

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Senator Ross**

A Bill

SENATE BILL 590

For An Act To Be Entitled

8 "AN ACT TO AMEND VARIOUS SECTIONS OF CHAPTER 91 OF TITLE
9 17 OF THE ARKANSAS CODE OF 1987, ANNOTATED RELATING TO THE
10 LICENSING OF PHARMACISTS AND THE STATE BOARD OF PHARMACY
11 TO EXPAND THE DEFINITION OF THE 'PRACTICE OF PHARMACY' TO
12 INCLUDE QUALIFIED PHARMACY EMPLOYEES, TO PERMIT THE
13 EMERGENCY RE-FILLING OF PRESCRIPTIONS, TO INCREASE VARIOUS
14 LICENSE FEES AND RENEWAL FEES, TO INCREASE BOARD MEMBER'S
15 PER DIEM, TO ALLOW FOR INSPECTIONS OF DRUG STORE AND
16 BUSINESS PREMISES, TO CHANGE THE REPORTING DATE FROM
17 JANUARY 1 TO JULY 1, TO ESTABLISH LICENSING REQUIREMENTS
18 FOR FOREIGN NATIONALS, TO CLARIFY THE GROUNDS FOR
19 REVOCATION AND SUSPENSION OF A LICENSE FOR CRIMINAL
20 ACTIONS, AND TO MAKE THE BOARD'S APPEAL PROCEDURES
21 CONSISTENT WITH THE ARKANSAS ADMINISTRATIVE PROCEDURE ACT;
22 AND FOR OTHER PURPOSES."

23
24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

25

26 SECTION 1. Subdivision (14) of Arkansas Code § 17-91-101 is hereby
27 amended to read as follows:

28 "(14) (A) 'Practice of pharmacy' means the learned profession of:

29 (i) Dispensing, selling, distributing, transferring,
30 possession of, vending, or bartering drugs, medicines, poisons, or chemicals
31 which, under the laws of the United States or the State of Arkansas, may be
32 sold or dispensed only on the prescription of a practitioner authorized by law
33 to prescribe drugs, medicines, poisons, or chemicals;

34 (ii) Placing, packing, pouring, or putting in a container
35 for dispensing, sale, distribution, transfer possession of, vending, or barter

1 any drug, medicine, poison, or chemical which, under the laws of the United
2 States or the State of Arkansas, may be sold or dispensed only on the
3 prescription of a practitioner authorized by law to prescribe drugs,
4 medicines, poisons, or chemicals;

5 (iii) Placing in or affixing upon any container described
6 in subdivision (13) (A) (ii) of this section a label required to be placed upon
7 drugs, medicines, poisons, or chemicals sold or dispensed upon prescription of
8 a practitioner authorized by law to prescribe those drugs, medicines, poisons,
9 or chemicals;

10 (iv) Preparing, typing, or writing labels to be placed in
11 or affixed on any container described in subdivision (13) (A) (ii) of this
12 section, which label is required to be placed upon drugs, medicines, poisons,
13 or chemicals sold or dispensed upon prescription of a practitioner authorized
14 by law to prescribe those drugs, medicines, poisons, or chemicals;

15 (v) Interpreting prescriptions for drugs, medicines,
16 poisons, or chemicals issued by practitioners authorized by law to prescribe
17 drugs, medicines, poisons, or chemicals which may be sold or dispensed only on
18 prescription;

19 (vi) Selecting, taking from, and replacing upon shelves in
20 the prescription department of a pharmacy or apothecary drugs, medicines,
21 chemicals, or poisons which are required by the law of the United States or
22 the State of Arkansas to be sold or dispensed only on prescription of a
23 practitioner authorized by law to prescribe them;

24 (vii) Compounding, mixing, preparing, or combining drugs,
25 medicines, chemicals, or poisons which, under the laws of the United States or
26 the State of Arkansas, may be sold or dispensed only on the prescription of a
27 practitioner authorized by law to prescribe them;

28 (viii) Advising and providing information concerning
29 utilization of drugs and devices and participation in drug utilization
30 reviews;

31 (ix) Providing pharmacokinetic services.

32 (B) The provisions of subdivision (13) of this section shall not
33 apply to employees of wholesale drug companies or other drug distributors who
34 do not fill prescriptions or sell or dispense drugs to the consumer.

35 (C) (i) The board may permit qualified pharmacy employees other

1 than pharmacists or interns to perform some or all of those functions
2 described in subdivisions (14) (A) (ii), (iii), (iv), or (vi) of this section
3 under the direct, personal supervision of a licensed pharmacist pursuant to
4 regulations defining the minimum qualifications of such employees, the ratio
5 of qualified pharmacy employees to supervising pharmacists and the scope of
6 the duties, practices, and procedures which the board determines will promote
7 the delivery of competent, professional pharmaceutical services and promote
8 the public health and welfare.

9 (ii) The conduct of a qualified pharmacy employee is the
10 responsibility of the pharmacist-in-charge and supervising pharmacist of the
11 pharmacy who shall not permit the employee to perform any act, task, or
12 function which involves the exercise of independent judgement by the employee.

13 (iii) Pharmacy products prepared by qualified pharmacy
14 employees shall be verified for accuracy by the supervising pharmacist prior
15 to release for patient use and the verification shall be documented.

16 (iv) The use of qualified pharmacy employees in a manner
17 not authorized by this chapter or regulations promulgated hereunder shall be
18 unprofessional conduct by the pharmacist-in-charge and the supervising
19 pharmacist.

20 (v) It is recognized the 'Qualified hospital personnel' as
21 defined in Arkansas Code § 17-91-602(5) are governed by the Hospital
22 Pharmacies Act, Arkansas Code §§ 17-91-101 et seq., and related board
23 regulations developed pursuant to that act."

24

25 SECTION 2. Arkansas Code § 17-91-102 is hereby amended to read as
26 follows:

27 "17-91-102. Exemptions.

28 (a) Nothing in §§ 17-91-101(1)-(11), 17-91-102, 17-91-103, 17-91-105,
29 17-91-205(b), 17-91-206(b), 17-91-303, 17-91-402, 17-91-404, 17-91-405,
30 17-91-409, 17-91-410, and 17-91-411(a) shall prevent the personal
31 administration of drugs and medicines carried and kept for emergencies by
32 licensed physicians, dentists, or veterinarians in order to supply the
33 immediate needs of their patients while in their presence, nor shall it apply
34 to physicians, dentists, or veterinarians compounding or dispensing their own
35 prescriptions.

1 (b) The provisions of §§ 17-91-101(1)-(11), 17-91-102, 17-91-103,
2 17-91-105, 17-91-205(b), 17-91-206(b), 17-91-303, 17-91-402, 17-91-404,
3 17-91-405, 17-91-409, 17-91-410, and 17-91-411(a) shall not apply:

4 (1) To the sale of drugs and medicines when intended for
5 agricultural, technical, and industrial use, unless those drugs and medicines
6 are legend drugs as defined in § 20-64-503.

7 (2) To the sales by wholesale druggists, wholesale or retail
8 grocers, or other wholesale or retail dealers or manufacturers of proprietary
9 medicines in original packages; nor

10 (3) To the sales of those drugs commonly known as 'grocers
11 drugs' in original packages when put up under the direction of a licensed
12 pharmacist of this or some other state.

13 (c) Further exempted from the provisions of §§ 17-91-101(1)-(11),
14 17-91-102, 17-91-103, 17-91-105, 17-91-205(b), 17-91-206(b), 17-91-303,
15 17-91-402, 17-91-404, 17-91-405, 17-91-409, 17-91-410, and 17-91-411(a) are
16 the sale of legend drugs approved by the State Board of Optometry by licensed
17 pharmacists to duly licensed optometrists and the possession and use of legend
18 drugs by duly licensed optometrists as authorized by the State Board of
19 Optometry and by §§ 17-89-401 - 17-89-403.

20 (d) In the event a pharmacist receives a request for a prescription
21 refill and the pharmacist is unable to obtain refill authorization from the
22 prescriber, the pharmacist may dispense a one-time emergency refill of up to a
23 seventy-two (72) hour supply of the prescribed medication, provided that:

24 (1) the prescription is not for a medicinal drug listed in
25 Schedule II as defined in Arkansas Code § 5-64-205;

26 (2) the medication is essential to the maintenance of life or to
27 the continuation of therapy;

28 (3) in the pharmacist's professional judgement, the interruption
29 of therapy might reasonably produce undesirable health consequences or may
30 cause physical or mental discomfort;

31 (4) the pharmacist properly records the dispensing; and

32 (5) the dispensing pharmacist notifies the prescriber of the
33 emergency dispensing within a reasonable time after the one-time emergency
34 refill dispensing."

35

1 SECTION 3. Arkansas Code § 17-91-108 is hereby amended to read as
2 follows:

3 "17-91-108. Fees.

4 (a) The fees charged by the Arkansas State Board of Pharmacy for the
5 various examinations, permits, licenses, certificates, and books issued by the
6 board shall be as follows:

7 (1) The fee for examination for license as a licensed pharmacist
8 upon examination shall be twenty-five dollars (\$25.00) plus the actual cost of
9 the examination;

10 (2) The fee for a license as a licensed pharmacist from another
11 state by reciprocity and without examination shall be two hundred dollars
12 (\$200);

13 (3) The fee for the initial license and renewal of a license as a
14 licensed pharmacist shall be fifty dollars (\$50.00);

15 (4) The fee for issuance of a permit for the first time to
16 operate a pharmacy or drugstore shall be two hundred dollars (\$200). The fee
17 for annual renewal of a permit to operate a pharmacy or drugstore shall be one
18 hundred dollars (\$100). When there is a change in ownership, a new permit must
19 be obtained, and the fee shall be one hundred dollars (\$100);

20 (5) The fee for a certificate as a licensed pharmacist shall be
21 ten dollars (\$10.00);

22 (6) The fee for certifying grades in connection with an
23 application for reciprocity licensure without an examination shall be ten
24 dollars (\$10.00);

25 (7) The fee for issuance of, and annual renewal of, a license as
26 a wholesale dealer under the Arkansas Prophylactic Law, 20-63-101 et seq.,
27 shall be twenty-five dollars (\$25.00);

28 (8) The fee for issuance of, and the annual renewal of, a
29 hospital pharmaceutical service permit shall be one hundred dollars (\$100);

30 (9) The fee for issuance of, and the annual renewal of, an
31 institutional pharmaceutical services permit shall be twenty dollars (\$20.00);

32 (10) The fee for issuance of, and the annual renewal of, a
33 nursing home pharmacy consultant permit shall be twenty dollars (\$20.00);

34 (11) The fee for intern and preceptor registration shall be
35 twenty dollars (\$20.00);

1 (12) The fee for a change of pharmacist in charge of a pharmacy
2 shall be *twenty-five* dollars (\$25.00);

3 (13) The fee for reinstatement of a pharmacist licensure shall be
4 fifty dollars (\$50.00) for each delinquent year up to a maximum of two hundred
5 dollars (\$200);

6 (14) The fee for the Board of Pharmacy law book shall be twenty-
7 five dollars (\$25.00) except to interns on initial licensure, and applicants
8 for reciprocity, on a one-time basis. A copy of each edition as revised shall
9 be provided free to each pharmacy permit holder;

10 (15) The fee for a change of location inspection shall be one
11 hundred dollars (\$100);

12 (16) The penalty for late payment of renewal of a pharmacist,
13 pharmacies, wholesaler/manufacturer of legend drugs and controlled substances,
14 hospital, institutional, and nursing home consultant permits shall be twenty
15 dollars (\$20.00) per month from February 1, provided that if the renewal is
16 unpaid by April 1 of any year, the license shall be null and void;

17 (17) The fee for issuance of a manufacturer's, bottler's,
18 packer's, repacker's or wholesaler's permit shall be two hundred dollars
19 (\$200.00), and annual renewal shall be one hundred dollars (\$100.00), provided
20 that if the renewal is unpaid by December 31 of any year, the permit shall be
21 null and void.

22 (b) All fees for examination for license shall be payable with the
23 application and shall not be subject to refund."

24

25 SECTION 4. Arkansas Code § 17-91-203 is hereby amended to read as
26 follows:

27 "17-91-203. Members - Compensation.

28 (a) The Board of Pharmacy is authorized to reimburse the members of the
29 board for necessary travel, meals, and lodging expenses incurred in the
30 performance of their responsibilities as board members.

31 (b) The members of the board shall each receive seventy-five dollars
32 (\$75.00) per diem while in session attending board meetings."

33

34 SECTION 5. Arkansas Code § 17-91-205 is hereby amended to read as
35 follows:

1 "17-91-205. Rules and regulations - Enforcement.

2 (a) The Arkansas State Board of Pharmacy shall have authority to make
3 reasonable rules and regulations, not inconsistent with law, to carry out the
4 purposes and intentions of this chapter and the pharmacy laws of this state
5 which the board deems necessary to preserve and protect the public health.

6 (b) It shall be the duty of the Board of Pharmacy through officials
7 appointed by it or under its supervision for that purpose, to enforce all the
8 provisions of this chapter.

9 (c) The board's inspectors shall have the power and authority to
10 inspect any store or business establishment where drugs, medicines, chemicals,
11 pharmaceuticals, or poisons regulated by the board are manufactured, sold, or
12 *dispensed*."

13

14 SECTION 6. Arkansas Code § 17-91-206 is hereby amended to read as
15 follows:

16 "17-91-206. Issuance of bulletins - Annual report.

17 (a) It shall be the duty of the Board of Pharmacy to issue bulletins
18 from time to time, informing pharmacists of important United States public
19 health regulations, service and regulatory announcements of the Bureau of
20 Chemistry in the United States Department of Agriculture, and decisions of the
21 United States Treasury Department relating to the possession, use, and sale of
22 nonbeverage United States Pharmacopoeia alcohol and to the Harrison-Wright
23 Antinarcotic Act.

24 (b) The board shall make a written report on July 1 of each year to the
25 Governor and to the Arkansas Pharmacists Association of all its proceedings,
26 orders, rules, requirements, and regulations, of its receipts and
27 disbursements, including also the names of all persons licensed to practice
28 under this chapter, and a record of permits and renewals."

29

30 SECTION 7. Arkansas Code § 17-91-301 is hereby amended to read as
31 follows:

32 "17-91-301. License required.

33 (a) No person shall perform any of the acts constituting the practice
34 of pharmacy unless the person is a licensed pharmacist or a student or
35 graduate of a recognized college of pharmacy serving an internship under an

1 internship program established and regulated by the Board of Pharmacy or a
2 qualified pharmacy employee performing the limited functions permitted under
3 this chapter and regulations promulgated hereunder, or a 'Qualified hospital
4 personnel' as defined in Arkansas Code § 17-91-602 performing the limited
5 functions permitted under that act and regulations promulgated thereunder.

6 (b) No person other than a licensed pharmacist shall use the term
7 'Doctor of Pharmacy' or 'P.D.'

8

9 SECTION 8. Arkansas Code § 17-91-302 is hereby amended to read as
10 follows:

11 "17-91-302. Unlicensed practice - Penalty.

12 (a) No person shall fill a prescription, compound medicines, or
13 otherwise perform the function of a licensed pharmacist unless the person is
14 an Arkansas licensed pharmacist, except students or graduates of a recognized
15 college of pharmacy serving internship as provided by law and regulated by the
16 Board of Pharmacy or a qualified pharmacy employee performing the limited
17 functions permitted under this chapter and regulations promulgated hereunder,
18 or 'Qualified hospital personnel' as defined in Arkansas Code § 17-91-602
19 performing the limited functions permitted under that act and regulations
20 promulgated thereunder.

21 (b) Any person who is not an Arkansas licensed pharmacist or a student
22 serving internship or a qualified pharmacy employee performing the limited
23 functions permitted under this chapter and regulations promulgated hereunder,
24 or 'Qualified hospital personnel' as defined in Arkansas Code § 17-91-602
25 performing the limited functions permitted under that act and regulations
26 promulgated thereunder, who shall fill a prescription, compound or dispense
27 medicine, or otherwise perform the functions of a pharmacist, shall be guilty
28 of a misdemeanor punishable by a fine of not less than fifty dollars (\$50.00)
29 nor more than one hundred dollars (\$100) for the first offense and not less
30 than one hundred dollars (\$100) or thirty (30) days' imprisonment, or both
31 fine and imprisonment, for each succeeding offense thereafter.

32 (c) Each day that the person shall fill prescriptions, compound or
33 dispense medicines, or otherwise perform the functions of a pharmacist shall
34 constitute a separate offense.

35 (d) Any licensed pharmacist who shall aid, abet, or encourage any

1 person to violate the provisions of this section shall have his license or
2 permit revoked or suspended, within the discretion of the Board of Pharmacy."

3

4 SECTION 9. Arkansas Code § 17-91-305 is hereby amended to read as
5 follows:

6 "17-91-305. Application - Qualification of applicants.

7 (a) Every applicant for examination as a pharmacist shall be not less
8 than twenty-one (21) years of age, of good moral character and temperate
9 habits, and

10 (1) shall have graduated and received the first professional
11 undergraduate degree from a pharmacy degree program which has been approved by
12 the Board of Pharmacy; or

13 (2) shall have graduated from a foreign college of pharmacy,
14 completed a transcript verification program, taken and passed a college of
15 pharmacy equivalency exam program, and completed a process of communication
16 ability testing as defined under Board of Pharmacy regulations so that it is
17 assured that the applicant meets standards necessary to protect public health
18 and safety.

19 (b) All applications for examination shall be made on a form to be
20 supplied by the Board of Pharmacy and shall be filed with the board as
21 required by board regulations.

22 (c) Each application must be accompanied by an examination fee of
23 twenty-five dollars (\$25.00) plus the cost of the examination and a
24 certificate fee of ten dollars (\$10.00).

25 (d) The examination shall be given at a time and place and in a manner
26 set by the board."

27

28 SECTION 10. Arkansas Code § 17-91-306 is hereby amended to read as
29 follows:

30 "17-91-306. Examinations. Upon application and at such time and place
31 and in such manner as it may determine, the Board of Pharmacy shall examine or
32 provide for examination every person who shall desire to practice pharmacy as
33 described in 17-91-101 and 17-91-402 in the State of Arkansas."

34

35 SECTION 11. Arkansas Code § 17-91-310 is hereby amended to read as

1 follows:

2 "17-91-310. Failure to renew.

3 (a) All licenses issued by the Arkansas State Board of Pharmacy shall
4 expire on the December 31 following the date of its issuance.

5 (b) The penalty for late payment of renewal for pharmacists,
6 pharmacies, wholesaler/manufacturer of legend drug and controlled substances,
7 hospital, institutional, and nursing home consultant permits shall be as
8 listed in § 17-91-108 and if renewal remains unpaid on April 1 of any year the
9 license shall be null and void.

10 (c) If a pharmacist's license is not renewed by April 1, the fee for
11 reinstatement shall be as stated in § 17-91-108.

12 (d) If a pharmacist's license has not been renewed for more than two
13 (2) years, the Board of Pharmacy shall evaluate the former pharmacist to
14 determine his or her continued ability to practice pharmacy safely with regard
15 to the public health and safety and the board shall establish conditions for
16 the safe re-entry into practice of the profession."

17

18 SECTION 12. Arkansas Code 17-91-311 is hereby amended to read as
19 follows:

20 "17-91-311. Revocation, suspension, or nonrenewal - Grounds.

21 (a) The Arkansas State Board of Pharmacy may revoke an existing license
22 of a licensed pharmacist or may suspend the license or may refuse to issue a
23 license if the holder or applicant, as the case may be, has committed or is
24 found guilty by the board of any of the following acts or offenses set forth:

25 (1) That the person is guilty of fraud, deceit, or
26 misrepresentation in the practice of pharmacy;

27 (2) That the person is unfit or incompetent to practice pharmacy
28 by reason of negligent performance of his duties;

29 (3) That the person has been found guilty, plead guilty or nolo
30 contendere in a criminal proceeding, regardless of whether or not the
31 adjudication of guilt or sentence is withheld, by a court of this state,
32 another state or the federal government for:

33 (A) any felony;

34 (B) any act involving moral turpitude, gross immorality, or
35 which is related to the qualifications, functions, and duties, of a licensee;

1 or

2 (C) any violation of the pharmacy or drug laws of this state
3 or rules and regulations pertaining thereto, or of the pharmacy or drug
4 statutes, rules and regulations of any other state or of the federal
5 government;

6 (4) That the person has become insane or has been adjudged by a
7 court of competent jurisdiction to be of unsound mind;

8 (5) That the person has directly or indirectly aided or abetted
9 the practice of pharmacy by a person not authorized to practice pharmacy by
10 the Arkansas State Board of Pharmacy;

11 (6) That the person has been guilty of fraud or misrepresentation
12 in obtaining a license to practice pharmacy in the State of Arkansas as a
13 licensed pharmacist;

14 (7) That the person has been guilty of gross unprofessional or
15 dishonorable conduct;

16 (8) That the person has willfully violated any of the provisions
17 of the pharmacy laws of the State of Arkansas;

18 (9) That the person is addicted to the use of intoxicating
19 liquors or drugs to such a degree as to render him unfit, in the opinion of
20 the board, to manufacture, compound, sell, or dispense drugs or medicine;

21 (10) That the person knowingly adulterated or caused to be
22 adulterated any drugs, chemical, or medical preparations and offered such
23 preparations for sale;

24 (11) That the person had his license to practice pharmacy
25 revoked, suspended, or had other disciplinary action taken, or had his
26 application for a license refused, revoked, or suspended or had voluntarily or
27 otherwise surrendered his license after a disciplinary action was instituted
28 by a duly authorized professional disciplinary agency of another state.

29 (b) Nothing in this section should be construed as affecting the rights
30 of any person to appeal any order of the Arkansas State Board of Pharmacy as
31 now provided by the state pharmacy laws."

32

33 SECTION 13. Arkansas Code § 17-91-314 is hereby amended to read as
34 follows;

35 "17-91-314. Revocation - Appeals. Any person whose certificate of

1 licensure, license, or permit has been revoked by the Board of Pharmacy as
2 provided in this chapter may appeal from the action of the board pursuant to
3 the Arkansas Administrative Procedure Act, Arkansas Code §§25-15-201 et seq."
4

5 SECTION 14. Arkansas Code § 17-91-315 is hereby amended to read as
6 follows:

7 "17-91-315. Alternative penalties.

8 (a) (1) Whenever the Board of Pharmacy has found a holder of a license
9 to practice pharmacy or the holder of a pharmacy permit to be guilty of a
10 violation of the rules of the Board of Pharmacy or the laws of the State of
11 Arkansas pertaining to the practice of pharmacy, the board shall have the
12 power and authority to impose a penalty on the licensee or the permit holder
13 in lieu of suspension or revocation of a license or certificate.

14 (2) Upon imposition of a penalty in lieu of suspension or
15 revocation of a license or certificate, the board shall have the power and
16 authority to require that the licensee or permit holder pay a penalty to the
17 Board of Pharmacy with regard to such violation with the sanction that the
18 license or permit may be suspended until the penalty is paid.

19 (3) Prior to the imposition of any penalty, the board shall hold
20 an investigation and hearing after notice to the licensee or his attorney, and
21 the penalty shall only be imposed and required to be paid if the board
22 formally finds that the public welfare and morals would not be impaired by the
23 imposition of the penalty and that the payment of a sum of money will achieve
24 the desired disciplinary purposes.

25 (b) (1) No penalty imposed by the board may exceed five hundred dollars
26 (\$500) per violation, nor shall the board impose a penalty on a licensee or a
27 permit holder where the license of such licensee or permit holder has been
28 revoked by the board for such violation.

29 (2) Each instance when a federal or state law or board regulation
30 is violated shall constitute a separate violation.

31 (3) The power and authority of the board to impose penalties are
32 not to be affected by any other civil or criminal proceeding, concerning the
33 same violation, nor shall the imposition of a penalty preclude the board from
34 imposing other sanctions short of revocation.

35 (c) Any person penalized by the Board of Pharmacy under this section

1 may appeal any order of the Board of Pharmacy as now provided by the state
2 pharmacy laws.

3

4 SECTION 15. All provisions of this act of general and permanent nature
5 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
6 Revision Commission shall incorporate the same in the Code.

7

8 SECTION 16. If any provisions of this act or the application thereof to
9 any person or circumstance is held invalid, the invalidity shall not affect
10 other provisions or applications of the act which can be given effect without
11 the invalid provisions or application, and to this end the provisions of this
12 act are declared to be severable.

13

14 SECTION 17. All laws and parts of laws in conflict with this act are
15 hereby repealed.

16

17

18 /s/Ross

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