
SUBSTITUTE SENATE BILL 5365

State of Washington

54th Legislature

1995 Regular Session

By Senate Committee on Health & Long-Term Care (originally sponsored by Senators Fairley, Deccio, Wojahn and Winsley; by request of Department of Health)

Read first time 02/20/95.

1 AN ACT Relating to the uniform disciplinary act; amending RCW
2 18.130.020, 18.130.095, 18.130.098, 18.130.170, and 18.130.180; and
3 reenacting and amending RCW 18.130.040 and 18.130.050.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 18.130.020 and 1994 sp.s. c 9 s 602 are each amended
6 to read as follows:

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout this chapter.

9 (1) "Disciplining authority" means the agency, board, or commission
10 having the authority to take disciplinary action against a holder of,
11 or applicant for, a professional or business license upon a finding of
12 a violation of this chapter or a chapter specified under RCW
13 18.130.040.

14 (2) "Department" means the department of health.

15 (3) "Secretary" means the secretary of health or the secretary's
16 designee.

17 (4) "Board" means any of those boards specified in RCW 18.130.040.

18 (5) "Commission" means any of the commissions specified in RCW
19 18.130.040.

1 (6) "Unlicensed practice" means:

2 (a) Practicing a profession or operating a business identified in
3 RCW 18.130.040 without holding a valid, unexpired, unrevoked, and
4 unsuspended license to do so; or

5 (b) Representing to a consumer, through offerings, advertisements,
6 or use of a professional title or designation, that the individual is
7 qualified to practice a profession or operate a business identified in
8 RCW 18.130.040, without holding a valid, unexpired, unrevoked, and
9 unsuspended license to do so.

10 (7) "Disciplinary action" means sanctions identified in RCW
11 18.130.160.

12 (8) "Practice review" means an investigative audit of records
13 related to the complaint, without prior identification of specific
14 patient or consumer names, or an assessment of the conditions,
15 circumstances, and methods of the professional's practice related to
16 the complaint, to determine whether unprofessional conduct may have
17 been committed.

18 (9) "Health agency" means city and county health departments and
19 the department of health.

20 (10) "License," "licensing," and "licensure" shall be deemed
21 equivalent to the terms "license," "licensing," "licensure,"
22 "certificate," "certification," and "registration" as those terms are
23 defined in RCW 18.120.020.

24 **Sec. 2.** RCW 18.130.040 and 1994 sp.s. c 9 s 603 and 1994 c 17 s 19
25 are each reenacted and amended to read as follows:

26 (1) This chapter applies only to the secretary and the boards and
27 commissions having jurisdiction in relation to the professions licensed
28 under the chapters specified in this section. This chapter does not
29 apply to any business or profession not licensed under the chapters
30 specified in this section.

31 (2)(a) The secretary has authority under this chapter in relation
32 to the following professions:

33 (i) Dispensing opticians licensed under chapter 18.34 RCW;

34 (ii) Naturopaths licensed under chapter 18.36A RCW;

35 (iii) Midwives licensed under chapter 18.50 RCW;

36 (iv) Ocularists licensed under chapter 18.55 RCW;

37 (v) Massage operators and businesses licensed under chapter 18.108
38 RCW;

1 (vi) Dental hygienists licensed under chapter 18.29 RCW;
2 (vii) Acupuncturists certified under chapter 18.06 RCW;
3 (viii) Radiologic technologists certified and x-ray technicians
4 registered under chapter 18.84 RCW;
5 (ix) Respiratory care practitioners certified under chapter 18.89
6 RCW;
7 (x) Persons registered or certified under chapter 18.19 RCW;
8 (xi) Persons registered as nursing pool operators under chapter
9 18.52C RCW;
10 (xii) Nursing assistants registered or certified under chapter
11 18.79 RCW;
12 (xiii) Health care assistants certified under chapter 18.135 RCW;
13 (xiv) Dietitians and nutritionists certified under chapter 18.138
14 RCW;
15 (xv) Sex offender treatment providers certified under chapter
16 18.155 RCW; and
17 (xvi) Persons licensed and certified under chapter 18.73 RCW or RCW
18 18.71.205.
19 (b) The boards and commissions having authority under this chapter
20 are as follows:
21 (i) The podiatric medical board as established in chapter 18.22
22 RCW;
23 (ii) The chiropractic quality assurance commission as established
24 in chapter 18.25 RCW;
25 (iii) The dental quality assurance commission as established in
26 chapter 18.32 RCW;
27 (iv) The board on fitting and dispensing of hearing aids as
28 established in chapter 18.35 RCW;
29 (v) The board of examiners for nursing home administrators as
30 established in chapter 18.52 RCW;
31 (vi) The optometry board as established in chapter 18.54 RCW
32 governing licenses issued under chapter 18.53 RCW;
33 (vii) The board of osteopathic medicine and surgery as established
34 in chapter 18.57 RCW governing licenses issued under chapters 18.57 and
35 18.57A RCW;
36 (viii) The board of pharmacy as established in chapter 18.64 RCW
37 governing licenses issued under chapters 18.64 and 18.64A RCW;

1 (ix) The medical quality assurance commission as established in
2 chapter 18.71 RCW governing licenses and registrations issued under
3 chapters 18.71 and 18.71A RCW;

4 (x) The board of physical therapy as established in chapter 18.74
5 RCW;

6 (xi) The board of occupational therapy practice as established in
7 chapter 18.59 RCW;

8 (xii) The nursing care quality assurance commission as established
9 in chapter 18.79 RCW governing licenses issued under that chapter;

10 (xiii) The examining board of psychology and its disciplinary
11 committee as established in chapter 18.83 RCW;

12 (xiv) The veterinary board of governors as established in chapter
13 18.92 RCW.

14 (3) In addition to the authority to discipline license holders, the
15 disciplining authority has the authority to grant or deny licenses
16 based on the conditions and criteria established in this chapter and
17 the chapters specified in subsection (2) of this section. This chapter
18 also governs any investigation, hearing, or proceeding relating to
19 denial of licensure or issuance of a license conditioned on the
20 applicant's compliance with an order entered pursuant to RCW 18.130.160
21 by the disciplining authority.

22 (4) All disciplining authorities shall adopt procedures to ensure
23 substantially consistent application of this chapter, the uniform
24 disciplinary act, among the disciplining authorities listed in
25 subsection (2) of this section.

26 **Sec. 3.** RCW 18.130.050 and 1993 c 367 s 21 and 1993 c 367 s 5 are
27 each reenacted and amended to read as follows:

28 The disciplining authority has the following authority:

29 (1) To adopt, amend, and rescind such rules as are deemed necessary
30 to carry out this chapter;

31 (2) To investigate all complaints or reports of unprofessional
32 conduct as defined in this chapter and to hold hearings as provided in
33 this chapter;

34 (3) To issue subpoenas and administer oaths in connection with any
35 investigation, hearing, or proceeding held under this chapter;

36 (4) To take or cause depositions to be taken and use other
37 discovery procedures as needed in any investigation, hearing, or
38 proceeding held under this chapter;

- 1 (5) To compel attendance of witnesses at hearings;
- 2 (6) In the course of investigating a complaint or report of
3 unprofessional conduct, to conduct practice reviews;
- 4 (7) To take emergency action ordering summary suspension of a
5 license, or restriction or limitation of the licensee's practice
6 pending proceedings by the disciplining authority;
- 7 (8) To use a presiding officer as authorized in RCW 18.130.095(5)
8 or the office of administrative hearings as authorized in chapter 34.12
9 RCW to conduct hearings. ((However,)) The disciplining authority shall
10 make the final decision regarding disposition of the license unless the
11 disciplining authority elects to delegate in writing the final decision
12 to the presiding officer;
- 13 (9) To use individual members of the boards to direct
14 investigations. However, the member of the board shall not
15 subsequently participate in the hearing of the case;
- 16 (10) To enter into contracts for professional services determined
17 to be necessary for adequate enforcement of this chapter;
- 18 (11) To contract with licensees or other persons or organizations
19 to provide services necessary for the monitoring and supervision of
20 licensees who are placed on probation, whose professional activities
21 are restricted, or who are for any authorized purpose subject to
22 monitoring by the disciplining authority;
- 23 (12) To adopt standards of professional conduct or practice;
- 24 (13) To grant or deny license applications, and in the event of a
25 finding of unprofessional conduct by an applicant or license holder, to
26 impose any sanction against a license applicant or license holder
27 provided by this chapter;
- 28 (14) To designate individuals authorized to sign subpoenas and
29 statements of charges;
- 30 (15) To establish panels consisting of three or more members of the
31 board to perform any duty or authority within the board's jurisdiction
32 under this chapter;
- 33 (16) To review and audit the records of licensed health facilities'
34 or services' quality assurance committee decisions in which a
35 licensee's practice privilege or employment is terminated or
36 restricted. Each health facility or service shall produce and make
37 accessible to the disciplining authority the appropriate records and
38 otherwise facilitate the review and audit. Information so gained shall

1 not be subject to discovery or introduction into evidence in any civil
2 action pursuant to RCW 70.41.200(3).

3 **Sec. 4.** RCW 18.130.095 and 1993 c 367 s 2 are each amended to read
4 as follows:

5 (1) The secretary, in consultation with the disciplining
6 authorities, shall develop uniform procedural rules to respond to
7 public inquiries concerning complaints and their disposition, active
8 investigations, statement of charges, findings of fact, and final
9 orders involving a licensee, applicant, or unlicensed person. The
10 uniform procedural rules adopted under this subsection apply to all
11 adjudicative proceedings conducted under this chapter and shall include
12 provisions for the establishing time ~~((lines))~~ periods for assessment,
13 investigation, charging, discovery, settlement, and ((scheduling
14 hearings)) adjudication of complaints, and shall include enforcement
15 provisions for violations of the specific time periods by the
16 department, the disciplining authority, and the respondent.

17 (2) The disciplining authority shall not open an investigation or
18 issue a statement of charges on de minimis complaints. De minimis
19 complaints do not contain allegations of actual patient harm, present
20 an unreasonable risk that a patient may be harmed, nor suggest serious
21 violations of professional standards. By December 31, 1995, the
22 secretary, in consultation with the disciplining authorities, shall
23 develop uniform procedural rules for criteria of de minimis complaints.

24 (3) The following information is exempt from public disclosure
25 requests made to the department, secretary, or disciplinary
26 authorities:

27 (a) Closed files on complaints where no charges were brought;

28 (b) Files on complaints judged not meritorious of investigation;

29 (c) De minimis complaints.

30 (4) The uniform procedures for conducting investigations shall
31 provide that prior to taking a written statement:

32 (a) For violation of this chapter, the investigator shall inform
33 such person, in writing of: (i) The nature of the complaint; (ii) that
34 the person may consult with legal counsel at his or her expense prior
35 to making a statement; and (iii) that any statement that the person
36 makes may be used in an adjudicative proceeding conducted under this
37 chapter; and

1 (b) From a witness or potential witness in an investigation under
2 this chapter, the investigator shall inform the person, in writing,
3 that the statement may be released to the licensee, applicant, or
4 unlicensed person under investigation if a statement of charges is
5 issued.

6 ~~((3))~~ (5) Only upon the authorization of a ~~((disciplinary))~~
7 disciplining authority identified in RCW 18.130.040(2)(b), the
8 secretary, or his or her designee, may serve as the presiding officer
9 for any disciplinary proceedings of the ~~((disciplinary))~~ disciplining
10 authority authorized under this chapter. Except as provided in RCW
11 18.130.050(8), the presiding officer shall not vote on or make any
12 final decision. All functions performed by the presiding officer shall
13 be subject to chapter 34.05 RCW. The secretary, in consultation with
14 the ~~((disciplinary))~~ disciplining authorities, shall adopt procedures
15 for implementing this subsection. ~~((This subsection shall not apply to~~
16 the board of funeral directors and embalmers.))

17 (6) The uniform procedural rules shall be adopted by all
18 disciplining authorities listed in RCW 18.130.040(2), and shall be used
19 for all adjudicative proceedings conducted under this chapter, as
20 defined by chapter 34.05 RCW. The uniform procedural rules shall
21 address the use of a presiding officer authorized in subsection (5) of
22 this section to determine and issue decisions on all legal issues and
23 motions arising during adjudicative proceedings.

24 **Sec. 5.** RCW 18.130.098 and 1994 sp.s. c 9 s 604 are each amended
25 to read as follows:

26 (1) The settlement process must be substantially uniform for
27 licensees governed by ~~((regulatory entities having authority))~~
28 disciplining authorities under this chapter. The disciplinary
29 authorities may also use alternative dispute resolution to resolve
30 complaints during adjudicative proceedings.

31 (2) Disclosure of the identity of reviewing disciplining authority
32 members who participate in the settlement process is available to the
33 respondent~~((s))~~ or ~~((their legal))~~ his or her representative upon
34 request.

35 (3) The settlement conference will occur only if a settlement is
36 not achieved through written documents. The respondent~~((s))~~ will have
37 the opportunity to conference either by phone or in person with the
38 reviewing disciplining authority member if the respondent chooses. The

1 respondent((s)) may also have ((their)) his or her attorney conference
2 either by phone or in person with the reviewing disciplining authority
3 member without the respondent being present personally.

4 (4) If the respondent wants to meet in person with the reviewing
5 disciplining authority member, he or she will travel to the reviewing
6 ((disciplinary)) disciplining authority member and have such a
7 conference with ((the attorney general)) a department representative in
8 attendance either by phone or in person.

9 **Sec. 6.** RCW 18.130.170 and 1987 c 150 s 6 are each amended to read
10 as follows:

11 (1) If the disciplining authority believes a license holder or
12 applicant may be unable to practice with reasonable skill and safety to
13 consumers by reason of any mental or physical condition, a statement of
14 charges in the name of the disciplining authority shall be served on
15 the license holder or applicant and notice shall also be issued
16 providing an opportunity for a hearing. The hearing shall be limited
17 to the sole issue of the capacity of the license holder or applicant to
18 practice with reasonable skill and safety. If the disciplining
19 authority determines that the license holder or applicant is unable to
20 practice with reasonable skill and safety for one of the reasons stated
21 in this subsection, the disciplining authority shall impose such
22 sanctions under RCW 18.130.160 as is deemed necessary to protect the
23 public.

24 (2)(a) In investigating or adjudicating a complaint or report that
25 a license holder or applicant may be unable to practice with reasonable
26 skill or safety by reason of any mental or physical condition, the
27 disciplining authority may require a license holder or applicant to
28 submit to a mental or physical examination by one or more licensed or
29 certified health professionals designated by the disciplining
30 authority. The license holder or applicant shall be provided written
31 notice of the disciplining authority's intent to order a mental or
32 physical examination, which notice shall include: (i) A statement of
33 the specific conduct, event, or circumstances justifying an
34 examination; (ii) a summary of the evidence supporting the disciplining
35 authority's concern that the license holder or applicant may be unable
36 to practice with reasonable skill and safety by reason of a mental or
37 physical condition, and the grounds for believing such evidence to be
38 credible and reliable; (iii) a statement of the nature, purpose, scope,

1 and content of the intended examination; (iv) a statement that the
2 license holder or applicant has the right to respond in writing within
3 twenty days to challenge the disciplining authority's grounds for
4 ordering an examination or to challenge the manner or form of the
5 examination; and (v) a statement that if the license holder or
6 applicant timely responds to the notice of intent, then the license
7 holder or applicant will not be required to submit to the examination
8 while the response is under consideration.

9 (b) Upon submission of a timely response to the notice of intent
10 to order a mental or physical examination, the license holder or
11 applicant shall have an opportunity to respond to or refute such an
12 order by submission of evidence or written argument or both. The
13 evidence and written argument supporting and opposing the mental or
14 physical examination shall be reviewed by either a panel of the
15 disciplining authority members who have not been involved with the
16 allegations against the license holder or applicant or a neutral
17 decision maker approved by the disciplining authority. The reviewing
18 panel of the disciplining authority or the approved neutral decision
19 maker may, in its discretion, ask for oral argument from the parties.
20 The reviewing panel of the disciplining authority or the approved
21 neutral decision maker shall prepare a written decision as to whether:
22 There is reasonable cause to believe that the license holder or
23 applicant may be unable to practice with reasonable skill and safety by
24 reason of a mental or physical condition, or the manner or form of the
25 mental or physical examination is appropriate, or both.

26 (c) Upon receipt by the disciplining authority of the written
27 decision, or upon the failure of the license holder or applicant to
28 timely respond to the notice of intent, the disciplining authority may
29 issue an order requiring the license holder or applicant to undergo a
30 mental or physical examination. All such mental or physical
31 examinations shall be narrowly tailored to address only the alleged
32 mental or physical condition and the ability of the license holder or
33 applicant to practice with reasonable skill and safety. An order of
34 the disciplining authority requiring the license holder or applicant to
35 undergo a mental or physical examination is not a final order for
36 purposes of appeal. The cost of the examinations ordered by the
37 disciplining authority shall be paid out of the health professions
38 account. In addition to any examinations ordered by the disciplining
39 authority, the licensee may submit physical or mental examination

1 reports from licensed or certified health professionals of the license
2 holder's or applicant's choosing and expense. ((Failure of a license
3 holder or applicant to submit to examination when directed constitutes
4 grounds for immediate suspension or denial of the license, consequent
5 upon which a default and final order may be entered without the taking
6 of testimony or presentations of evidence, unless the failure was due
7 to circumstances beyond the person's control.))

8 (d) If the disciplining authority finds that a license holder or
9 applicant has failed to submit to a properly ordered mental or physical
10 examination, then the disciplining authority may order appropriate
11 action or discipline under RCW 18.130.180(9), unless the failure was
12 due to circumstances beyond the person's control. However, no such
13 action or discipline may be imposed unless the license holder or
14 applicant has had the notice and opportunity to challenge the
15 disciplining authority's grounds for ordering the examination, to
16 challenge the manner and form, to assert any other defenses, and to
17 have such challenges or defenses considered by either a panel of the
18 disciplining authority members who have not been involved with the
19 allegations against the license holder or applicant or a neutral
20 decision maker approved by the disciplining authority, as previously
21 set forth in this section. Further, the action or discipline ordered
22 by the disciplining authority shall not be more severe than a
23 suspension of the license, certification, registration or application
24 until such time as the license holder or applicant complies with the
25 properly ordered mental or physical examination.

26 (e) Nothing in this section shall restrict the power of a
27 disciplining authority to act in an emergency under RCW 34.05.422(4),
28 34.05.479, and 18.130.050(7).

29 (f) A determination by a court of competent jurisdiction that a
30 license holder or applicant is mentally incompetent or mentally ill is
31 presumptive evidence of the license holder's or applicant's inability
32 to practice with reasonable skill and safety. An individual affected
33 under this section shall at reasonable intervals be afforded an
34 opportunity, at his or her expense, to demonstrate that the individual
35 can resume competent practice with reasonable skill and safety to the
36 consumer.

37 (3) For the purpose of subsection (2) of this section, an applicant
38 or license holder governed by this chapter, by making application,
39 practicing, or filing a license renewal, is deemed to have given

1 consent to submit to a mental, physical, or psychological examination
2 when directed in writing by the disciplining authority and further to
3 have waived all objections to the admissibility or use of the examining
4 health professional's testimony or examination reports by the
5 disciplining authority on the ground that the testimony or reports
6 constitute privileged communications.

7 **Sec. 7.** RCW 18.130.180 and 1993 c 367 s 22 are each amended to
8 read as follows:

9 The following conduct, acts, or conditions constitute
10 unprofessional conduct for any license holder or applicant under the
11 jurisdiction of this chapter:

12 (1) The commission of any act involving moral turpitude,
13 dishonesty, or corruption relating to the practice of the person's
14 profession, whether the act constitutes a crime or not. If the act
15 constitutes a crime, conviction in a criminal proceeding is not a
16 condition precedent to disciplinary action. Upon such a conviction,
17 however, the judgment and sentence is conclusive evidence at the
18 ensuing disciplinary hearing of the guilt of the license holder or
19 applicant of the crime described in the indictment or information, and
20 of the person's violation of the statute on which it is based. For the
21 purposes of this section, conviction includes all instances in which a
22 plea of guilty or nolo contendere is the basis for the conviction and
23 all proceedings in which the sentence has been deferred or suspended.
24 Nothing in this section abrogates rights guaranteed under chapter 9.96A
25 RCW;

26 (2) Misrepresentation or concealment of a material fact in
27 obtaining a license or in reinstatement thereof;

28 (3) All advertising which is false, fraudulent, or misleading;

29 (4) Incompetence, negligence, or malpractice which results in
30 injury to a patient or which creates an unreasonable risk that a
31 patient may be harmed. The use of a nontraditional treatment by itself
32 shall not constitute unprofessional conduct, provided that it does not
33 result in injury to a patient or create an unreasonable risk that a
34 patient may be harmed;

35 (5) Suspension, revocation, or restriction of the individual's
36 license to practice (~~the~~) any health care profession by competent
37 authority in any state, federal, or foreign jurisdiction, a certified

1 copy of the order, stipulation, or agreement being conclusive evidence
2 of the revocation, suspension, or restriction;

3 (6) The possession, use, prescription for use, or distribution of
4 controlled substances or legend drugs in any way other than for
5 legitimate or therapeutic purposes, diversion of controlled substances
6 or legend drugs, the violation of any drug law, or prescribing
7 controlled substances for oneself;

8 (7) Violation of any state or federal statute or administrative
9 rule regulating the profession in question, including any statute or
10 rule defining or establishing standards of patient care or professional
11 conduct or practice;

12 (8) Failure to cooperate with the disciplining authority by:

13 (a) Not furnishing any papers or documents;

14 (b) Not furnishing in writing a full and complete explanation
15 covering the matter contained in the complaint filed with the
16 disciplining authority; ((or))

17 (c) Not responding to subpoenas issued by the disciplining
18 authority, whether or not the recipient of the subpoena is the accused
19 in the proceeding; or

20 (d) Not providing reasonable and timely access for authorized
21 representatives of the disciplining authority seeking to perform
22 practice reviews at facilities utilized by the license holder;

23 (9) Failure to comply with an order issued by the ((disciplinary))
24 disciplining authority or a stipulation for informal disposition
25 entered into with the ((disciplinary)) disciplining authority;

26 (10) Aiding or abetting an unlicensed person to practice when a
27 license is required;

28 (11) Violations of rules established by any health agency;

29 (12) Practice beyond the scope of practice as defined by law or
30 rule;

31 (13) Misrepresentation or fraud in any aspect of the conduct of the
32 business or profession;

33 (14) Failure to adequately supervise auxiliary staff to the extent
34 that the consumer's health or safety is at risk;

35 (15) Engaging in a profession involving contact with the public
36 while suffering from a contagious or infectious disease involving
37 serious risk to public health;

38 (16) Promotion for personal gain of any unnecessary or
39 inefficacious drug, device, treatment, procedure, or service;

1 (17) Conviction of any gross misdemeanor or felony relating to the
2 practice of the person's profession. For the purposes of this
3 subsection, conviction includes all instances in which a plea of guilty
4 or nolo contendere is the basis for conviction and all proceedings in
5 which the sentence has been deferred or suspended. Nothing in this
6 section abrogates rights guaranteed under chapter 9.96A RCW;

7 (18) The procuring, or aiding or abetting in procuring, a criminal
8 abortion;

9 (19) The offering, undertaking, or agreeing to cure or treat
10 disease by a secret method, procedure, treatment, or medicine, or the
11 treating, operating, or prescribing for any health condition by a
12 method, means, or procedure which the licensee refuses to divulge upon
13 demand of the disciplining authority;

14 (20) The willful betrayal of a practitioner-patient privilege as
15 recognized by law;

16 (21) Violation of chapter 19.68 RCW;

17 (22) Interference with an investigation or disciplinary proceeding
18 by willful misrepresentation of facts before the disciplining authority
19 or its authorized representative, or by the use of threats or
20 harassment against any patient or witness to prevent them from
21 providing evidence in a disciplinary proceeding or any other legal
22 action, or by the use of financial inducements to any patient or
23 witness to prevent or attempt to prevent him or her from providing
24 evidence in a disciplinary proceeding;

25 (23) Current misuse of:

26 (a) Alcohol;

27 (b) Controlled substances; or

28 (c) Legend drugs;

29 (24) Abuse of a client or patient or sexual contact with a client
30 or patient;

31 (25) Acceptance of more than a nominal gratuity, hospitality, or
32 subsidy offered by a representative or vendor of medical or health-
33 related products or services intended for patients, in contemplation of
34 a sale or for use in research publishable in professional journals,
35 where a conflict of interest is presented, as defined by rules of the
36 disciplining authority, in consultation with the department, based on
37 recognized professional ethical standards.

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