

1 BEFORE THE ARIZONA MEDICAL BOARD

2 In the Matter of

3 **JAMES R. THOMAS, M.D.**

4 Holder of License No. 17089
5 For the Practice of Medicine
6 In the State of Arizona.

Case No. MD-02-0827

**CONSENT AGREEMENT FOR
DECREE OF CENSURE AND
PROBATION**

7 **CONSENT AGREEMENT**

8 By mutual agreement and understanding, between the Arizona Medical Board
9 ("Board") and James R. Thomas, M.D. ("Respondent"), the parties agreed to the following
10 disposition of this matter.

11 1. Respondent acknowledges that he has read and understands this Consent
12 Agreement and the stipulated Findings of Fact, Conclusions of Law and Order ("Consent
13 Agreement"). Respondent acknowledges that he has the right to consult with legal
14 counsel regarding this matter and has done so or chooses not to do so.

15 2. Respondent understands that by entering into this Consent Agreement, he
16 voluntarily relinquishes any rights to a hearing or judicial review in state or federal court on
17 the matters alleged, or to challenge this Consent Agreement in its entirety as issued by the
18 Board, and waives any other cause of action related thereto or arising from said Consent
19 Agreement.

20 3. Respondent acknowledges and understands that this Consent Agreement is
21 not effective until approved by the Board and signed by its Executive Director.


22 4. All admissions made by Respondent are solely for final disposition of this
23 matter and any subsequent related administrative proceedings or civil litigation involving
24 the Board and Respondent. Therefore, said admissions by Respondent are not intended
25 or made for any other use, such as in the context of another state or federal government

1 regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or
2 any other state or federal court.


3 5. Respondent acknowledges and agrees upon signing this Consent
4 Agreement, and returning this document (or a copy thereof) to the Board's Executive
5 Director, Respondent may not revoke his acceptance of the Consent Agreement.
6 Respondent may not make any modifications to the document. Any modifications to this
7 original document are ineffective and void unless mutually approved by the parties.

8 6. Respondent further understands that this Consent Agreement, once
9 approved and signed, is a public record that may be publicly disseminated as a formal
10 action of the Board and will be reported to the National Practitioner Data Bank and to the
11 Arizona Medical Board's website.

12 7. If any part of the Consent Agreement is later declared void or otherwise
13 unenforceable, the remainder of the Order in its entirety shall remain in force and effect.

14
15 
16 James R. Thomas, M.D.

DATED: 5/14/2003

17 
18 Kari B. Zangerle
19 Attorney for Respondent
20 Approved as to Form

DATED: 5/20/2003

21 **FINDINGS OF FACT**

22 1. The Board is the duly constituted authority for the regulation and control of
23 the practice of allopathic medicine in the State of Arizona.

24 2. Respondent is the holder of license number 17089 for the practice of
25 allopathic medicine in the State of Arizona.

1 3. The Board initiated case number MD-02-0827 after being informed that
2 nursing staff at Flagstaff Medical Center ("FMC") believed that Respondent was under the
3 influence of alcohol and/or impaired when he delivered a baby in the early morning hours
4 of December 25, 2002.

5 4. On December 24, 2002, around 9:30 p.m., Respondent and his family ate a
6 late dinner. Respondent had champagne with his dinner to celebrate Christmas Eve.

7 5. Shortly after 10:00 p.m., Respondent received a telephone call from an Ohio
8 hospital informing him that his father was about to expire. Respondent admitted to having
9 a "good drink of scotch" upon receiving the news.

10 6. Soon after receiving the call about his father, Respondent was notified that
11 his patient ("K.H.") was in the hospital to give birth. K.H. was considered a high-risk
12 patient because she had a history of cerebral aneurysm and was unable to push during
13 delivery.

14 7. On December 25, 2002, around 12:50 a.m., Respondent telephoned FMC
15 labor and delivery and spoke with a Registered Nurse ("Nurse #1"). Nurse #1 observed
16 Respondent's speech was slurred, repetitive and difficult to understand. Respondent tried
17 to ask Nurse #1 if she was the nurse taking care of his patient. It took Respondent three
18 times before he could express himself in a manner that allowed Nurse #1 to understand
19 him. Nurse #1 told Respondent she was not the nurse and handed the telephone to the
20 Registered Nurse in charge ("Nurse #2"), who was standing next to her. Nurse #1 was
21 concerned because she had prior conversations with Respondent and this conversation
22 did not reflect his normal speech pattern.

23 8. Nurse #2 spoke with Respondent and advised him that K.H. was at 9
24 centimeters and that he needed to come to the labor room immediately. Nurse #2 also
25 observed that Respondent's speech was slurred and that he repeated himself
unnecessarily. Respondent arrived at the labor room within 5 minutes.

1 9. An Obstetrics Technician ("OB Tech") was working the midnight shift at FMC.
2 She first saw Respondent around 1:00 a.m. as he was walking into the second floor of
3 FMC. OB Tech noticed Respondent was walking very slowly and appeared to stumble.
4 When she came within several feet of Respondent and asked if he was okay, Respondent
5 replied that he was fine and continued walking into the labor room. OB Tech described an
6 odor about Respondent's person that smelled like Listerine. OB Tech did not follow
7 Respondent into the labor room as Nurse #1 and Nurse #2 were already in the room with
8 K.H. and K.H.'s boyfriend, the father of her baby ("M.L.").

9 10. Around 12:55 a.m., Registered Nurse ("Nurse #3") was called to the labor
10 and delivery floor. Nurse #3 knew Respondent and has had conversations with him in the
11 past. Nurse #3 observed Respondent walking down the hall and he did not appear to be
12 acting like himself. Nurse #3 entered the delivery room and was within several feet of
13 Respondent and noticed an odor of mouthwash about his person. Nurse #3 observed that
14 Respondent had a difficult time focusing on K.H. at the foot of the bed and he had a
15 difficult time using the vacuum device. After the birth, she took charge of the infant, which
16 was her main concern. She gave the Apgar scores several times to the Respondent and
17 he asked several times for the sex of the infant. Nurse #3 thought this was very unusual.

18 11. Registered Nurse ("Nurse #4") works in the special care nursery at FMC and
19 was also in the labor room before Respondent's arrival. Nurse #4 observed Respondent
20 enter the room walking slowly and not in a straight line. Respondent sat on the bed and
21 checked K.H. Nurse #4 was approximately nine to ten feet from Respondent and did not
22 detect any odors about him. Nurse #4 thought Respondent appeared impaired and
23 sleepy. Nurse #2 was also in the labor room when Respondent arrived. She observed
24 that he had difficulty maintaining his balance and needed to lean against the wall and the
25 patient table. Respondent's speech was so soft and slurred that it was difficult to
understand his instructions. Nurse #1 noted Respondent did not wash his hands prior to

1 putting on sterile gloves, which contradicted his normal routine. While Respondent
2 conducted a vaginal exam, his head bobbed up and down. Respondent's breath smelled
3 of Listerine and he was chewing gum. Nurses #1, #2, and #4 did not smell alcohol on
4 Respondent's breath.

5 12. Nurses #1 and #2 observed Respondent had a difficult time expressing
6 himself and was uncoordinated during the birthing process. Nurse #4 observed
7 Respondent lean against one of the stirrups and close his eyes. Respondent tried to order
8 a vacuum extraction, but had difficulty articulating the order. He attempted to apply the
9 vacuum extraction device approximately four times and was unsuccessful. Respondent
10 then placed the bulb on the bed next to K.H. instead of on the sterile tray. Respondent
11 decided to use forceps but had difficulty and the forceps slipped off of the infant's head
12 three times

13 13. Nurses #1 and #2 observed that Respondent had difficulty loading a needle
14 onto a syringe for injection of a local anesthetic so he could repair the perineal laceration
15 site on K.H. Respondent appeared to have difficulty focusing and would move his head
16 back and forth while suturing. Respondent could not properly grasp the needle and
17 occasionally grasped tissue with the needle driver and pulled small pieces of tissue from
18 the wound. He then would wipe the needle driver on the drape near the bottom of K.H.
19 Nurse #4 did not observe the close of the laceration.

20 14. Respondent's partner ("Partner") arrived in the labor room to check on the
21 wound. Partner performed a vaginal and rectal exam on K.H. and did not detect any rectal
22 tear. When Partner arrived, M.L. realized that something was wrong with Respondent.
23 M.L. had noticed Respondent shuffled when he walked into the labor room and that his
24 face was red. M.L. thought Respondent was possibly tired or sick because he appeared
25 so sluggish. M.L. observed one of the nurses had to ask Respondent the same question
several times because he simply would not respond. M.L. thought Respondent may be

1 intoxicated but did not smell any odor about Respondent. M.L. stated he was getting over
2 a cold at the time.

3 15. At some point during the delivery process, OB Tech had telephoned the
4 Relief Shift Coordinator ("Relief Coordinator") regarding the situation. Relief Coordinator is
5 a Registered Nurse and critical care float at FMC. OB Tech explained that Respondent
6 was delivering an infant and was thought to be intoxicated. Relief Coordinator arrived at
7 labor and delivery and was told that the doctor, who was in charge of labor and delivery,
8 had been called.

9 16. Relief Coordinator called the Vice President of Patient Care Services at FMC
10 ("V.P.") to find out who she was supposed to call and what the nurses' duties in this
11 situation. V.P. advised Relief Coordinator to call the Chief of Staff. The Chief of Staff was
12 called and paged.

13 17. FMC Security Officers ("Security Officers") responded to a call of an
14 unknown circumstance STAT on the labor and delivery floor. OB Tech pointed out
15 Respondent and stated that Respondent was having difficulty in the labor room and was
16 thought to be impaired. Relief Coordinator told the Security Officers to stand by in case
17 Respondent became difficult. The Security Officers did not know what was going on in the
18 labor room and did not observe Respondent in the labor room.

19 18. At least six people, if not more, observed Respondent having a difficult time
20 leaving the labor room and using the bed and then the wall for support. Respondent was
21 unsteady in his walk and need support to negotiate his way from the labor room to the
22 nurse's station.

23 19. Respondent had a difficult time finding the counter at the nurse's station and
24 difficulty sitting in a chair. Respondent's speech was extremely slurred as he dictated the
25 case into the telephone. Respondent then got up, held onto the wall railings and walked
up and down the hall twice looking for his belongings. Respondent eventually found his

1 belongings in a soiled utility room. One Security Officer was within three feet behind
2 Respondent and did not detect any odor about his person. The Security Officers observed
3 Respondent was stumbling and smelled Listerine and chewing gum about Respondent's
4 person. At this time, Partner took Respondent out to another hallway to speak with him.
5 Partner returned to the labor area and Respondent went the other direction toward the
6 main elevator. A Security Officer was concerned with Respondent leaving the premises in
7 a vehicle and attempted to follow him, but Partner delayed her and Nurse #3 in
8 conversation. Partner was informed that Respondent was impaired. A Security Officer
9 lost track of Respondent and then called Flagstaff Police regarding the possibility that
10 Respondent was driving while impaired.

11 20. Respondent subsequently underwent an evaluation for chemical
12 dependency at the Betty Ford Center ("Betty Ford") and Hazelden Springbrook Clinic.
13 Betty Ford has recommended that Respondent undergo treatment for alcohol abuse.

14 21. Respondent has agreed to abstain from alcohol and controlled substances.

15 22. A Board Medical Consultant, with a specialty in Obstetrics/Gynecology,
16 opined that the standard of care required Respondent to not be under the influence of
17 alcohol or narcotic drugs when treating patients, to maintain a sterile field during a
18 patient's delivery and properly repair a perineal laceration.

19 23. The standard of care required Respondent to not be under the influence of
20 alcohol or narcotic drugs when treating patients, to maintain a sterile field during a
21 patient's delivery and to properly repair a perineal laceration.

22 24. Respondent failed to meet the accepted standard of care because he was
23 impaired when he treated the patient, he failed to maintain a sterile field during a patient's
24 delivery and he failed to properly repair a perineal laceration.

25 25. There was a potential for injury or death of both K.H. and her infant.

1 **CONCLUSIONS OF LAW**

2 1. The Board possesses jurisdiction over the subject matter hereof and over
3 Respondent.

4 2. The conduct and circumstances described above constitute unprofessional
5 conduct pursuant to A.R.S. § 32-1401(24)(q) - ("[a]ny conduct or practice that is or might
6 be harmful or dangerous to the health of the patient or the public.").

7 **ORDER**

8 IT IS HEREBY ORDERED THAT:

9 1. Respondent is issued a Decree of Censure for being impaired when he
10 delivered an infant and for breaking the sterile field during the delivery and for using an
11 improper suture technique in repairing a perineal laceration.

12 2. Respondent shall pay a civil penalty in the amount of \$2,500.00 within 60
13 days of the effective date of this Consent Agreement.

14 3. Respondent is placed on probation for five years with the following terms and
15 conditions:

16 a. Respondent shall submit to quarterly declarations under penalty of
17 perjury on forms provided by the Board, stating whether there has been compliance with
18 all the conditions of probation. The declarations must be submitted on or before the 15th of
19 March, June, September and December of each year, beginning on or before September
20 15, 2003.

21 b. Respondent shall pay the costs associated with monitoring his
22 probation as designated by the Board each and every year of probation. Such costs may
23 be adjusted on an annual basis. Costs are payable to the Board no later than 60 days
24 after the effective date of this Order and thereafter on an annual basis. Failure to pay
25 these costs within 30 days of the due date constitutes a violation of probation.

1 c. Respondent shall enroll in the Board's confidential substance abuse
2 treatment and rehabilitation program (MAP) with the following terms:

3 1. **Participation.**

4 As part of the participation in MAP, the Respondent shall cooperate with Board
5 Staff and contracting MAP supervisors. Respondent shall remain in MAP for a period of
6 five years from the effective date of the Order. Respondent's participation in MAP may be
7 unilaterally terminated at the discretion of the Board at any time after issuance of this
8 Consent Agreement, with or without cause for termination.

9 2. **Group Therapy.**

10 Respondent shall attend MAP's group therapy sessions one time per week for
11 the duration of this Consent Agreement, unless excused by the group therapist for good
12 cause such as illness or vacation. Respondent shall instruct the MAP group therapist to
13 release to the Board, upon its request, all records relating to Respondent's treatment, and
14 to submit monthly reports to the Board regarding attendance and progress. The reports
15 must be submitted on or before the 10th day of each month.

16 3. **12 Step or Self-Help Group Meetings.**

17 A. Respondent shall attend ninety (90) 12-step meetings or other self-help
18 group meetings appropriate for substance abuse and approved by the Board, for a period
19 of ninety (90) days beginning not later than either (a) the first day following his discharge
20 from chemical dependency treatment or (b) the effective date of this Consent Agreement.

21 B. Following completion of the ninety (90) meetings in ninety (90) days,
22 Respondent shall participate in a 12-step recovery program or other self-help program
23 appropriate for substance abuse as recommended by the group therapist and approved by
24 the Board. Respondent shall attend a minimum of three (3) 12-step or other self-help
25 program meetings per week.

4. **Board-Approved primary Care Physician.**

1 Respondent shall promptly obtain a primary care physician (PCP) and shall
2 submit the name of the PCP to Board Staff in writing for approval. The Board-approved
3 PCP shall be in charge of providing and coordinating Respondent's medical care and
4 treatment. Except in an *Emergency*, Respondent shall obtain Respondent's medical care
5 and treatment only from the PCP and from health care providers to whom the PCP refers
6 Respondent from time to time. Respondent shall request that the PCP document all
7 referrals in the medical record. Respondent shall promptly inform the Board-approved
8 PCP of Respondent's rehabilitation efforts and provide a copy of this Consent Agreement
9 to the PCP. Respondent shall also inform all other health care providers who provide
10 medical care or treatment that Respondent is participating in MAP.

11 5. **Medication.**

12 A. Except in an *Emergency*, Respondent shall take no *Medication* unless the
13 *Medication* is prescribed by the PCP or other health care provider to whom the PCP
14 physician makes referral. Respondent shall not self-prescribe any *Medication*.

15 B. If a controlled substance is prescribed, dispensed, or is administered to
16 Respondent by any person other than the PCP, Respondent shall notify the PCP in writing
17 within 48 hours. The notification shall contain all information required for the medication
18 log entry specified below. Respondent shall request that the notification be made a part of
19 the medical record. This paragraph does not authorize Respondent to take any
20 *Medication* other than in accordance with paragraph A.

21 6. **Medication Log.**

22 A. Respondent shall maintain a current legible log of all *Medication* taken by
23 or administered to Respondent, and shall make the log available to the Board and its Staff
24 upon request. For *Medication* (other than controlled substances) taken on an on-going
25 basis, Respondent may comply with this paragraph by logging the first and last
administration of the *Medication* and all changes in dosage or frequency. The log, at a

1 minimum, shall include the following:

- 2 i. Name and dosage of *Medication* taken or administered;
- 3 ii. Date taken or administered;
- 4 iii. Name of prescribing or administering physician;
- 5 iv. Reason *Medication* was prescribed or administered.

6 This paragraph does not authorize Respondent to take any *Medication* other
7 than in accordance with paragraph 5.

8 7. **No Alcohol or Poppy Seeds.**

9 Respondent shall not consume alcohol or any food/substance containing poppy
10 seeds or alcohol.

11 8. **Biological Fluid Collection.**

12 A. During all times that Respondent is physically present in the state of
13 Arizona and such other times as Board Staff may direct, Respondent shall promptly
14 comply with requests from Board Staff, the group therapist, or the Program director to
15 submit to witnessed biological fluid collection. If Respondent is directed to contact an
16 automated telephone message system to determine when to provide a specimen,
17 Respondent shall do so within the hours specified by Board Staff. For the purposes of this
18 paragraph, in the case of an in-person request, "promptly comply" means "immediately".
19 In the case of a telephonic request, "promptly comply" means that, except for good cause
20 shown, Respondent shall appear and submit to specimen collection not later than two
21 hours after telephonic notice to appear is given. The Board in its sole discretion shall
22 determine good cause.

23 B. Respondent shall provide Board Staff in writing with one telephone
24 number, which shall be used to contact Respondent on a 24 hour per day/seven day per
25 week basis to submit to biological fluid collection. For the purposes of this section,
telephonic notice shall be deemed given at the time a message to appear is left at the

1 contact telephone number provided by Respondent. Respondent authorizes any person
2 or organization conducting tests on the collected samples to provide testing results to the
3 Board and the MAP director.

4 C. Respondent shall cooperate with collection site personnel regarding
5 biological fluid collection. Repeated complaints from collection site personnel regarding
6 Respondent's lack of cooperation regarding collection may be grounds for termination from
7 MAP.

8 9. **Payment for Services.**

9 Respondent shall pay for all costs, including personnel and contractor costs,
10 associated with participating in MAP at time service is rendered or within 30 days of each
11 invoice sent to him.

12 10. **Examination.**

13 Respondent shall submit to mental, physical, and medical competency
14 examinations at such times and under such conditions as directed by the Board to assist
15 the Board in monitoring Respondent's ability to safely engage in the practice of medicine
16 and compliance with the terms of this Consent Agreement.

17 11. **Treatment.**

18 Respondent shall submit to all medical, substance abuse, and mental health
19 care and treatment ordered by the Board, or recommended by the MAP director.

20 12. **Obey All Laws.**

21 Respondent shall obey all federal, state and local laws, and all rules governing
22 the practice of medicine in the State of Arizona.

23 13. **Interviews.**

24 Respondent shall appear in person before the Board and its Staff and
25 committees for interviews upon request, upon reasonable notice.

1 14. **Address and Phone Changes, Notice.**

2 Respondent shall immediately notify the Board in writing of any change in
3 office or home addresses and telephone numbers. Respondent shall provide Board Staff
4 at least three business days advance written notice of any plans to be away from office or
5 home for more than five (5) consecutive days. The notice shall state the reason for the
6 intended absence from home or office, and shall provide a telephone number to contact
7 Respondent.

8 15. **Relapse, Violation.**

9 In the event of chemical dependency relapse by Respondent or use of drugs
10 or alcohol by Respondent in violation of this Consent Agreement, Respondent shall
11 promptly enter into an Interim Consent Agreement that requires, among other things, that
12 Respondent not practice medicine until such time as Respondent successfully completes
13 an inpatient or residential treatment program for chemical dependency designated by
14 Board or Staff and obtains the affirmative approval of the Board to return to the practice of
15 medicine. Prior to approving Respondent's request to return to the practice of medicine,
16 Respondent may be required to submit witnessed biological fluid collection, undergo any
17 combination of physical examination, psychiatric or psychological evaluation and/or to
18 successfully pass the special purpose licensing examination or the Board may conduct
19 interviews for the purpose of assisting it in determining the ability of Respondent to safely
20 return to the practice of medicine. In no respect shall the terms of this paragraph restrict
21 the Board's authority to initiate and take disciplinary action for violation of this Consent
22 Agreement.

23 16. **Notice Requirements.**

24 A. Respondent shall immediately provide a copy of this Consent Agreement
25 to all employers and hospitals and free standing surgery centers at which Respondent
currently has privileges. Within 30 days of the date of this Consent Agreement,

1 Respondent shall provide the Board with a signed statement that Respondent has
2 complied with this notification requirement. Upon any change in employer or upon the
3 granting of privileges at additional hospitals or free standing surgery centers, Respondent
4 shall provide the employer, hospital or free standing surgery center with a copy of this
5 Consent Agreement. Within 30 days of a change in employer or upon the granting of
6 privileges at additional hospitals or free standing surgery centers, Respondent shall
7 provide the Board with a signed statement that Respondent has complied with this
8 notification requirement.

9 B. Respondent is further required to notify, in writing, all employers, hospitals
10 and free standing surgery centers at which Respondent currently has, or in the future
11 gains employment or privileges, of a chemical dependency relapse, use of drugs or
12 alcohol in violation of this Consent Agreement and/or entry into a treatment program.
13 Respondent shall provide the Board with written confirmation that he has complied with
14 this notification requirement within seven days of any of these events.

15 C. Respondent shall immediately submit to the Board, under penalty of
16 perjury, on a form provided by the Board, the name(s) and address(es) of all employers
17 and all hospitals and free-standing surgery centers at which Respondent currently holds
18 privileges to practice. Respondent is further required to, under penalty of perjury, on a
19 form provided by the Board, immediately notify the Board of any changes in his
20 employment and of any hospitals and freestanding surgery centers at which Respondent
21 gains privileges after the effective date of this Consent Agreement.
22

23 17. **Public Record.**

24 This Consent Agreement is a public record.
25

1 18. **Out-of-State.**

2 In the event Respondent resides or practices medicine in a state other than
3 Arizona, Respondent shall participate in the physician rehabilitation program sponsored by
4 that state's medical licensing authority or medical society. Respondent shall cause the
5 other state's program to provide written reports to the Board regarding his attendance,
6 participation, and monitoring. The reports are due on or before the 15th day of March and
7 September of each year, until the Board terminates this requirement in writing.
8

9 **DEFINITIONS:**

10 "**Medication**" means "prescription-only drug, controlled substance, and over-
11 the-counter preparation, other than plain aspirin and plain acetaminophen."

12 "**Emergency**" means "a serious accident or sudden illness that, if not treated
13 immediately, may result in a long-term medical problem or loss of life."

14 4. This Order is the final disposition of case number MD-02-0827.

15 DATED AND EFFECTIVE this 11th day of JUNE, 2003.

16 ARIZONA MEDICAL BOARD

17 (SEAL)

18 By Barry Cassidy
19 BARRY A. CASSIDY, Ph.D., PA-C
20 Executive Director

21 ORIGINAL of the foregoing filed this
22 11th day of JUNE, 2003 with:

23 Arizona Medical Board
24 9545 E. Doubletree Ranch Road
25 Scottsdale, AZ 85258

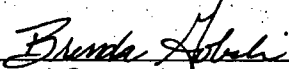
1 EXECUTED COPY of the foregoing mailed by
2 Certified Mail this 11th day of JUNE, 2003 to:

3 Kari B. Zangerle
4 Sanders & Park, PC
5 3030 N. Third Street, Suite 1300
6 Phoenix, AZ 85012-3099

7 James R. Thomas, M.D.
8 77 W. Forest Avenue, Suite 108
9 Flagstaff, AZ 86001-1482

10 EXECUTED COPY of the foregoing
11 hand-delivered this 11th day of
12 JUNE, 2003, to:

13 Christine Cassetta, Assistant Attorney General
14 Sandra Waitt, Management Analyst
15 Investigations
16 c/o Arizona Medical Board
17 9545 E. Doubletree Ranch Road
18 Scottsdale, AZ 85258

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20 _____
21 Board Operations
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24
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