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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 25-1]

Peter Dashkoff, M.D.; Decision and Order

I. Introduction

On September 9, 2024, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause and Immediate Suspension of Registration (OSC/ISO) to Peter Dashkoff, M.D., of Yuma, Arizona (Respondent). OSC/ISO, at 1. The OSC/ISO informed Respondent of the immediate suspension of his DEA Certificate of Registration (Registration) No. FD3660304, alleging that Respondent's continued registration constitutes "'an imminent danger to the public health or safety.'" *Id.* (quoting 21 U.S.C. 824(d)). The OSC/ISO also proposed the revocation of Respondent's registration, alleging that Respondent's continued registration is inconsistent with the public interest. *Id*. at 1 (citing 21 U.S.C. 823(g)(1), 824(a)(4)).[1]

Specifically, the Government alleges that on June 26, 2024, Respondent issued four[2] controlled substance prescriptions after he was prohibited from engaging in the practice of medicine in the State of Arizona. *Id.* at 3. The OSC/ISO alleged that these prescriptions were issued outside the usual course of professional practice and violated federal and state law. *Id.* at 2-3 (citing 21 U.S.C. 1306.04(a), Ariz. Rev. Stat. Ann. secs. 36-2522(A), 32-3227(F) & (G)).

[1] The OSC/ISO also alleged that, pursuant to 21 U.S.C. 824(a)(3), Respondent did not have state authority to handle controlled substances. OSC/ISO, at 1. However, on December 12, 2024, the Government filed a Motion for Dismissal of Allegation that Respondent Lacks State Authority when it learned that Respondent regained his state authority subsequent to the filing of the OSC/ISO. Recommended Decision (RD), 2; ALJ Exhibit (ALJX) 26. Based on this evidence, the Administrative Law Judge (ALJ) found that the OSC/ISO allegation regarding loss state authority was "NOT SUSTAINED." Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (RD), at 10 (emphasis in original).

[2] The OSC/ISO alleged that Respondent issued at least five controlled substance prescriptions. OSC/ISO, at 3. However, during the administrative hearing, the Government's Diversion Investigator testified that only four prescriptions were filled after 4:48 p.m. Tr. 38; *see also* RD, at 4. Additionally, the Government only submitted evidence of four prescriptions that were issued after Respondent lost his state authority. *See* RD, at 4.

Respondent requested a hearing, which was held before DEA Administrative Law Judge (ALJ) Teresa Wallbaum, who on January 16, 2025, issued her Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the ALJ (RD). The RD recommended that Respondent's registration be suspended for six months. RD, at 20. Both the Government and Respondent filed timely Exceptions to the RD.[3]

Having reviewed the entire record, the Agency adopts and hereby incorporates by reference the ALJ's credibility findings,[4] findings of fact, and conclusions of law, and clarifies and expands upon portions thereof herein. However, the Agency has determined that revocation is the appropriate sanction based on Respondent's tenuous acceptance of responsibility and the Agency's interest in deterring similar acts on the part of other registrants.

II. Applicable Law

As already discussed, the OSC/ISO alleges that Respondent violated multiple provisions of the Controlled Substances Act (CSA) and its implementing regulations. As the Supreme Court stated in *Gonzales v. Raich*, "the main objectives of the CSA were to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances. . . . To effectuate these goals, Congress devised a closed regulatory system making it unlawful to . . . dispense[ ] or possess any controlled substance except in a manner authorized by the CSA." 545 U.S. 1, at 12-13 (2005). In maintaining this closed regulatory system, "[t]he CSA and its implementing regulations set forth strict requirements regarding registration, . . . drug security, and recordkeeping." *Id.* at 14.

The OSC/ISO's allegations concern the CSA's "statutory and regulatory provisions . . . mandating . . . compliance with . . . prescription requirements" and, therefore, go to the heart of the CSA's "closed regulatory system" specifically designed "to conquer drug abuse and to

[3] Exceptions are addressed in the Sanction section. *See infra* Section III, n.8.
[4] The Agency adopts the ALJ's summary of the witnesses' testimonies as well as the ALJ's assessment with respect to each of the witnesses' credibility. RD, at 5-6.

control the legitimate and illegitimate traffic in controlled substances," and "to prevent the diversion of drugs from legitimate to illicit channels." *Id.* at 12-14, 27.

The Allegation that Respondent Issued Prescriptions Outside the Usual Course of Professional Practice

According to the CSA's implementing regulations, a lawful prescription for controlled substances is one that is "issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice." 21 CFR 1306.04(a); *see Gonzales v. Oregon*, 546 U.S. 243, 274 (2006); *United States v. Hayes*, 595 F.2d 258 (5th Cir. 1979), *rehearing den*., 598 F.2d 620 (5th Cir. 1979), *cert. denied*, 444 U.S. 866 (1979); OSC/ISO, at 2. Under the CSA, "[a] physician who engages in the unauthorized practice of medicine is not a 'practitioner acting in the usual course of professional practice.'" *United Prescription Servs., Inc.*, 72 FR 50397, 50407 (2007) (citing 21 CFR 1306.04(a)); *see also Gonzales v. Oregon*, 546 U.S. at 270 ("The very definition of a 'practitioner' eligible to prescribe includes physicians 'licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices' to dispense controlled substances. § 802(21)."); OSC/ISO, at 2. Moreover, it is unlawful for an individual who is not licensed to practice medicine in a state to issue a prescription for a controlled substance. *United Prescription Servs., Inc.*, 72 FR at 50407 (citing 21 CFR 1306.03(a)(1)).[5]

In order to lawfully prescribe a controlled substance in Arizona, a person "must first. . . [o]btain and possess a current license or permit as a medical practitioner . . . ." Ariz. Rev. Stat. Ann. sec. 36-2522(A)(1); *see also* OSC/ISO, at 1. An individual who is not "licensed and authorized by law to use and prescribe drugs" is not a "medical practitioner." Ariz. Rev. Stat. Ann. sec. 32-1901. Arizona defines the "unauthorized practice of a health profession" as "engag[ing] in the practice of a health profession without having the licensure or certification

[5] The Agency need not adjudicate the criminal violations alleged in the instant OSC. *Ruan v. United States*, 597 U.S. 450 (2022) (decided in the context of criminal proceedings).

required to practice in that health profession in this state." Ariz. Rev. Stat. Ann. sec. 32-3227 (G); OSC/ISO, at 2.

III. Findings of Fact

The Allegation that Respondent Issued Prescriptions Outside the Usual Course of Professional Practice

Respondent is a medical doctor in the state of Arizona. RD, at 2. On April 2024, Respondent entered into a first Interim Consent Agreement with the Arizona Medical Board (Board), which required Respondent to comply with certain terms in order to continue practicing medicine in the State of Arizona. GX 3; *see also* Tr. at 57-58; RD, at 6. Respondent failed to comply with these terms, and shortly thereafter, the Board of Arizona offered him a second Interim Consent Agreement, which prohibited him "from engaging in the practice of medicine in the State of Arizona . . . ." GX 4; *see also* RD, at 6-7. Respondent's counsel received a copy of the second Interim Consent Agreement on June 21, 2024, and Respondent testified that he learned on June 24, 2024, that he would be restricted from practicing medicine if he and the Board's Executive signed the Interim Consent Agreement. Tr. 70; *see also* RD, at 6-7. By its own terms, the Interim Consent Agreement would become effective "on the date signed by the Board's Executive Director." GX 4; *see also* RD, at 4.

Respondent signed the second Interim Consent Agreement on June 26, 2024, and e-mailed the signed agreement to the Board at 3:49 p.m. (MST). GX 13; *see also* RD, at 6-7. Thereafter, the Board's Executive Director signed the agreement and emailed the fully-executed version to Respondent at 4:48 p.m. (MST). GX 14; Tr. 84; *see also* RD, at 4. The Agency finds substantial record evidence that Respondent's authority to prescribe controlled substances in Arizona lapsed on January 26, 2024, at 4:48 p.m. RD, at 4.

The Agency finds substantial record evidence that after Respondent's state authority lapsed, Respondent issued four prescriptions for controlled substances: (1) a prescription for lorazepam (a schedule IV benzodiazepine), issued to Patient R.B. at 5:53 p.m.; (2) a prescription for morphine (a schedule II opioid), issued to Patient R.B. at 5:53 p.m.; (3) a prescription for

morphine, issued to Patient D.H. at 5:53 p.m.; and (4) a prescription for lorazepam, issued to Patient B.T. at 6:23 p.m. GX 6, 11; *see also* RD, at 4. At the hearing, Respondent acknowledged that his state authority had lapsed when he wrote these prescriptions. *See* Transcript (Tr.) at 84; RD, at 10-11; *see also* Respondent's Post-Hearing Brief, at 1-2.[6]

Accordingly, the Agency finds substantial record evidence that Respondent issued four prescriptions for controlled substances without possessing the requisite state authority to prescribe controlled substances in the State of Arizona.

IV. DISCUSSION

A. The Five Public Interest Factors

Under Section 304 of the CSA, "[a] registration . . . to . . . distribute[ ] or dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render his registration under . . . [21 U.S.C. 823] inconsistent with the public interest as determined by such section." 21 U.S.C. 824(a)(4). In the case of a "practitioner," Congress directed the Attorney General to consider five factors in making the public interest determination. 21 U.S.C. 823(g)(1)(A-E).[7] The five factors are considered in the disjunctive. *Gonzales v. Oregon*, 546 U.S. 243, 292-93 (2006) (Scalia, J., dissenting) ("It is well established that these factors are to be considered in the disjunctive," citing *In re Arora*, 60 FR 4447, 4448 (1995)); *Robert A. Leslie, M.D.*, 68 FR 15227, 15230 (2003). Each factor is weighed on a case-by-case basis. *Morall v. Drug Enf't Admin.*, 412 F.3d 165, 173-74 (D.C. Cir. 2005). Any one factor, or combination of factors, may be

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[6] Under the Proposed Findings of Fact, Respondent admitted that he "entered into an Interim Consent Agreement for Practice Restriction . . . with the Arizona Medical Board." Respondent's Post-Hearing Brief, at 1. Respondent also indicated that "[t]he Interim Consent Agreement for Practice Restriction became effective on the date it was signed by the Arizona Medical Board's Executive Director, which was June 26, 2024." *Id*. at 2. Moreover, Respondent admitted that he issued four prescriptions after 4:48 P.M., (specifically between 5:53 p.m. and 6:23 p.m.). *Id*., at 2.

[7] The five factors of 21 U.S.C. 823(g)(1)(A-E) are:
(A) The recommendation of the appropriate State licensing board or professional disciplinary authority.
(B) The [registrant's] experience in dispensing, or conducting research with respect to controlled substances.
(C) The [registrant's] conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.
(D) Compliance with applicable State, Federal, or local laws relating to controlled substances.
(E) Such other conduct which may threaten the public health and safety.

decisive. *Penick Corp. v. Drug Enf't Admin*., 491 F.3d 483, 490 (D.C. Cir. 2007); *Morall*, 412 F.3d. at 185 n.2; *David H. Gillis, M.D*., 58 FR 37507, 37508 (1993).

In this matter, while all of the 21 U.S.C. 823(g)(1) factors have been considered, the Agency finds that the Government's evidence in support of its *prima facie* case is confined to Factors B and D. *See* RD, at 11. Moreover, the Government has the burden of proof in this proceeding. 21 CFR 1301.44. The Agency agrees with the ALJ and finds that the Government's evidence satisfies its *prima facie* burden of showing that Respondent's registration would be "inconsistent with the public interest." 21 U.S.C. 823(g)(1); RD, at 11.

B. Allegation that Respondent's Registration is Inconsistent with the Public Interest

Factors B and/or D – Respondent Experience in Dispensing Controlled Substances and Compliance with Applicable Laws Related to Controlled Substances

Evidence is considered under Public Interest Factors B and D when it reflects compliance or non-compliance with federal and local laws related to controlled substances and experience dispensing controlled substances. 21 U.S.C. 823(g)(1)(B) and (D); *see also Kareem Hubbard, M.D.*, 87 FR 21156, 21162 (2022). Here, as found above, the Agency agrees with the ALJ and finds that substantial record evidence that Respondent issued four prescriptions for controlled substances without possessing the requisite state authority to prescribe controlled substances in the State of Arizona in violation of Ariz. Rev. Stat. Ann. secs. 36-2522(A). Accordingly, the Agency finds substantial record evidence that these prescriptions were issued outside the usual course of professional practice and violated federal and state laws, namely 21 CFR 1306.4(a), and Ariz. Rev. Stat. Ann. secs. 36-2522(A).

The Agency finds that Factors B and D weigh in favor of revocation of Respondent's registration and that Respondent's continued registration would be inconsistent with the public interest in balancing the factors of 21 U.S.C. 823(g)(1). Accordingly, the Agency finds that the Government established a *prima facie* case, that Respondent did not rebut that *prima facie* case,

and that there is substantial record evidence supporting the revocation of Respondent's registration. 21 U.S.C. 823(g)(1).

III. SANCTION

Where, as here, the Government has met its *prima facie* burden of Respondent's registration is inconsistent with the public interest due to its numerous violations pertaining to controlled substances, the burden shifts to Respondent to show why he can be entrusted with a registration. *Jones Total Health Care Pharmacy.*, 881 F.3d 823, 830 (11th Cir. 2018); *Morall*, 412 F.3d at 174; *Garrett Howard Smith, M.D.*, 83 FR 18882, 18904 (2018). The issue of trust is necessarily a fact-dependent determination based on the circumstances presented by the individual respondent. *Jeffrey Stein, M.D.*, 84 FR 46968, 46972 (2019); *see also Jones Total Health Care Pharmacy*, 881 F.3d at 833. Moreover, as past performance is the best predictor of future performance, DEA Administrators have required that a registrant who has committed acts inconsistent with the public interest must accept responsibility for those acts and demonstrate that it will not engage in future misconduct. *Jones Total Health Care Pharmacy*, 881 F.3d at 833; *ALRA Labs, Inc. v. Drug Enf't Admin.*, 54 F.3d 450, 452 (7th Cir. 1995). A registrant's acceptance of responsibility must be unequivocal. *Jones Total Health Care Pharmacy*, 881 F.3d at 830-31. In addition, a registrant's candor during the investigation and hearing has been an important factor in determining acceptance of responsibility and the appropriate sanction. *Id.* Further, the Agency has found that the egregiousness and extent of the misconduct are significant factors in determining the appropriate sanction. *Id.* at 834 & n.4. The Agency has also considered the need to deter similar acts by the respondent and by the community of registrants. *Jeffrey Stein, M.D.*, 84 FR at 46972-73.

A. Acceptance of Responsibility

The Agency agrees with the ALJ that there is substantial record evidence that Respondent failed to unequivocally accept responsibility for his misconduct. RD, at 15. When given several opportunities to accept responsibility at the hearing, Respondent failed to precisely articulate what he did wrong. *See* Respondent's Post-Hearing Brief, at 5; Tr. 77; RD, at 13. For example, Respondent did not acknowledge that he engaged in unprofessional conduct by violating the consent agreement; instead, he testified that he "was too busy to check [his] email." Tr. 88; *see also* RD, at 13-14. Respondent also testified that if given another chance to correct his misconduct, the only adjustment he would have made was to check his email before issuing the prescriptions. Tr. 77; *see also* RD, at 15. Furthermore, in response to the ALJ's question as to why he neglected to check his email prior to prescribing the controlled substances, Respondent answered that he was working to complete his medical duties, such as "documentation and . . . communicating with [his] nursing staff." Tr. 87; *see also* RD, at 15. Significantly, Respondent never admitted that he violated the CSA by prescribing two Schedule II opioids and two Schedule IV benzodiazepine after he had signed the agreement. *See* RD, at 16-19.

Moreover, when the ALJ asked about his commitment to prevent future diversion of controlled substances, Respondent failed to offer concrete solutions, such as ensuring that he would transition his medical duties prior to losing his state authority. Tr. at 79-80; *see* RD, 12-15. Instead, Respondent detracted from his acceptance of responsibility by focusing his testimony on when, technically, he lost authority to prescribe medication. He testified that he "knew that the restriction took effect not when [he] signed [the agreement] but when the executive director of the Medical Board signed it." Tr. 87; *see* RD, at 13. Respondent also attempted to excuse his misconduct by highlighting the shortage of medical professionals in his community and implying that he had no choice but to issue the prescriptions. Tr. 81-82; *see also* RD, at 15

Respondent's attempts at the hearing to minimize, justify, and excuse his misconduct detract from his acceptance of responsibility and show that he lacked an understanding of the

gravity of his misconduct. *See* Tr. 77; RD, at 12-14.[8] *See Jones Total Health Care Pharmacy, LLC*, 881 F.3d at 833 (finding that "it was reasonable for the agency to conclude that [respondent's] failure to clearly acknowledge even unintentional misconduct demonstrated lack of understanding of her legal obligations").

Regarding these matters, there is no record evidence that Respondent takes responsibility, let alone unequivocal responsibility, for the founded violations. Accordingly, Respondent did not convince the Agency that he would comply with the legal requirements of the CSA in the future or that he can be entrusted with a registration.

B. Deterrence and Egregiousness

In addition to unequivocally accepting responsibility, the Agency considers both specific and general deterrence when determining an appropriate sanction. *Daniel A. Glick*, 80 FR 74800, 74810 (2015). In this case, the Agency agrees with the ALJ and finds substantial evidence that "it must impose a sanction on Respondent to impress upon him that he cannot be negligent in such important matters." RD, at 19. Respondent was aware that he had signed a legal agreement that restricted his medical practice but failed to adhere to the terms of the agreement. *Id*., at 19.

The Agency further agrees with the ALJ that the interests of general deterrence compel a similar result. RD, at 18. As the ALJ states, "this tribunal must craft a sanction that sends a message to all registrants that the Agency takes such conduct seriously." *Id.*, at 18. If the Agency permitted Respondent to retain his registration, it would signal that registrants may be

[8] Respondent filed an Exception to the RD and emphasized that he "accepted responsibility for his actions and explained what actions he should have taken." Respondent's Exception to the Recommended Decision of the Administrative Law, at 2 (citing to Tr. 77). Respondent argued that the ALJ misconstrued his explanations of his misconduct as undermining his acceptance of responsibility, when in fact they were meant to provide context for the tribunal in interpreting his actions. *Id*. The Agency agrees with the ALJ's analysis of Respondent's testimony and agrees that Respondent made many statements that undermined his acceptance of responsibility. The Agency "has long considered statements that are aimed at minimizing the egregiousness of its conduct to weigh against a finding of acceptance of full responsibility." *Medical Pharmacy,* 86 FR 72030, 72054 (2021); s*ee also Michael A. White v. Drug Enf't Admin.,* 626 F. App'x 493, 496-97 (5th Cir. 2015). Moreover, the Agency has long noted that "the degree of acceptance of responsibility that is required does not hinge on the respondent uttering 'magic words' of repentance, but rather on whether the respondent has credibly and candidly demonstrated that he will not repeat the same behavior and endanger the public in a manner that instills confidence in the Administrator." *Jeffrey Stein, M.D.,*84 FR 46968, 46973 (2019). Here, Respondent has not met his burden.

negligent or inattentive to contractual terms and laws that restrict their medical practice, even when those rules are crucial to preventing the abuse and diversion of dangerous controlled substances.[9] Prescribing controlled substances without state authority is an egregious violation of the CSA and an act of diversion.

In sum, Respondent has not offered sufficient credible evidence on the record to rebut the Government's case for revocation, and Respondent has not demonstrated that he can be entrusted with the responsibility of registration. Accordingly, the Agency will order that Respondent's registration be revoked.

ORDER

Pursuant to 28 CFR. 0.100(b) and the authority vested in me by 21 U.S.C. 824(a) and 21 U.S.C. 823(g)(1), I hereby revoke DEA Certificate of Registration No. FD 3660304 issued to

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[9] The ALJ concluded that Respondent's conduct was egregious, but found that this was an "unusual case, with narrow facts." RD, at 16. Because Respondent issued the prescriptions within ninety minutes of the practice restriction, the ALJ suspended Respondent's registration for six months instead of revoking his registration. *Id*., at 19.

In his Post-Hearing Brief, Respondent argued, in part, that his misconduct was not egregious because it was not intentional. Respondent's Post-Hearing Brief, at 7 (citing *Paul J. Caragine*, 63 FR 51592, 51602 (1998). But in *Caragine*, the Agency was clear that misconduct need not be intentional to revoke a registrant's registration: "[j]ust because misconduct is unintentional, innocent or devoid of improper motivation, does not preclude revocation or denial." *Id*. at 51601. Indeed, the Agency emphasized that "[c]areless or negligent handling of controlled substances create the opportunity for diversion and could justify revocation or denial." *Id*.; *see also* RD, at 17 ("Agency precedent has consistently held that even unintentional misconduct can nonetheless create a substantial risk of diversion and be egregious.") (citing *Paul J. Caragine*, *Jr*., 63 FR at 51601) (other citations omitted).

The Government argued in its Exceptions that "the overall egregiousness of Respondent's conduct" warrants a revocation. Government's Exception to the RD, at 3. Here, they argue, Respondent violated the CSA and committed an act of diversion when he unlawfully prescribed controlled substances without state authority. *See* 21 CFR 1306.04(a).

In general, the Agency believes that prescribing controlled substances without state authority is an egregious act. However, the Agency is not required to find that a registrant's misconduct is egregious before revoking a registration where, as here, the registrant has failed to accept responsibility. *Cf. Jones Total Health Care Pharmacy*, 881 F.3d at 833 (rejecting respondent's argument that its conduct was not egregious enough to warrant a sanction of revocation and highlighting the Agency's historical focus on acceptance of responsibility: "The DEA decisions Petitioners rely on are distinguishable because, in each of the decisions, the agency found that the registrant had rebutted the government's case by, among other things, admitting fault or expressing remorse. . . . Petitioners . . . do not cite any decision in which the DEA has continued a registration despite finding that the registrant did not fully accept responsibility"); *MacKay v. Drug Enf't Admin*., 664 F.3d 808, 822 (10th Cir. 2011) (finding that "because [the respondent] ha[d] not accepted responsibility for his conduct, revocation of his registration [was] entirely consistent with DEA policy"); *Jeffery J. Becker, D.D.S*., 77 FR 72387, 72408 (2012) ("Agency precedent has firmly placed acknowledgement of guilt and acceptance of responsibility as conditions precedent to merit the granting or continuation of status as a registrant."); *Jayam Krishna-Iyer, M.D*., 74 FR 459, 464 (2009) ("even where the Agency's proof establishes that a practitioner has committed only a few acts of diversion, this Agency will not grant or continue the practitioner's registration unless he accepts responsibility for his misconduct"). Here, Respondent's failure to unequivocally accept responsibility demonstrated that the Agency cannot trust him to responsibly handle controlled substances.

Peter Dashkoff, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a) and 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Peter Dashkoff, M.D., to renew or modify this registration, as well as any other pending application of Peter Dashkoff, M.D., for additional registration in the state of Arizona. This Order is effective **[INSERT DATE THIRTY DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

SIGNING AUTHORITY

This document of the Drug Enforcement Administration was signed on May 1, 2025, by Acting Administrator Derek Maltz. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the Federal Register.

Heather Achbach,
Federal Register Liaison Officer,
Drug Enforcement Administration.

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