

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

In the Matter of the Accusation Against:

Case No. 4819

CARE PHARMACY
DBA CVS PHARMACY #9145
9730 Mission Gorge
Santee, CA 92071

Pharmacy Permit No. PHY 47974

Respondent.

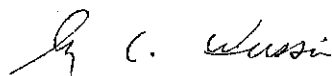
DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on October 15, 2014.

It is so ORDERED on October 8, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
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Attorneys for Complainant

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10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:
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13 **CARE PHARMACY,**
DBA CVS PHARMACY #9145
14 **9730 Mission Gorge**
Santee, CA 92071
15
16 **Pharmacy Permit No. PHY 47974**
17 Respondents.

Case No. 4819
STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 PARTIES

21 1. Virginia Herold ("Complainant") is the Executive Officer of the Board of Pharmacy.
22 She brought this action solely in her official capacity and is represented in this matter by Kamala
23 D. Harris, Attorney General of the State of California, by Nicole R. Trama, Deputy Attorney
24 General.

25 2. Respondent Care Pharmacy, DBA CVS Pharmacy #9145 ("Respondent") is
26 represented in this proceeding by attorney Susan Brichler Trujillo, Esq., whose address is:
27 Quarles & Brady LLP, One Renaissance Square, Two North Central Avenue, Phoenix, Arizona
28 85004-2391.

1 is stayed and Respondent is placed on probation for three (3) years on the following terms and
2 conditions.

3 **1. Obey All Laws**

4 Respondent shall obey all state and federal laws and regulations.

5 Respondent shall report any of the following occurrences to the board, in writing, within
6 seventy-two (72) hours of such occurrence:

- 7 an arrest or issuance of a criminal complaint for violation of any provision of the
8 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
9 substances laws
- 10 a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
11 criminal complaint, information or indictment
- 12 a conviction of any crime
- 13 discipline, citation, or other administrative action filed by any state or federal agency
14 which involves respondent's pharmacy permit license or which is related to the
15 practice of pharmacy or the manufacturing, obtaining, handling or distributing,
16 billing, or charging for any drug, device or controlled substance.

17 Failure to timely report any such occurrence shall be considered a violation of probation.

18 **2. Report to the Board**

19 Respondent shall report to the board quarterly, on a schedule as directed by the board or its
20 designee. The report shall be made either in person or in writing, as directed. Among other
21 requirements, respondent shall state in each report under penalty of perjury whether there has
22 been compliance with all the terms and conditions of probation. Failure to submit timely reports
23 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency
24 in submission of reports as directed may be added to the total period of probation. Moreover, if
25 the final probation report is not made as directed, probation shall be automatically extended until
26 such time as the final report is made and accepted by the board.

27 **3. Interview with the Board**

28 Upon receipt of reasonable prior notice, respondent shall appear in person for interviews

1 with the board or its designee, at such intervals and locations as are determined by the board or its
2 designee. Failure to appear for any scheduled interview without prior notification to board staff,
3 or failure to appear for two (2) or more scheduled interviews with the board or its designee during
4 the period of probation, shall be considered a violation of probation.

5 **4. Cooperate with Board Staff**

6 Respondent shall cooperate with the board's inspection program and with the board's
7 monitoring and investigation of respondent's compliance with the terms and conditions of their
8 probation. Failure to cooperate shall be considered a violation of probation.

9 **5. Reimbursement of Board Costs**

10 As a condition precedent to successful completion of probation, respondent shall pay to the
11 board its costs of investigation and prosecution in the amount of \$7,829.00. Respondent shall pay
12 the costs within ninety (90) days of the effective date of the Decision. There shall be no deviation
13 from this schedule absent prior written approval by the board or its designee. Failure to pay costs
14 by the deadline(s) as directed shall be considered a violation of probation.

15 The filing of bankruptcy by respondent shall not relieve respondent of their responsibility to
16 reimburse the board its costs of investigation and prosecution.

17 **6. Probation Monitoring Costs**

18 Respondent shall pay any costs associated with probation monitoring as determined by the
19 board each and every year of probation. Such costs shall be payable to the board on a schedule as
20 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall
21 be considered a violation of probation.

22 **7. Status of License**

23 Respondent shall, at all times while on probation, maintain current licensure with the board.
24 If respondent submits an application to the board, and the application is approved, for a change of
25 location, change of permit or change of ownership, the board shall retain continuing jurisdiction
26 over the license, and the respondent shall remain on probation as determined by the board.
27 Failure to maintain current licensure shall be considered a violation of probation.

28 If respondent's license expires or is cancelled by operation of law or otherwise at any time

1 during the period of probation, including any extensions thereof or otherwise, upon renewal or
2 reapplication respondent's license shall be subject to all terms and conditions of this probation not
3 previously satisfied.

4 **8. License Surrender While on Probation/Suspension**

5 Following the effective date of this decision, should respondent discontinue business,
6 respondent may tender the premises license to the board for surrender. The board or its designee
7 shall have the discretion whether to grant the request for surrender or take any other action it
8 deems appropriate and reasonable. Upon formal acceptance of the surrender of the license,
9 respondent will no longer be subject to the terms and conditions of probation.

10 Upon acceptance of the surrender, respondent shall relinquish the premises wall and
11 renewal license to the board within ten (10) days of notification by the board that the surrender is
12 accepted. Respondent shall further submit a completed Discontinuance of Business form
13 according to board guidelines and shall notify the board of the records inventory transfer.

14 Respondent shall also, by the effective date of this decision, arrange for the continuation of
15 care for ongoing patients of the pharmacy by, at minimum, providing a written notice to ongoing
16 patients that specifies the anticipated closing date of the pharmacy and that identifies one or more
17 area pharmacies capable of taking up the patients' care, and by cooperating as may be necessary
18 in the transfer of records or prescriptions for ongoing patients. Within five days of its provision
19 to the pharmacy's ongoing patients, Respondent shall provide a copy of the written notice to the
20 board. For the purposes of this provision, "ongoing patients" means those patients for whom the
21 pharmacy has on file a prescription with one or more refills outstanding, or for whom the
22 pharmacy has filled a prescription within the preceding sixty (60) days.

23 Respondent may not apply for any new licensure from the board for three (3) years from the
24 effective date of the surrender. Respondent shall meet all requirements applicable to the license
25 sought as of the date the application for that license is submitted to the board.

26 Respondent further stipulates that he or she shall reimburse the board for its costs of
27 investigation and prosecution prior to the acceptance of the surrender.

28

1 **9. Notice to Employees**

2 Respondent shall, upon or before the effective date of this decision, ensure that all
3 employees involved in permit operations are made aware of all the terms and conditions of
4 probation, either by posting a notice of the terms and conditions, circulating such notice, or both.
5 If the notice required by this provision is posted, it shall be posted in a prominent place and shall
6 remain posted throughout the probation period. Respondent shall ensure that any employees
7 hired or used after the effective date of this decision are made aware of the terms and conditions
8 of probation by posting a notice, circulating a notice, or both. Additionally, respondent shall
9 submit written notification to the board, within fifteen (15) days of the effective date of this
10 decision, that this term has been satisfied. Failure to submit such notification to the board shall be
11 considered a violation of probation.

12 "Employees" as used in this provision includes all full-time, part-time,
13 volunteer, temporary and relief employees and independent contractors employed or
14 hired at any time during probation.

15 **10. Knowledge of the Law**

16 Respondent shall provide, within thirty (30) days after the effective date of this decision,
17 signed and dated statements from its Pharmacist-in-Charge and area supervisor, stating under
18 penalty of perjury that said individuals have read and are familiar with state and federal laws and
19 regulations governing the practice of pharmacy. The failure to timely provide said statements
20 under penalty of perjury shall be considered a violation of probation.

21 **11. Posted Notice of Probation**

22 Respondent shall prominently post a probation notice provided by the board in a place
23 conspicuous and readable to the public. The probation notice shall remain posted during the
24 entire period of probation.

25 Respondent shall not, directly or indirectly, engage in any conduct or make any statement
26 which is intended to mislead or is likely to have the effect of misleading any patient, customer,
27 member of the public, or other person(s) as to the nature of and reason for the probation of the
28 licensed entity.

1 Failure to post such notice shall be considered a violation of probation.

2 **12. Violation of Probation**

3 If a respondent has not complied with any term or condition of probation, the board shall
4 have continuing jurisdiction over respondent license, and probation shall be automatically
5 extended until all terms and conditions have been satisfied or the board has taken other action as
6 deemed appropriate to treat the failure to comply as a violation of probation, to terminate
7 probation, and to impose the penalty that was stayed.

8 If respondent violates probation in any respect, the board, after giving respondent notice
9 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
10 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
11 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
12 a petition to revoke probation or an accusation is filed against respondent during probation, the
13 board shall have continuing jurisdiction and the period of probation shall be automatically
14 extended until the petition to revoke probation or accusation is heard and decided.

15 **13. Completion of Probation**

16 Upon written notice by the board or its designee indicating successful completion of
17 probation, respondent license will be fully restored.

18 **14. Community Services Program**

19 Within sixty (60) days of the effective date of this decision, respondent shall submit to the
20 board or its designee, for prior approval, a community service program in which respondent shall
21 provide free "sharps" disposal containers valuing \$10,000.00 to a local law enforcement agency
22 or the Department of Justice, or provide free or at a reduced cost immunizations, brown bag
23 consultations, or other health-care related services, to a community, charitable facility, or agency
24 valuing \$10,000.00.

25 Within thirty (30) days of board approval thereof, respondent shall submit documentation to
26 the board demonstrating commencement of the community service program. Respondent shall
27 report on progress with the community service program in the quarterly reports.

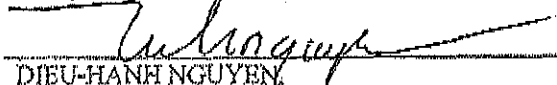
28 Failure to timely submit, commence, or comply with the program shall be considered a

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violation of probation.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Susan Brichler Trujillo, Esq. I understand the stipulation and the effect it will have on Pharmacy Permit No. PHY 47974. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

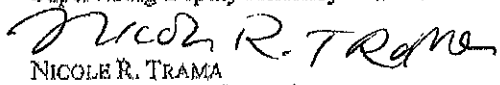
DATED: 9/10/14 
DIEU-HANH NGUYEN
As Pharmacist-in-Charge and Authorized Agent on
Behalf of
CARE PHARMACY, DBA CVS PHARMACY #9145
Respondent

I have read and fully discussed with Respondent the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 9/10/2014 
SUSAN BRICHLER TRUJILLO,
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy.

DATED: 9/11/2014 Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General

NICOLE R. TRAMA
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 4819

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 NICOLE R. TRAMA
Deputy Attorney General
4 State Bar No. 263607
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
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A C C U S A T I O N

16 **Pharmacy Permit No. PHY 47974**

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 September 20, 2006, the Board of Pharmacy issued Pharmacy Permit
24 Number PHY 47974 to Care Pharmacy to do business as CVS Pharmacy #9145 (Respondent).
25 The Pharmacy Permit was in full force and effect at all times relevant to the charges brought
26 herein and will expire on June 1, 2014, unless renewed.

1 **JURISDICTION**

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

5 4. Section 4011 of the Code provides that the Board shall administer and enforce both
6 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
7 Act [Health & Safety Code, § 11000 et seq.].

8 5. Section 4300(a) of the Code provides that every license issued by the Board may be
9 suspended or revoked.

10 6. Section 4300.1 of the Code states:

11 The expiration, cancellation, forfeiture, or suspension of a board-issued
12 license by operation of law or by order or decision of the board or a court of law,
13 the placement of a license on a retired status, or the voluntary surrender of a
14 license by a licensee shall not deprive the board of jurisdiction to commence or
15 proceed with any investigation of, or action or disciplinary proceeding against, the
16 licensee or to render a decision suspending or revoking the license.

17 7. Section 4302 defines "license" to include any license, permit, registration, certificate,
18 or exemption issued by the board.

19 **STATUTORY PROVISIONS & REGULATORY PROVISIONS**

20 8. Section 4022 of the Code states:

21 "Dangerous drug" or "dangerous device" means any drug or device unsafe
22 for self-use in humans or animals, and includes the following:

23 (a) Any drug that bears the legend: "Caution: federal law prohibits
24 dispensing without prescription," "Rx only," or words of similar import.

25 (b) Any device that bears the statement: "Caution: federal law restricts this
26 device to sale by or on the order of a _____," "Rx only," or words of similar import,
27 the blank to be filled in with the designation of the practitioner licensed to use or
28 order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully
dispensed only on prescription or furnished pursuant to Section 4006.

1 9. Section 4301 of the Code states:

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

6 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
7 abetting the violation of or conspiring to violate any provision or term of this
8 chapter or of the applicable federal and state laws and regulations governing
9 pharmacy, including regulations established by the board or by any other state or
10 federal regulatory agency.

11 10. California Code of Regulations, title 16, section 1714 states:

12 (a) All pharmacies (except hospital inpatient pharmacies as defined by
13 Business and Professions Code section 4029 which solely or predominantly
14 furnish drugs to inpatients of the hospital) shall contain an area which is suitable
15 for confidential patient counseling.

16 (b) Each pharmacy licensed by the board shall maintain its facilities, space,
17 fixtures, and equipment so that drugs are safely and properly prepared, maintained,
18 secured and distributed. The pharmacy shall be of sufficient size and unobstructed
19 area to accommodate the safe practice of pharmacy.

20 (c) The pharmacy and fixtures and equipment shall be maintained in a
21 clean and orderly condition. The pharmacy shall be dry, well-ventilated, free from
22 rodents and insects, and properly lighted. The pharmacy shall be equipped with a
23 sink with hot and cold running water for pharmaceutical purposes.

24 (d) Each pharmacist while on duty shall be responsible for the security of
25 the prescription department, including provisions for effective control against theft
26 or diversion of dangerous drugs and devices, and records for such drugs and
27 devices. Possession of a key to the pharmacy where dangerous drugs and
28 controlled substances are stored shall be restricted to a pharmacist.

(e) The pharmacy owner, the building owner or manager, or a family
member of a pharmacist owner (but not more than one of the aforementioned) may
possess a key to the pharmacy that is maintained in a tamper evident container for
the purpose of 1) delivering the key to a pharmacist or 2) providing access in case
of emergency. An emergency would include fire, flood or earthquake. The
signature of the pharmacist-in-charge shall be present in such a way that the
pharmacist may readily determine whether the key has been removed from the
container.

(f) The board shall require an applicant for a licensed premise or for
renewal of that license to certify that it meets the requirements of this section at the
time of licensure or renewal.

1 (g) A pharmacy shall maintain a readily accessible restroom. The restroom
2 shall contain a toilet and washbasin supplied with running water.

3 **COST RECOVERY**

4 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
5 administrative law judge to direct a licentiate found to have committed a violation or violations of
6 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
7 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
8 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
9 included in a stipulated settlement.

10 **DRUGS**

11 12. Alprazolam, the generic name for Xanax, is a Schedule IV controlled substance
12 pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug
13 pursuant to Business and Professions Code section 4022.

14 13. Hydrocodone/apap, the generic name for Vicodin and Norco, is a Schedule III
15 controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and a
16 dangerous drug pursuant to Business and Professions Code section 4022.

17 14. Suboxone is a brand name for buprenorphine and naloxone, and is a Schedule III
18 controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and a
19 dangerous drug pursuant to Business and Professions Code section 4022.

20 15. Subutex, is a brand name for buprenorphine, and is a Schedule III controlled
21 substance pursuant to Health and Safety Code section 11056, subdivision (d), and a dangerous
22 drug pursuant to Business and Professions Code section 4022.

23 **FACTUAL ALLEGATIONS**

24 16. In the Fall of 2010, a CVS Loss Prevention Manager opened an investigation at
25 Respondent CVS Pharmacy #9145 based on a report that flagged a high variance in Norco
26 10/325. On or about October 5, 2010, a covert surveillance camera was installed at CVS
27 Pharmacy #9145. The video surveillance showed a pharmacy technician T.P. removing bottles
28 from the shelf, concealing the bottles out of view and then taking the garbage out.

1 17. On or about October 25, 2010, the Loss Prevention Manager met with DEA agents
2 and a Deputy Sheriff who had been working on the case for two weeks based on a confidential
3 informant's tip that T.P. was selling hydrocodone/apap and that his source was CVS Pharmacy
4 #9145. On or about October 28, 2010, the Pharmacist-in-Charge at CVS Pharmacy #9145
5 reported that another employee saw T.P. conceal a bottle of Vicodin 5/500 in a trash bag and exit
6 the store to the receiving area. On October 30, 2010, T.P. removed two bottles of
7 hydrocodone/apap 10/325, concealing it in garbage bags.

8 18. On November 2, 2010, T.P. was apprehended and interviewed by the Department of
9 Justice, DEA, and the Sheriff's Department. T.P. admitted to taking hydrocodone/apap 10/325-
10 500 count bottles, Vicodin 5/500-500 count bottles, and alprazolam 2mg-100 count bottles. T.P.
11 told officers that he was taking orders from his friend who made \$350 per bottle. T.P. admitted
12 that he stole drugs for approximately five to six months, stealing sometimes on a weekly basis.
13 T.P. stated that he was able to steal the drugs by using a garbage bag, then prior to disposing it in
14 the trash bin, he would remove the bottles, hiding them near the trash bins and later coming back
15 with a CVS bag or lunch bag, which he used to move out the concealed drugs out. He also
16 admitted that had previously removed drugs from deliveries as they were staged in the stockroom,
17 outside the pharmacy. T.P. stated that he hid the products in the storeroom, and then brought the
18 deliveries into the pharmacy.

19 19. During the interview, T.P. admitted to stealing 40 bottles of hydrocodone/apap
20 10/325, 12 bottles of alprazolam 2 mg, and one bottle of Vicodin 5/500. The cost of the stolen
21 drugs was \$13,795.87. T.P. was terminated from his employment at CVS Pharmacy #9145 and
22 the incident was reported to the Board of Pharmacy. An investigation revealed the following
23 missing drugs, totaling 45,952 tablets from April 30, 2009 through November 6, 2010: Vicodin
24 5/500, hydrocodone/apap 5/500, hydrocodone/apap 10/325, alprazolam, Suboxone, Suboxone tab,
25 and Subutex.

1 **CAUSE FOR DISCIPLINE**

2 (Failure to Maintain Dangerous Drugs in a Safe and Secure Manner)

3 20. Respondent is subject to disciplinary action under section 4301, subdivision (o) for
4 violation of California Code of Regulations, title 16, section 1714, subdivision (b), for failing to
5 maintain dangerous drugs in a safe and secure manner, as set forth in paragraphs 16 through 19,
6 which are incorporated herein by reference.

7 **DISCIPLINARY CONSIDERATIONS**

8 21. To determine the degree of discipline, if any, to be imposed on Respondents,
9 Complainant alleges:

10 a. On September 27, 2010, the Board issued Citation Number CI 2009 44443 against
11 Respondent for violating California Code of Regulations, title 16, section 1716, for dispensing a
12 drug that varied from a prescription. There was no order of abatement or fine associated with the
13 Citation and Respondent did not appeal the Citation.

14 b. On May 8, 2012, the Board issued Citation Number CI 2010 46328 against
15 Respondent for violating California Code of Regulations, title 16, sections 1716 and 1711(d), and
16 ordered Respondent to pay the fine in the amount of \$250.00 by June 7, 2012. Respondent
17 complied with the Citation.

18 **PRAYER**

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

21 1. Revoking or suspending Pharmacy Permit Number PHY 47974, issued to Care
22 Pharmacy, dba CVS Pharmacy #9145;

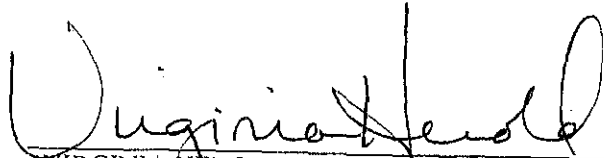
23 2. Ordering Respondent to pay the Board of Pharmacy the reasonable costs of the
24 investigation and enforcement of this case, pursuant to Business and Professions Code section
25 125.3;

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

DATED:

6/14/14



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

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