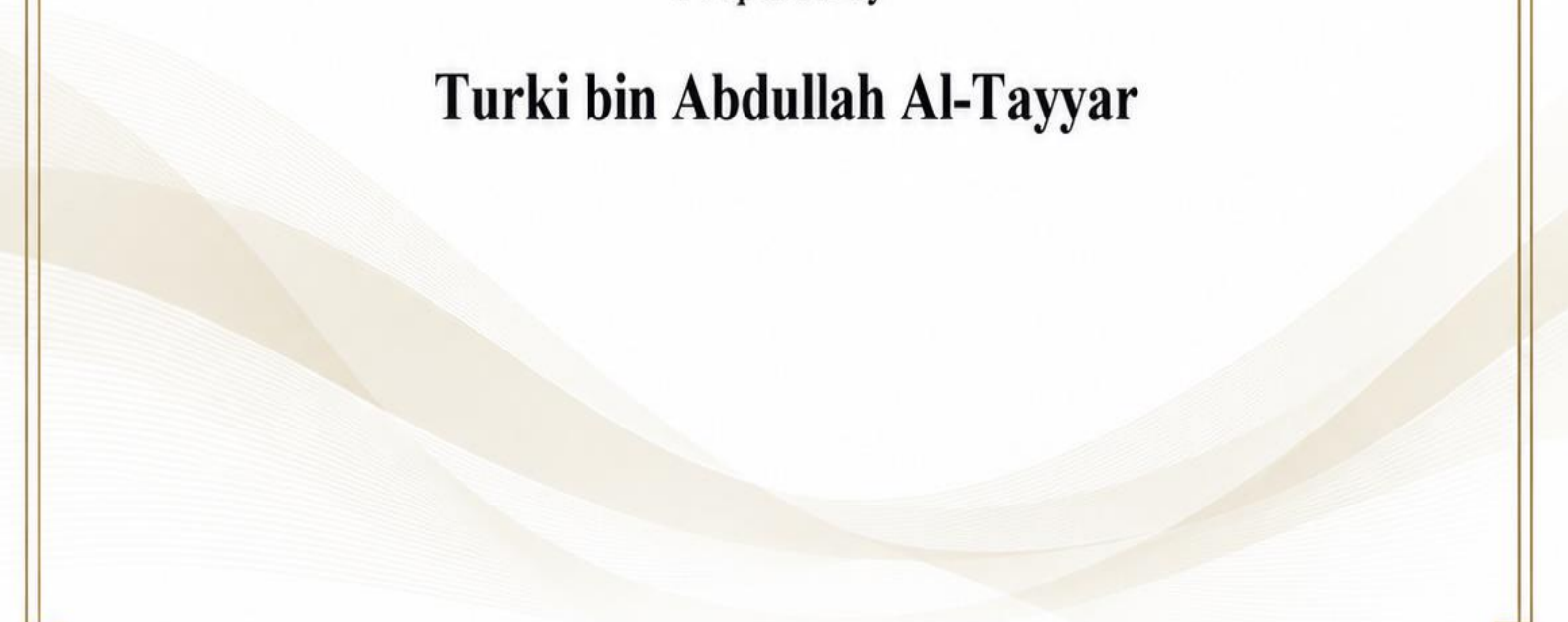
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The Effect of the Decisive Judicial Oath

– A Comparative Study in Islamic Jurisprudence –

Prepared by

Turki bin Abdullah Al-Tayyar



Introduction

I praise Allah and commend Him, and all praise is due to Him. Among the greatest blessings for which He deserves praise is that He has prescribed for us just judgments and forbidden us unjust judgments. Through His Name and Majesty, He deters litigants in adjudication from lying. I then invoke prayers and peace upon the Master of Judges and their Teacher, prayers and peace enduring until the Day of Judgment. Thereafter:

Islamic adjudication operates within an integrated system based on a logical foundation consisting of evidence and oath.

Accordingly, the decisive judicial oath plays a second remedial role and is the final resort following evidence.

This significant role played by the oath in adjudication would have no value or effect unless it were conducted within proper frameworks ensuring its integrity.

Islamic Sharia first established the necessary frameworks governing the substance of the oath and left the procedure flexible and adaptable, to be regulated by people according to what they consider suitable for their times, places, and circumstances. Accordingly, the Saudi regulator has addressed this flexible aspect, regulating it, establishing its rules and features, with the ultimate objective of achieving justice and fairness.

If the judge or the litigants fail to apply the mandatory Sharia provisions or procedural rules governing the administration of the oath, this will adversely affect the oath.

The subject of this research is **(The Effect of the Decisive Judicial Oath)**. I address its issues and discuss its provisions according to the following structure:

- 1- Introduction
- 2- Importance of the Subject
- 3- Reasons for Selecting the Subject
- 4- Research Objectives
- 5- Research Problem
- 6- Previous Studies
- 7- Research Methodology
- 8- Preliminary Requirement entitled: Definition of the Effects of the Decisive Judicial Oath Linguistically, Jurisprudentially, and Legally
- 9- First Section: Judgment in Favor of One of the Litigants, comprising two requirements:
 - A- First Requirement: Judgment due to the administration of the oath or refusal to take it
 - B- Second Requirement: Judgment due to retraction
- 10- Second Section: Termination of the Claim and Extinguishment of the Right
- 11- Third Section: Punishment, comprising two requirements:
 - A- First Requirement: Types of Punishment
 - B- Second Requirement: Conditions for the Obligation of Punishment

Importance of the Subject:

The importance of the subject is evident when considering the pressing judicial need to resort to the decisive judicial oath, particularly with the inability of many litigants to present evidence, or the deficiency or invalidity thereof, which therefore requires...

To identify the consequences arising from administering this decisive judicial oath or refraining from it, in order to reveal the consequences that may arise from compliance with it before the judiciary or from failure to perform it before the judiciary.

Reasons for Selecting the Subject:

There are several reasons for selecting this subject, perhaps including the need of specialists and the judiciary to examine this subject from both the Sharia and statutory perspectives, as well as to comprehend the issues surrounding the judicial oath, which demonstrates the importance of obtaining knowledge of the effects of judicial oaths. Therefore, the idea revolves around limiting the discussion to its most prominent issues and providing a jurisprudential and statutory summary thereof.

Research Objectives:

The research aims to identify the effects of the judicial oath, clarify the Sharia and statutory foundations for each effect, address the most prominent problems arising from the effects of the judicial oath, and reveal judicial applications concerning the issues of the research.

Research Problem:

The problem of the study lies in the absence of a comprehensive identification of the effects of the decisive judicial oath under Saudi regulations, which raises several questions, including:

1- Does the Sharia pleading system's treatment of some effects of the judicial oath, while leaving others, mean that the Sharia pleading system does not recognize those omitted effects, or that such omission is referred to the principles of Islamic Sharia jurisprudence?

2- Has Islamic jurisprudence comprehensively addressed all the effects of the decisive judicial oath?

3- How does the judiciary deal with the effects of the decisive judicial oath?

Previous Studies:

I did not find anyone who devoted an independent study to the effects of the judicial oath. I found mention of the effects in various books or research works. Among those who discussed the effects was Imam Ibn al-Qayyim, may Allah have mercy on him, in his book *Al-Turuq al-Hukmiyyah*, and Sheikh Ibn Farhun, may Allah have mercy on him, in his book *Tabsirat al-Hukkam*. Among the research works: *The Oath in Criminal Evidence* in Islamic Criminal Legislation (An Applied Study), by the researcher: Mansour bin Rashid Al-Majlad.

Research Methodology:

The research adopts the comparative method between Islamic jurisprudence, Saudi regulations, and non-Saudi laws where necessary. It also presents a prominent judicial application in the research, addresses the issues clearly and explicitly, and draws information from its sources.

Preliminary Requirement: Definition of the Effects of the Decisive Judicial Oath Linguistically, Jurisprudentially, and Statutorily

It is useful, as a preliminary matter, to define the terms of the research subject from the linguistic, Sharia, and statutory perspectives.

The term “**effect**” is defined linguistically. It is stated in *Mu‘jam Maqayis al-Lughah* that its root consists of three letters: hamzah, tha’, and ra’, and has three origins: giving precedence to a thing, mentioning a thing, and depicting or marking the remainder of a thing. ⁽¹⁶⁶⁷⁾

In the terminology of Islamic jurists, it is also defined as having three meanings: the first meaning is “the result,” which is what arises from a thing; the second meaning is “a sign,” and the third meaning is “a part.” ⁽¹⁶⁶⁸⁾

As for the statutory definition of “effect,” the commentators on the regulations did not provide a separate definition for it. Rather, it is compounded in the context of the effects of obligations. They stated: “It is what results from obligations by virtue of their particular provisions and the necessity of their performance.” ⁽¹⁶⁶⁹⁾ It is understood from this statutory definition that the effects are the consequences.

As for the linguistic definition of an oath, it is derived from the notions of swearing, division, strength, and direction. ⁽¹⁶⁷⁰⁾

In the terminology of Islamic Sharia jurists, it is: “Affirming what is sworn to by mentioning the name of Allah the Almighty in a form of glorification.” ⁽¹⁶⁷¹⁾

In statutory terminology, it is defined as: “Calling Allah the Almighty to witness the truthfulness of a statement, accompanied by a sense of reverence for the One sworn by, His Majesty, and fear of His punishment and torment.” (1672)

As for the linguistic definition of adjudication, it means “to sever,” and the letters qaf, dad, and ya’ form a sound root indicating the completion of a matter, its perfection, and its execution according to its proper course. Allah the Almighty said: **{So He completed them as seven heavens in two days}**, meaning: He completed their creation.

Adjudication means judgment. Allah, Glorified and Exalted, said regarding those He mentioned: **{So decree whatever you are to decree}**, meaning: decide and rule.

In the terminology of Sharia jurists, adjudication is: severing a dispute, or a binding statement issued by one vested with public authority; whenever he decides, his judgment becomes binding and effective, and whenever he defers or postpones, it remains deferred and postponed.

1667. Dictionary of Law, p. 41.

1668. Adapted from: *Al-Sihah* by Al-Jawhari, edited by Ahmad Attar, Dar Al-Ilm Lil-Malayin, Beirut, Lebanon, 2nd ed., 1399 AH, Vol. 6, pp. 2220–2221.

1669. *Kashshaf Al-Qina’* by Al-Buhuti, Vol. 6, p. 228.

1670. *Treatise on Evidence*, by Prof. Ahmad Nash’at, Vol. 2, p. 69, Dar Al-Fikr Al-Arabi, Cairo, Egypt, 1972 ed.

1671. Surah Fussilat, verse 12.

1672. Surah Taha, verse 72.

In the terminology of commentators on regulations, and in statutory legal terminology, I did not find an independent definition of the term “adjudication”; rather, it was defined in conjunction with another term. They stated regarding “res judicata”: “It is the binding authority of a judgment as to the establishment and validity of what it has adjudicated, such that it may not be overturned.”

“Judicial adjudication and jurisprudence: the body of principles derived from court judgments.”

From the foregoing, it becomes clear that it refers to the judgments and decisions issued by courts and the judiciary.

As for the linguistic definition of “decisive”: “The letters ḥā’, sīn, and mīm constitute a single root meaning to sever one thing from another. Thus, ḥasm means severance, and the sword is called ḥusām.”

In the terminology of Islamic Sharia jurists, they stated: “Ḥasm means severance; ḥasm of a disease means its complete eradication, and ḥasm of a dispute means bringing it to an end.”

In the terminology of commentators on regulations, they stated: “The decisive oath is an oath directed, in a claim, by one litigant to the other for the purpose of resolving the dispute, such that taking the oath or refusing to take it results in the determination of the dispute in favor of the person taking the oath or against the person refusing it.”

Based on the foregoing, the subject of this research, **(Effects of the Decisive Judicial Oath)**, may be defined as a compound term as follows: the Sharia, statutory, and judicial consequences arising from taking the decisive judicial oath or refusing to take it before the court.

Having completed the definition, I proceed to the substance of the research and the treatment of its issues, beginning with the judgment in favor of one of the litigants due to taking the oath or refusing to take it.

First Section: Judgment in Favor of One of the Litigants

The results and effects of the judicial oath arise either from taking and tendering it before the court in the manner prescribed by Sharia and statute, or from refusing and declining to take the judicial oath before the court.

The effects arising from taking the oath or from its rejection by the party requesting it will be detailed in the following requirement.

First Requirement: Judgment Due to Taking the Oath or Refusal by the Party Requesting It

The judge shall rule in favor of the party to the proceedings to whom the judicial oath is directed and who takes it. The judge shall likewise rule in favor of the party to the proceedings to whom the oath ought to have been directed but whose opponent prevented it.

The wording of the judicial oath must either affirm the truth of what the party claims or deny the truth of what the opponent claims, and it shall be taken in the wording approved by the court. Since the oath has a religious character, the person to whom the oath is directed may take it in accordance with what he believes in his religion, provided that its wording and manner of performance do not contravene what is prescribed under Islamic Sharia.

The statutory basis for this is the provision of Article Eleven of the Law of Sharia Procedure.

For judgment to be rendered in favor of the person taking the oath, it is required that the oath be directed to him by the opposing party or by the judge. Accordingly, directing the oath to the litigant shall be permissible where the litigant to whom the oath is directed has failed to provide evidence or has failed to provide sufficient evidence to establish his claim.

Among the types of oaths that the judge may direct is the oath of confirmation and what falls within its scope. However, we shall not discuss its details here, as they fall outside the subject matter of our research.

It is also required, for judgment to be rendered in favor of the person taking the oath, that the oath relate to facts connected with the claim before the court. If the party swears as to a fact arising from another claim and having no connection with the dispute, the judgment shall not be based on that fact.

The judge has discretionary authority to determine the extent to which the subject matter of the oath concerns a material and decisive fact in the claim before him.

It is also required, for judgment to be rendered in favor of the person taking the oath, that the litigant to whom the oath is directed shall take it directly before the judge or with the judge's authorization and in accordance with the legally prescribed wording of the oath. After it is presented to him and in the presence of the opposing party before the court hearing the claim, ⁽¹⁶⁷³⁾ unless there is a valid excuse preventing the person to whom the oath is directed from appearing before the court in order to take it. In such a case, the judge may delegate one of the court's judges, or the court may appoint one of its judges to administer the oath to him at his place of residence. If his place of residence is outside the jurisdiction of the court, the oath shall be directed to the court within whose jurisdiction his place of residence falls. ⁽¹⁶⁷⁴⁾

It is also required, for judgment to be rendered in favor of the person taking the oath, that he attend before the court to take the oath after being summoned to appear before it, and that he take the oath immediately. The oath shall be

administered in the presence of the party requesting it unless that party has waived his right to attend its administration. ⁽¹⁶⁷⁵⁾

The basis for this issue is what was narrated by Wa'il ibn Hujr, who said: I was with the Messenger of Allah, peace and blessings be upon him, when two men who were in dispute came to him over land. One of them said: "This man seized my land during the pre-Islamic period." He was Imru' al-Qays ibn 'Abis al-Kindi, and his opponent was Rabi'ah ibn 'Abdan. He said: "Your evidence." He replied: "I have no evidence." He said: "Then his oath." He replied: "Then he will take it." The Messenger of Allah, peace and blessings be upon him, said: "You have no right except that." When the man stood up to swear, the Messenger of Allah, peace and blessings be upon him, said: "Whoever wrongfully takes the property of a Muslim through his oath will meet Allah while He is angry with him."⁽¹⁶⁷⁶⁾

Among the judicial applications in the Kingdom of Saudi Arabia concerning this issue is a judgment issued by the General Court in Najran in favor of a party who took the decisive oath, in a claim in which the claimant alleged that she had a debt against the defendant in the amount of eighty-three thousand nine hundred and eighty-three riyals and seventy halalas. As the claimant failed to produce evidence establishing her claim and requested that the defendant be directed to take the oath denying the claim, the defendant attended and took the oath denying the claimant's entitlement. Accordingly, the court ruled dismissing the claimant's claim.

1673. *Mu'jam Maqayis al-Lughah*, Vol. 5, p. 99.

1674. *Al-Kulliyat: A Dictionary of Terms and Linguistic Distinctions*, by Abu al-Baqā' Ayyub ibn Musa al-Husayni al-Qurashi al-Kafawi, edited by Dr. Adnan Darwish and Muhammad al-Masri, Al-Resalah Foundation, Beirut, Lebanon, 2nd ed., 1432 AH / 2011 AD, p. 593.

1675. Previously cited: *Dictionary of Law*, p. 59; *Civil Law*.

1676. Previously cited source, p. 127; *Civil Law*.

The Claimant's Allegation and the Defendant's Oath

He denied taking an amount of SAR 32,000 and admitted taking SAR 4,000 that had been transferred. The Claimant had no evidence that the Defendant had taken SAR 32,000 from her bag. The judge therefore informed the Claimant that she was entitled to require the Defendant to take an oath denying her claim. She requested that he take the oath. When the oath was presented to the Defendant, he agreed and then swore, saying:

“By Allah, there is no deity except Him, I did not take from the Claimant or from her bag an amount of SAR 32,000, neither less nor more.”

Upon taking the oath, the judge dismissed the Claimant's claim for SAR 32,000.

Second Requirement: Judgment Based on Refusal to Take the Oath

The judge shall rule against the party who refuses to take the oath, in which case the judgment shall be in favour of the refusing party's opponent. Refusal to take the oath may arise in several circumstances, and the judge may issue a judgment where any of the following circumstances exists: ⁽¹⁶⁷⁷⁾

First case: The party to whom the oath has been directed is summoned by the judge to appear before the court but fails to appear at the specified time.

Second case: The party to whom the oath has been directed disputes the permissibility of directing the oath to him, and the judge is not convinced by his objection after the judge has warned the objecting party three times.

Third case: The party to whom the oath has been directed disputes the relevance of the oath to the claim, and the judge is not convinced by his objection after the judge has warned the objecting party three times.

Fourth case: The party to whom the oath has been directed refuses to take it, even where the oath has been referred back to him, after he has been warned three times by the judge. ⁽¹⁶⁷⁸⁾

The legal basis for these four cases of refusal to take the oath is Article 113 of the Law of Civil Procedure. ⁽¹⁶⁷⁹⁾ Accordingly, the judge may rule against the party refusing to take the oath and in favour of that party's opponent.

It should be noted that where the presiding judge violates the procedures and rules required under the provisions of Islamic Sharia and Saudi laws when directing the oath to one of the litigants, the Court of Appeal may set aside the judgment, even where the first-instance judgment was based on the refusal of one of the litigants to take the oath. Examples include:

The presiding judge rules on the basis of refusal against the party who was directed to take the oath without warning him three times;

The party refusing to take the oath refers the oath back to his opponent;

The party to whom the oath was directed was not summoned to appear before the court, in the judge's view;

The party to whom the oath was directed refuses to take it because the oath does not properly lie against him or concerns a matter unrelated to the claim. ⁽¹⁶⁸⁰⁾

Chapter Two: Interruption of the Claim and Extinguishment of the Right

1677. Previous reference: Ibn Faris, Vol. 2, p. 57.

1678. Dictionary of Jurists' Terminology, Al-Qal'aji, p. 179.

1679. Previous reference: Legal Dictionary, p. 158.

1680. Adapted from: Rules of Evidence in Civil and Commercial Matters, Dr. Tawfiq Hams, p. 303; revised and supplemented with developments in judicial decisions and legislation by Issam Tawfiq, Al-Halabi Legal Publications, Beirut, 2003. Al-Mubassat in the Explanation of the Law of Sharia Procedure in the Kingdom of Saudi Arabia, Abdul Fattah Suleiman, pp. 197–199, 1430 AH.

Islamic jurists agree that when the Defendant takes the oath, the consequence is the termination of the dispute between the parties, the dismissal of the claim, and the cessation of the proceedings and the claim for relief immediately. ⁽¹⁶⁸¹⁾

Islamic jurists differ, however, on the following issue: Does the taking of the oath by the Defendant terminate the proceedings absolutely or temporarily?

Answer:

First view: The proceedings are terminated temporarily until the Claimant produces evidence establishing the validity of his claim. The Defendant is therefore not discharged from the underlying obligation, which remains outstanding until the Claimant is able to establish his claim by another means of proof. This is the view of the majority of the Hanafis, ⁽¹⁶⁸²⁾ Shafi'is, ⁽¹⁶⁸³⁾ and Hanbalis. ⁽¹⁶⁸⁴⁾

Second view: The proceedings are terminated permanently and absolutely. The Claimant may not produce evidence after a judicial judgment based on the oath, except where there is an excuse, such as having forgotten the testimony or being unaware of it and subsequently becoming aware of it. In such circumstances, the evidence may be accepted, provided that he takes an oath confirming his excuse. This is the view of the Malikis. ⁽¹⁶⁸⁵⁾

As for the Saudi legal system, represented by the **Law of Sharia Procedure**, ⁽¹⁶⁸⁶⁾ I have not found therein any provision addressing the issue of the termination of the claim and proceedings and the extinguishment of the right upon taking the oath. However, laws in other countries have addressed this issue, and we shall review herein some of the provisions contained in those

laws, as well as the views expressed by commentators on the relevant laws, as follows:

(1681) . The system stipulates in Article 111 of the Regulations, which is the eleventh article following the hundredth article:

The party against whom the oath is directed must be informed of the precise wording of the oath that he is required to take, and the court shall determine the legally required form of the oath. The oath shall be administered by repeating the prescribed wording, even where the person is unable to write.

Regulations:

Article 111/1: It is not permissible for the litigant to direct the oath to his opponent concerning facts unrelated to the claim pending before the court.

Article 111/2: The oath directed by the litigant shall not be administered without the permission of the circuit.

Article 111/3: The circuit shall refuse to administer the oath if it appears that the oath is irrelevant to the claim.

Article 111/4: If the circuit determines the proper form of the oath, it shall administer the oath to the litigant and his opponent—after warning him of the consequences of a false oath—and shall record the wording of the oath in the case record and the transcript of the judgment.

Article 111/5: The circuit may direct the oath to the party against whom the oath is sought and may include in its judgment whatever it deems appropriate in this regard, even if the opposing party does not request it.

(1682) . By reference to: Previous reference, p. 197–198.

(1683) . Some commentators on the regulations mention examples of cases in which the oath may be administered, including: an individual claims before the judge a right in the estate of a deceased person and provides evidence supporting his claim. The judge may not administer the oath to the claimant merely because the deceased's opponent requested it after the deceased's death, unless the claimant is required to take an oath concerning the deceased's estate and its disposition.

Previous reference, p. 198.

(1684) . Some commentators on the regulations mention cases in which the oath may be administered, such as: **the oath of circumstantial evidence**, whereby the judge requires the claimant of a financial entitlement to establish the evidence supporting his claim, and the judge then directs him to take an oath that he has not received the money and has not been released from liability by the opposing party or disposed of it in any manner.

Likewise, the **oath of completion of evidence** is administered, whereby the judge requires the purchaser to take an oath confirming that he intends to return the defective subject matter of the sale, where the judge directs him to do so because he has not accepted the defect or otherwise disposed of the property.

Previous reference, pp. 198–199.

(1685) . By reference to: Previous reference, p. 199.

(1686) . By reference to: Previous reference, p. 199.

The Lebanese and Egyptian laws provide that: **“A party may not prove the falsity of the oath after the party to whom the oath was directed or referred has taken it.” (1687)

Accordingly, the taking of the oath by the claimant against whom it is directed absolutely terminates the dispute, and it is not possible to reintroduce the claim, whether by way of a new action or by challenging the judgment rendered on the basis of the oath, (1688) except that the Lebanese and Egyptian laws make an exception to this rule where the falsity of the oath is established by a criminal judgment. In such a case, the party who has suffered damage may seek compensation or challenge the judgment rendered against him through the prescribed procedures, provided that the statutory time limits for bringing the challenge are not exceeded.

The person against whom judgment was rendered due to the oath and who has suffered damage must await the issuance of the criminal judgment in the criminal proceedings instituted by the Public Prosecution concerning the false oath. (1689)

This raises the following question: If a person who was prepared to take the oath appeared and died before taking it, would this, as previously mentioned by reference to the Lebanese and Egyptian laws, entail the termination of the dispute upon the taking of the oath without resorting once again to litigating the substance of the oath?

Answer: There is no value in accepting the oath without it being followed by the taking of the oath in fact, and the matter here reverts to what it was before the oath was administered. (1690)

Third: Criminal Liability

Criminal liability is limited to the consequences of the decisive oath upon the person who took the oath and proved its falsity, and Islamic Sharia and the laws agree on criminalizing and penalizing the commission of such an act. Allah the Almighty said concerning the hypocrites: “Have you not seen those who took as allies a people with whom Allah has become angry? They are neither of you nor of them, and they swear to falsehood while they know.”⁽¹⁶⁹¹⁾

No provision was found in the laws of the Kingdom of Saudi Arabia expressly providing for its criminalization. However, legal provisions outside the Kingdom of Saudi Arabia have been found that criminalize and penalize it. For example, Article 221 of the Jordanian Penal Code provides: ⁽¹⁶⁹²⁾ “Whoever takes an oath in the capacity of a claimant or defendant and the oath is false in a legal action shall be punished by imprisonment for a period of six months to three years and a fine of five dinars to fifty dinars.”

(1687) . The Shariah Pleadings Law provides, in Article 112, as follows:

“The oath and the authorization to administer the oath may only take place before the judge hearing the case in the court session, and neither shall have any legal effect outside the court, unless there is a provision to the contrary.”

(1688) . Ibid., p. 200.

(1689) . Ibid., pp. 201–202.

(1690) . Sahih Muslim, Vol./p. 124, Chapter: The Warning to One Who Usurps the Right of a Muslim Through a False Oath by the Fire, Book of Faith, edited by Muhammad Fu’ad Abdul-Baqi, Dar Ihya’ al-Turath al-Arabi, Beirut.

(1691) . For details of the judgment, see the Judicial Rulings Compilation, issued by the General Administration for Codification and Publication of Judgments at the Ministry of Justice, Vol. 3, pp. 281–285, issued in 1429 AH / 2008 AD, Deed No. 135/4 dated 29/10/1427 AH, and affirmed by the Court of Cassation pursuant to Decision No. 99/1/1 dated 19/1/1428 AH.

(1692) . Ibid., pp. 200–201.

After it has been established by the Sharia evidence and the legal text that the performance of a decisive judicial oath falsely constitutes a violation and a criminal offence, the types and conditions of this penalty are addressed in the following claims.

First Claim: Types of Punishment

Islamic Sharia jurists generally discuss the ruling on swearing falsely by Allah, the evidence prohibiting it, and its expiation when addressing this offence. I have not found any Sharia text prescribing a specific worldly punishment for this offence. ⁽¹⁶⁹³⁾ This means that the punishment for this offence is a discretionary punishment (Ta'zir), to be determined by the judge according to his assessment and the discretionary authority granted to him.

This punishment is not limited to specific types; therefore, the judge may impose the punishment that he deems appropriate for this offence.

However, the judge must adhere to a fundamental criterion when imposing punishment for this offence, namely, taking into consideration the circumstances of the offence and the circumstances of the offender. He shall consider mitigating circumstances or reduce the aggravated punishment due to the harsh circumstances that accompanied the offence. The personality of the offender and the gravity of his offence are relevant in determining the appropriate punishment for this offence. ⁽¹⁶⁹⁴⁾

The judge's discretionary authority in imposing punishment is subject to the principles of Sharia. Therefore, jurists have specified the punishments of Ta'zir from which the judge may choose, beginning with admonition and ending with

death, according to the gravity of the offence and the dangerousness of the offender. (1695)

It should be noted here that Islamic Sharia jurists have differed regarding the permissibility of imposing Ta'zir by taking money, with two opinions.

Text of the Article and Its Implementing Regulations:

(1693) . Whoever is summoned to appear before the court to take an oath shall be required to appear.

If the person to whom the oath has been directed appears in person and raises no objection either to the admissibility of the oath or to its relevance to the claim, he shall take the oath immediately or refer it back to his opponent; otherwise, he shall be deemed to have refused to take the oath. If he refuses without raising an objection, or fails to appear without an excuse, he shall likewise be deemed to have refused to take the oath.

If the person to whom the oath has been directed appears and objects to its admissibility or to its relevance to the claim, he shall be required to state the grounds for such objection. If the court is not convinced by the objection, he shall be required to take the oath; otherwise, he shall be deemed to have refused to take the oath.

Implementing Regulations

11/1: If the opposing party appears and objects to the admissibility of the oath, such as where the debt is intended to establish usury or gambling, or objects to its relevance to the claim, he shall be required to state the grounds for such objection. If the judicial panel is not convinced by this, it shall warn him three times to take the oath; if he fails to do so, he shall be deemed to have refused to take the oath.

11/2: A person who refuses to take the oath shall not be deemed to have refused it until he has been warned three times, and this shall be recorded in the court record.

11/3: The judicial panel may, where necessary, grant an adjournment to the person upon whom the oath has been directed.

(1694) . **Source:** Previous reference, p. 100–101.

(1695) . **Source:** Adapted from *Al-Mabsut* by Imam al-Sarakhsi, Vol. 10, p. 411, Al-Sa'adah Press, First Edition; *Bidayat al-Mujtahid wa Nihayat al-Muqtasid* by Ibn Rushd, Vol. 2, p. 454, Al-Istiqamah Press, Egypt; *Mughni al-Muhtaj Sharh al-Minhaj* by Al-Shirbini, Vol. 4, p. 478, Al-Babi Al-Halabi Press, Egypt; *Al-Turuq al-Hukmiyyah* by Ibn Al-Qayyim, p. 112.

First Opinion: It is permissible to impose financial compensation in specific circumstances and in certain crimes, provided that there is a valid basis for doing so. This is the opinion of some of the Hanafi jurists and the⁽¹⁶⁹⁶⁾ Maliki jurists.⁽¹⁶⁹⁷⁾

They based their opinion on a collection of evidence, including the Hadith narrated from the Messenger of Allah (peace and blessings be upon him) regarding the prohibition of zakat evasion, wherein he said: **“Whoever gives it voluntarily will be rewarded, and whoever withholds it, I shall take it, together with half of his wealth, as one of the obligations of our Lord, Blessed and Exalted.”*⁽¹⁶⁹⁸⁾

Second Opinion: Financial compensation is not permissible. This is the view of the majority of the Hanafi jurists⁽¹⁶⁹⁹⁾, and it is also the view of the Shafi‘i and⁽¹⁷⁰⁰⁾ Hanbali jurists.⁽¹⁷⁰¹⁾

They based their opinion on the absence of any provision permitting financial compensation in Islamic Sharia.⁽¹⁷⁰²⁾

The evidence for this is answered by the evidence cited by the first opinion.

The stronger view is the first opinion, due to the strength and clarity of its evidence and the weakness of the evidence supporting the second opinion and the response given to it.

As for the Saudi legal system, I did not find any specific provision criminalizing the act of taking an oath before a judge falsely. However, in view of the Saudi laws that establish legal provisions criminalizing this act and impose penalties for it, the Jordanian Penal Code provides in Article 221/1 for the following: *“Whoever, in the capacity of a plaintiff, defendant, or witness, takes a false oath shall be punished by imprisonment for a period of six months to three years and by a fine ranging from five dinars to fifty dinars.”*

The UAE Federal ⁽¹⁷⁰³⁾Penal Code provides in Article 260 for the following: “A person who takes a false oath shall be punished by imprisonment for a period not exceeding two years or by a fine not exceeding ten thousand dirhams, in addition to the penalty prescribed in the Civil Code for a false oath.”

The Egyptian ⁽¹⁷⁰⁴⁾Penal Code provides in Article 301 for the following: “Whoever takes a false oath or gives a false oath in civil matters shall be punished by imprisonment, and it is permissible to impose a fine not exceeding one hundred Egyptian pounds.”

(1696) . Previous reference: Al-Sarakhsi, Vol. 6, p. 119.

(1697) . Previous reference: Al-Shirbini, Vol. 4, p. 478.

(1698) . Previous reference: Ibn Al-Qayyim, p. 112.

(1699) . Previous reference: Ibn Rushd, Vol. 2, p. 454.

(1700) . Issued by Royal Decree No. M/1 dated 22/1/1435 AH.

(1701) . Article 117 of the Egyptian Law of Evidence promulgated by Law No. 25 of 1968, and Article 248 of the Lebanese Code of Civil Procedure promulgated by Legislative Decree No. 90 dated 16/9/1983.

(1702) . The text of Article 248: “A party may not prove the falsity of the oath after the party to whom the oath was directed or referred back has taken it. However, if the falsity of the oath is established by a criminal judgment, the party who has suffered damage as a result thereof may claim compensation, without prejudice to whatever right he may have to challenge the judgment rendered against him by the means of challenge (the court), and the like, Article 117 of the Egyptian Law of Evidence.”

(1703) . Adapted from: *Rules of Evidence in Civil and Commercial Matters*, by Dr. Tawfiq Hassan, pp. 315–316.

(1704) . Adapted from: *Al-Wasit in the Saudi Sharia Pleadings System*, by Dr. Muhammad Burak Al-Fawzan, Vol. 2, p. 84, Library of Law and Economics, Riyadh, First Edition, 1430 AH.

