

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

THEOPHILUS C. OKAI
8674 Harrison Way
Buena Park, CA 90620

Pharmacy Technician Registration No. TCH 49903

Respondent.

Case No. 4057

OAH No. 2011101013

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as the decision in the above-entitled matter, except that, pursuant to the provisions of Government Code section 11517, subdivision (c)(2)(C), in the caption box appearing on page 1, of the Proposed Decision, is hereby modified for technical reasons as follows:

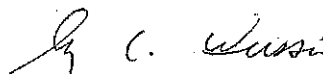
Pharmacy Technician Registration No. TCH 49903

The technical change made above does not affect the factual or legal basis of the Proposed Decision, which shall become effective on November 21, 2012.

IT IS SO ORDERED this 22nd day of October, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY C. WEISSER
Board President

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No. THC 49903

Respondent.

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PROPOSED DECISION

On July 25, 2012, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Nicole R. Trama, Deputy Attorney General, represented the complainant.

Michael B. Levin, Attorney at Law, represented respondent.

The matter was submitted on July 25, 2012.

FACTUAL FINDINGS

1. On September 23, 2011, Virginia Herold, Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California (hereafter, "Board") filed Accusation No. 4057 in her official capacity. Respondent filed a timely Notice of Defense.
2. On May 13, 2005, the Board issued Original Pharmacy Technician Registration Number TCH 49903 to respondent to work as a pharmacy technician in California.
3. On February 9, 2009, in the Superior Court of Los Angeles County, respondent pleaded nolo contendere and was convicted of violating Penal Code section 502, subdivision (c)(1), knowingly accessing and without permission altering, damaging, deleting, destroying and otherwise using any data, computer system, and computer network in order to devise and execute a scheme and artifice to defraud, deceive, and extort, or to wrongfully control and obtain money, property and data, a felony. The court suspended imposition of

sentence and placed respondent on probation for three years on condition, among others, he perform 200 hours of community service, pay restitution to the Bureau of Automotive Repair in the amount of \$12,115.00, and pay a restitution fine. The court also required respondent to resign as a smog check technician.

On January 24, 2012, the court reduced the conviction to a misdemeanor and extended probation to March 7, 2012. On March 6, 2012, respondent represented to the court that he had completely satisfied his restitution obligation and on March 20, 2012, the court terminated probation and expunged the conviction pursuant to Penal Code section 1203.4.

Respondent's conviction is substantially related to the qualifications, functions, or duties of a registered pharmacy technician. Tit. 16, Cal. Code of Regs., §1770.

4. The facts and circumstances of the offense are as follows:

On February 27, 2008, respondent, who was at that time a licensed smog check technician licensed by the Bureau of Automotive Repair (Bureau), performed a smog check on a 1992 Mercedes and issued an electronic smog certificate that indicated the vehicle was in compliance with applicable laws and regulations when in fact, respondent performed the inspection using the clean-piping method, and this resulted in the issuance of a fraudulent certificate of compliance. Clean-piping means he used a sample of the exhaust emissions of one vehicle in order to cause the Test Analyzer System or Emissions Inspection System to issue a certificate of compliance for another vehicle.

5. On March 11, 2008, respondent performed a smog check on a 1994 BMW and issued an electronic smog certificate that indicated the vehicle was in compliance with applicable laws and regulations when in fact, respondent performed the inspection using the clean-piping method, and this resulted in the issuance of a fraudulent certificate of compliance.

6. On July 28, 2008, the Chief of the Bureau filed Accusation No. 79/09-6 against respondent and others alleging violations of Health and Safety Code sections 44072.2, subdivision (a), 44072.2, subdivision (c), and 44072.2, subdivision (d). The two fraudulent smog checks respondent performed on February 27 and March 11, 2008 were the basis for the allegations. Respondent entered into a Stipulated Settlement and Disciplinary Order with the Bureau in which he admitted the allegations contained in the accusation. The Disciplinary Order provided that respondent's smog check license would be revoked. The Director of the Department of Consumer Affairs adopted the stipulation on October 29, 2009, and it became effective on December 3, 2009.

7. On December 2, 1996, in the Superior Court of Los Angeles County, respondent pleaded nolo contendere and was convicted of three counts of violating Penal Code section 502, subdivision (c)(1), in case number BA109266. The offenses were felonies. Respondent committed them on November 16, 1995. On October 22, 1997, in case number BA146176, respondent pleaded guilty and was convicted of violating Penal

Code section 502, subdivision (c)(1) and three counts of violating Penal Code section 44059, perjury by false statements, all felonies. On May 21, 1998, the court sentenced respondent to serve 16 months in prison for all of the above offenses.

8. Respondent's convictions in 1996 and 1997 were for illegal actions similar to those he committed in 2008. On July 8, 1996, the Deputy Chief of the Bureau filed Accusation No.79/97-3 alleging that respondent as a smog check technician and the owner of a licensed smog check facility issued fraudulent smog certificates using the clean piping method on nine vehicles in 1995. On July 16, 1999, the Department of Consumer Affairs revoked respondent's licenses.

9. Respondent testified that he worked at Elim Pharmacy as a pharmacy technician from 2006 until 2009, but has not worked in a pharmacy since then. He testified at the hearing that he did not enter data into the computer.

Respondent graduated from high school in Ghana and came to the United States, where he attended Cerritos College. He obtained an Associate of Arts degree and then began attending California State University at Dominguez Hills off and on. He obtained a Bachelor of Science degree in business administration in 2011 and then entered the master's program. He hopes to obtain a masters degree in a year or two and then open an accounting firm.

Respondent admitted performing illegal smog checks and regrets it. He explained he did them to help customers, but realizes what he did was wrong. He testified he is considering applying for a new license from the Bureau.

Respondent has been married for 21 years and has one adult son. He attends church and performs community service regularly. He performed the 200 hours required of him by the court in 2009 by working to feed the poor. He does not work and is supported by his wife who works for Los Angeles County. He repaid the Bureau for its costs of investigation in connection with his 2009 conviction.

10. Respondent submitted several character letters attesting to his good character.

11. The Board incurred costs for the investigation and enforcement of this matter in the amount of \$6,550.00 for the services of the Attorney General. The total amount is reasonable.

Respondent testified that he could repay the costs little by little, and was willing to make payments.

LEGAL CONCLUSIONS

1. Business and Professions Code section 4301 provides in part:

“The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

[¶] . . .

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

[¶] . . .

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. . . The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. . . .”

2. Business and Professions Code section 490 provides in part:

“A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere”

3. Cause to revoke or suspend respondent’s pharmacy technician registration pursuant to Business and Professions Code sections 4301, subdivision (l) and 490 was established by Findings 3 and 4 in that respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a pharmacy technician.

4. Cause to revoke or suspend respondent’s pharmacy technician registration pursuant to Business and Professions Code section 4300, subdivision (g) was established by Findings 3, 4 and 5 in that respondent knowingly made a certificate or other document that falsely represented the existence of a state of facts.

5. Cause to revoke or suspend respondent’s pharmacy technician registration pursuant to Business and Professions Code section 4300, subdivision (f) was established by

Findings 3, 4, and 5 in that respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, and corruption.

6. Title 16, California Code of Regulations, section 1769 provides in part:

“(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.”

7. The evidence introduced in this matter points conclusively toward revocation of respondent's pharmacy technician registration. Respondent was convicted of perhaps the most egregious offense a smog check technician can commit, that of falsely creating a smog certificate that indicated a vehicle passed a smog check by performing the test on another car. He did it twice in 2008. He was convicted just three years ago. And he did it after he had been convicted of doing the same things 13 years earlier, spending 16 months in prison for it, and losing his smog check and facility licenses. Respondent's conduct in 1995 and 2008 demonstrated dishonesty, and demonstrated he did not learn anything after he was caught the first time.

A pharmacy technician has access to the pharmacy's supply of drugs, patient information, insurance information, computers and so forth. Drugs are as good as cash and the temptation to steal drugs and either use them or sell them is always present. Pharmacy technicians have to be honest and moral. They have to accurately input information into a computer and follow the rules. They must exercise good judgment. The field of pharmacy is one of the most regulated fields in the state. The failure of a pharmacy technician to follow the rules can cause harm to customers of the pharmacy and the public.

Respondent's conduct in 1995 and again in 2008 when he was a licensed smog check technician calls into question his honesty, his judgment, and his ability and willingness to follow the rules. Respondent's conduct resulted in the Bureau of Automotive Repair twice revoking his smog check licenses and resulted in convictions which included a 16-month sentence to state prison. Balanced against this is respondent's evidence of rehabilitation which consists of his lengthy effort to obtain a college degree. While he must be commended for obtaining a Bachelor of Science degree in business administration and

beginning a master's program in that field, that is insufficient to overcome the seriousness of his misconduct.

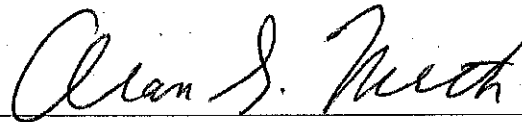
8. Cause to order respondent to reimburse the Board for its costs of investigation and enforcement of this matter in the amount of \$6,650.00 was established by reason of Finding 11.

ORDER

1. Pharmacy Technician Registration No. TCH 49903 issued to respondent Theophilus C. Okai is revoked.

2. Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$6,650.00.

DATED: July 26, 2012

A handwritten signature in cursive script, reading "Alan S. Meth", written in dark ink over a horizontal line.

ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings

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8
9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 4057

12 **THEOPHILUS C. OKAI**
13 **8674 Harrison Way**
14 **Buena Park, CA 90620**

ACCUSATION

15 **Pharmacy Technician Registration No. TCH**
16 **49903**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

23 2. On or about May 13, 2005, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH-49903 to Theophilus C. Okai (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on April 30, 2013, unless renewed.
27
28

JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 4300, subdivision (a) of the Code states in pertinent part that "[e]very license issued may be suspended or revoked."

STATUTORY/REGULATORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

...

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,

1 and the board may inquire into the circumstances surrounding the commission of
2 the crime in order to fix the degree of discipline or to determine if the conviction is
substantially related to the qualifications, functions, and duties of the licensee in
question.

3 As used in this section, "license" includes "certificate," "permit,"
4 "authority," and "registration."

5 9. Section 4301 of the Code states:

6 The board shall take action against any holder of a license who is guilty of
7 unprofessional conduct or whose license has been procured by fraud or
8 misrepresentation or issued by mistake. Unprofessional conduct shall include, but
is not limited to, any of the following:

9
10 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
11 deceit, or corruption, whether the act is committed in the course of relations as a
12 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

13 (g) Knowingly making or signing any certificate or other document that
14 falsely represents the existence or nonexistence of a state of facts.

15
16 (h) The conviction of a crime substantially related to the qualifications,
17 functions, and duties of a licensee under this chapter. The record of conviction of
18 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
19 States Code regulating controlled substances or of a violation of the statutes of this
20 state regulating controlled substances or dangerous drugs shall be conclusive
21 evidence of unprofessional conduct. In all other cases, the record of conviction
22 shall be conclusive evidence only of the fact that the conviction occurred. The
23 board may inquire into the circumstances surrounding the commission of the
24 crime, in order to fix the degree of discipline or, in the case of a conviction not
25 involving controlled substances or dangerous drugs, to determine if the conviction
26 is of an offense substantially related to the qualifications, functions, and duties of a
27 licensee under this chapter. A plea or verdict of guilty or a conviction following a
28 plea of nolo contendere is deemed to be a conviction within the meaning of this
provision. The board may take action when the time for appeal has elapsed, or the
judgment of conviction has been affirmed on appeal or when an order granting
probation is made suspending the imposition of sentence, irrespective of a
subsequent order under Section 1203.4 of the Penal Code allowing the person to
withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
the verdict of guilty, or dismissing the accusation, information, or indictment.

1 10. California Code of Regulations, title 16, section 1769, states:

2
3 (b) When considering the suspension or revocation of a facility or a
4 personal license on the ground that the licensee or the registrant has been
5 convicted of a crime, the board, in evaluating the rehabilitation of such person and
6 his present eligibility for a license will consider the following criteria:

7 (1) Nature and severity of the act(s) or offense(s).

8 (2) Total criminal record.

9 (3) The time that has elapsed since commission of the act(s) or offense(s).

10 (4) Whether the licensee has complied with all terms of parole, probation,
11 restitution or any other sanctions lawfully imposed against the licensee.

12 (5) Evidence, if any, of rehabilitation submitted by the licensee.

13 11. California Code of Regulations, title 16, section 1770, states:

14 For the purpose of denial, suspension, or revocation of a personal or facility
15 license pursuant to Division 1.5 (commencing with Section 475) of the Business
16 and Professions Code, a crime or act shall be considered substantially related to
17 the qualifications, functions or duties of a licensee or registrant if to a substantial
18 degree it evidences present or potential unfitness of a licensee or registrant to
19 perform the functions authorized by his license or registration in a manner
20 consistent with the public health, safety, or welfare.

21 **COST RECOVERY**

22 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request
23 the administrative law judge to direct a licensee found to have committed a violation or
24 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
25 and enforcement of the case.

26 **FIRST CAUSE FOR DISCIPLINE**

27 (February 9, 2009 Conviction for Unauthorized Access to Computers, Computer Systems
28 and Data on February 27, 2008)

13. Respondent is subject to disciplinary action under sections 490 and 4301(I) of the
Code in that he was convicted of a crime that is substantially related to the qualifications, duties
and functions of a pharmacy technician. The circumstances are as follows:

1 a. On or about February 9, 2009, in a criminal proceeding entitled *The People of*
2 *the State of California v. Theophilus Cecil Okai*, in Los Angeles County Superior Court, case no.
3 BA345920, Respondent was convicted on his plea of nolo contendere for violating Penal Code
4 section 502(C)(1), unauthorized access to computers, computer systems and computer data, a
5 felony. The Court found that Respondent was guilty.

6 b. As a result of the conviction, on or about February 9, 2009, Respondent was
7 sentenced to three years formal probation and ordered to perform two hundred hours of
8 community service, to resign as a smog technician, to pay restitution to the Bureau of Automotive
9 Repair and to pay a restitution fine.

10 c. The facts that led to the conviction were that on or about February 27, 2008,
11 representatives of the Bureau of Automotive Repair conducted a video surveillance operation of
12 the smog check facility which employed Respondent. The surveillance video and information
13 obtained from the Bureau of Automotive Repair's vehicle information database revealed that
14 Respondent issued an electronic smog certificate of compliance, certifying that he had tested and
15 inspected a 1992 Mercedes and that the Mercedes was in compliance with applicable laws and
16 regulations. However, Respondent had conducted the inspection using clean-piping methods,¹
17 resulting in the issuance of a fraudulent certificate of compliance for the Mercedes.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct-Knowingly Making Documents that Falsely Represents**
20 **Existence or Nonexistence of Facts)**

21 14. Respondent is subject to disciplinary action under section 4301(g) of the Code in that
22 Respondent knowingly made or signed a certificate or other document that falsely represented the
23 existence or nonexistence of a state of facts as set forth in paragraph 13 above, and paragraphs
24 15-16 below. The circumstances are as follows.

25
26 ¹ Pursuant to California Code of Regulations, title 16, section 3340.1 "clean piping"
27 means the use of a sample of the exhaust emissions of one vehicle in order to cause the Test
28 Analyzer System or Emissions Inspection System to issue a certificate of compliance for another
vehicle.

15. On or about February 27, 2008 and March 11, 2008, representatives of the Bureau of Automotive Repair conducted a video surveillance operation of Respondent's former employer's smog check facility. The surveillance video and information obtained from the Bureau's vehicle information database revealed that Respondent issued electronic smog certificates of compliance, certifying that he had tested and inspected a 1992 Mercedes and a 1994 BMW and that those vehicles were in compliance with applicable laws and regulations. However, Respondent conducted the inspections using clean-piping methods, resulting in the issuance of fraudulent certificates of compliance for those vehicles.

16. On or about July 28, 2008, the Bureau of Automotive Repair brought an accusation against Respondent for violations of Health & Safety Code sections 44072.2(a), 44072.2(c) and 44072.2(d). In the Decision dated October 29, 2009, which became effective December 8, 2009, the Bureau of Automotive Repair accepted and adopted the Stipulated Settlement and Disciplinary Order as to Respondent in the disciplinary action entitled *In the Matter of the Accusation Against: Auto Smog Masters, etc.*, Case no. 79/09-06. In that Stipulated Settlement and Disciplinary Order, Respondent's Advanced Emission Specialist Technician License No. EA 017417 was revoked and Respondent admitted the truth of each and every charge and allegation in Accusation No. 79/09-06.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Commission of Acts Involving Dishonesty, Fraud or Deceit)

17. Respondent is subject to disciplinary action under section 4301(f) of the Code in that Respondent committed acts involving dishonesty, fraud or deceit as set forth in paragraphs 13, 15 and 16 above.

DISCIPLINARY CONSIDERATIONS

18. Pursuant to title 16, California Code of Regulations, section 1769(b)(2), to determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that before Respondent was licensed as a pharmacy technician, on or about October 22, 1997, in criminal proceedings entitled *The People of the State of California v. Theophilus Cecil Okai*, in Los Angeles County Superior Court, case numbers BA109266 and BA146176, Respondent was

1 convicted on his plea of guilty for violating Penal Code section 502(c)(1), unauthorized access to
2 computers; Vehicle Code section 4463(a)(1), uttering a false certificate; and Health & Safety
3 Code section 44059, perjury by false statements or entries, felonies. As a result of his
4 convictions, Respondent was sentenced to jail and ordered to pay all applicable fines. These
5 convictions were disclosed on Respondent's application for licensure as a pharmacy technician.

6 19. Complainant further alleges that before Respondent was licensed as a pharmacy
7 technician, on or about July 16, 1999, pursuant to the Default Decision in the disciplinary action
8 entitled *In the Matter of the Accusation Against: Auto Smog Master IV, etc.*, Case no. 79/97-3, the
9 Director of the Department of Consumer Affairs permanently invalidated Automotive Repair
10 Dealer Registration Number AJ 162891 and revoked Smog Check Station License Number RJ
11 162891, both of which were issued to Respondent as owner of Auto Smog Masters IV.
12 Respondent was found to have committed fraud in violation of Code sections 9884.7(1)(a) and
13 9884.7(1)(d) and Health & Safety Code sections 44012, 44012(a), 44015(a) 44059, 44072.2(a)
14 and 44072.2(d), by conducting smog inspections on nine vehicles using clean-piping methods in
15 order to issue fraudulent smog certificates for those vehicles.

16 **PRAYER**

17 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
18 and that following the hearing, the Board of Pharmacy issue a decision:

19 1. Revoking or suspending Pharmacy Technician Registration Number TCH 49903,
20 issued to Theophilus Cecil Okai;

21 2. Ordering Theophilus Cecil Okai to pay the Board of Pharmacy the reasonable costs of
22 the investigation and enforcement of this case, pursuant to Business and Professions Code section
23 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED: 9/23/11 Virginia Herold

VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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