BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

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| In the Matter of the Accusation Against: | ) | |
| BRUCE BIENENSTOCK, M.D. | ) | Case No. 03-2011-214647 |
| Physician's and Surgeon's Certificate No. G 31836 | ) | |
| Respondent | ) | |

## DECISION

The attached Stipulated Surrender of License and Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on March 24, 2014.

IT IS SO ORDERED March 10, 2014.

MEDICAL BOARD OF CALIFORNIA

By: Kimberly Kirchmeyer
Kimberly Kirchmeyer
Executive Director

KAMALA D. HARRIS
Attorney General of California
JOSE R. GUERRERO
Supervising Deputy Attorney General
EMILY L. BRINKMAN
Deputy Attorney General
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*Attorneys for Complainant*

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

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|---|---|
| In the Matter of the Accusation Against:<br><br>**BRUCE BIENENSTOCK, M.D.**<br><br>**2485 Hospital Drive, Suite 351**<br>**Mountain View, CA 94040**<br>**Physician's and Surgeon's Certificate No. G31836**<br><br>Respondent. | Case No. 03-2011-214647<br><br>OAH No. 2012120375<br><br>**STIPULATED SURRENDER OF LICENSE AND ORDER** |

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

PARTIES

1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Emily L. Brinkman, Deputy Attorney General.

2. Bruce Bienenstock, M.D. (Respondent) is represented in this proceeding by attorney Cyrus A. Tabari, whose address is: Sheueurman, Martini & Tabari, 1033 Willow St., San Jose, CA 95125.

3. On or about June 21, 1976, the Medical Board of California issued Physician's and Surgeon's Certificate No. G31836 to Bruce Bienenstock, M.D. (Respondent). The Physician's

and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 03-2011-214647 and will expire on October 31, 2015, unless renewed.

JURISDICTION

4. Accusation No. 03-2011-214647 was filed before the Medical Board of California (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 3, 2012. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 03-2011-214647 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 03-2011-214647. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent understands that the charges and allegations in Accusation No. 03-2011-214647, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual

basis for the charges in the Accusation and that those charges constitute cause for discipline. Respondent hereby gives up his right to contest that cause for discipline exists based on those charges.

10. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Physician's and Surgeon's Certificate without further process.

11. Respondent understands and is aware of the allegations in Medical Board Investigation No. 03-2013-231589.

CONTINGENCY

12. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

**ORDER**

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G31836, issued to Respondent BRUCE BIENENSTOCK, M.D., is surrendered and accepted by the Medical Board of California.

1. The surrender of Respondent's Physician's and Surgeon's Certificate and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Medical Board of California.

2. Respondent shall lose all rights and privileges as a Physician and Surgeon in California as of March 24, 2014, following the issuance of the Board's Decision and Order. This will provide Respondent sufficient time to close his medical practice.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 03-2011-214647 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition. Respondent further understands that information gathered in connection with Medical Board Investigation No. 03-2013-231589 may be considered by the Board in determining whether or not to grant the petition for reinstatement. Respondent hereby waives any time-based defenses based on a claim of laches or statute of limitations as it relates to the Board's Investigation No. 03-2013-231589 in any petition for reinstatement or application for licensure.

5. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, with any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 03-2011-214647 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure. The licensing agency may consider any information gathered in connection with Investigation No. 03-2013-231589 in any decision as related to any Statement of Issues or any other proceeding seeking to deny or restrict licensure. Respondent hereby waives any time-based defenses based on a claim of laches, statute

of limitations, and/or challenge to Respondent's privacy interests as it relates to the Board's Investigation No. 03-2013-231589 in any petition for reinstatement or any other proceeding seeking to deny or restrict licensure.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Cyrus A. Tabari. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 2/24/14

BRUCE BIENENSTOCK, M.D.
Respondent

I have read and fully discussed with Respondent BRUCE BIENENSTOCK, M.D. the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 2/25/14

CYRUS A. TABARI
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

Dated: 2/25/2014

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JOSE R. GUERRERO
Supervising Deputy Attorney General

EMILY L. BRINKMAN
Deputy Attorney General
*Attorneys for Complainant*

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# Exhibit A

**Accusation No. 03-2011-214647**

KAMALA D. HARRIS
Attorney General of California
JOSE R. GUERRERO
Supervising Deputy Attorney General
BRENDA P. REYES
Deputy Attorney General
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*Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO August 3 20 12
BY H. Park ANALYST

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

| In the Matter of the Accusation Against: | Case No. 03-2011-214647 |
|---|---|
| **BRUCE BIENENSTOCK, M.D.**<br>**2485 Hospital Drive, Suite 351**<br>**Mountain View, CA 94040**<br><br>**Physician's and Surgeon's Certificate No. G31836**<br><br>Respondent. | **A C C U S A T I O N** |

Complainant alleges:

PARTIES

1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On or about June 21, 1976, the Medical Board of California issued Physician's and Surgeon's Certificate Number G31836 to Bruce Bienenstock, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2013, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Medical Board of California (Board),[1] Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2004 of the Code states, in relevant part:

"The board shall have the responsibility for the following:

"(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

"(b) The administration and hearing of disciplinary actions.

"(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

"(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

"(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board."

5. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

6. Section 2234 of the Code states:

"The Division of Medical Quality shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter [Chapter 5, the Medical Practice Act].

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[1] The term "board" means the Medical Board of California. "Division of Medical Quality" shall also be deemed to refer to the Medical Board. (Bus. & Prof. Code § 2002.)

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"(d) Incompetence.

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

"(f) Any action or conduct which would have warranted the denial of a certificate."

7. Section 726 of the Code states:

"The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division, under any initiative act referred to in this division and under Chapter 17 (commencing with Section 9000) of Division 3.

"This section shall not apply to sexual contact between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship when that physician and surgeon provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship."

8. Section 2266 of the Code states:

"The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

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FACTS

9. On or about April 19, 2011, the Medical Board received a complaint from Patient A,[2] a 53-year-old female, alleging that Respondent had engaged in inappropriate sexual conduct with her during the time he was her treating psychiatrist.

10. In or about November 2008, Patient A took her son to Respondent for treatment following a referral from a child psychologist. Respondent determined that Patient A exhibited signs of stress and suggested that he treat her and act as her "life coach" to work on her own stress in connection with her son's diagnosis. Respondent first saw Patient A on November 24, 2008 and his last therapy note is dated October 15, 2009. Respondent saw Patient A approximately weekly from November 24, 2008 through October 15, 2009.

11. On November 24, 2008, Respondent first saw Patient A, who reported issues related to focus and following through on tasks. Respondent took a history of present illness and a family history. Respondent diagnosed Patient A with Major Depressive Disorder and he recommended individual weekly 45 to 50 minute psychotherapy sessions.

12. On December 11, 2008, Respondent noted "MINI MDD [major depressive disorder], recurrent" and noted that Patient A had a past diagnosis of panic disorder with agoraphobia.

13. Respondent saw Patient A on December 23, 2008 and prescribed Zoloft 25 mg q.a.m. (every day before noon).

14. On January 22, 2009, Respondent saw Patient A and noted she had sleep issues and that she had just started taking the Zoloft. On February 2, 2009, Respondent noted Patient A was taking a 50 mg dose of Zoloft. There is no explanation in the record for the dosage increase in Zoloft from 25 mg to 50 mg daily.

15. On February 9, 2009, Patient A complained of an irregular heartbeat, sleep problems, and anxiety.

16. On April 13, 2009, Respondent noted that his session with Patient A included meditation. Patient A told the Medical Board investigators that the relationship with the

[2] Patient A, rather than a name or initials, will be used to protect the identity of the patient. Respondent knows the identity of the patient and can confirm this information through discovery.

Respondent began to change at this point. Respondent would hold the patient's gaze for long periods of time and he told her she was "sexy" and had "expressive eyes." During another session, Respondent asked to take a photo of Patient A, taking several pictures until he got the picture he wanted. Respondent also told Patient A that he thought about her between their sessions.

17. Respondent's medical records for Patient A contain a Diagnostic Sleep Report from Clinical Monitoring Sleep Disorders Center dated April 13, 2009. Respondent is noted as the referring physician; however, Respondent failed to document in Patient A's progress notes the reason for the referral. The report concluded, "Polysomnographic findings are consistent with Mild to Moderate REM-related Positional Obstructive Sleep Apnea Syndrome."

18. On May 12, 2009, Respondent noted that Patient A continued to take Zoloft.

19. On July 30, 2009, Respondent noted Patient A suffered from minimal depressive symptoms with a seasonal component.

20. On September 17, 2009, Respondent noted that Patient A was having trouble discussing intimacy issues. At the next session on September 24, 2009, Respondent noted that Patient A was doing extremely well.

21. On October 2, 2009, Respondent noted that Patient A asked him personal questions about his life. Respondent was interviewed by an investigator with the California Medical Board on December 14, 2011. During this interview, Respondent admitted that he told Patient A about his personal and family life.

22. Respondent prescribed Ambien C.R. 12.5 mg to Patient A on October 13, 2009. Respondent's records do not contain a therapy note for this date documenting the medical indication for the prescription.

23. Respondent's last progress note for Patient A is dated October 15, 2009 and contains a single sentence regarding the nature of the issues in her ongoing therapy.

24. Respondent's records indicate that he prescribed Zoloft, with 12 refills, to Patient A on October 27, 2009. On that same date, he also prescribed Ambien C.R. 12.5 mg with six refills to Patient A.

25. During the course of therapy, Respondent and Patient A exchanged personal gifts outside of therapy sessions, including books and music CD's.

26. In one session, Respondent told Patient A about the death of a colleague/friend and how this friend had a "soulmate." Respondent told Patient A that he wanted to be her "soulmate."

27. During one therapy session, Patient A told Respondent she thought that "transference" was occurring. Respondent laughed and did not explore the comment further. Patient A admitted to Respondent that she had a "teenage crush" on him. There is no documentation in Respondent's records for Patient A about any concerns or conversations related to "transference."

28. Respondent engaged in the practice of embracing Patient A for several minutes at the end of each therapy session. At the end of one therapy session, Respondent kissed Patient A on the face and the lips with an open mouth. At the following session, Patient A asked Respondent if she should find a new therapist and he responded "It's still ok, I just shouldn't kiss you." Respondent did not document this interaction with Patient A in her medical records. When Patient A cancelled her next therapy session, Respondent called Patient A to reschedule an appointment and he suggested that Patient A add one extra session per week. At or about this time, Respondent began sending Patient A poetry and music via email outside of the therapy sessions.

29. Sometime after October 15, 2009, Respondent left a voicemail for Patient A stating that he was ending the therapeutic relationship because he and his wife, who served as his receptionist, did not like the direction therapy was going. Respondent's records do not contain a formal written letter of termination to Patient A, nor a referral to another psychiatrist. During Respondent's interview, he admitted that he did not send a formal letter of termination to Patient A.

30. Three days after the voicemail terminating the therapeutic relationship, Respondent called Patient A and "tearfully" apologized for terminating the relationship and stated that he only did it because his wife found out about their relationship. He also stated that he loved her and needed to speak with her in person. Respondent referred to Patient A as his "soulmate" and

"friend." Respondent directed the conversation to his own personal relationships, his marriage, and his sexual fantasies. During Respondent's interview with the Medical Board he admitted telling Patient A that he loved her and that he called her his "soulmate."

31. Following Respondent's termination of care, Patient A sent Respondent an official letter requesting a copy of her medical records. Respondent contacted Patient A and asked her to come to his office to pick up the records. When Patient A arrived at Respondent's office, he tried to hug and kiss her. As she was leaving the office, Respondent grabbed Patient A's hand and placed it over his clothes on his erect penis and said, "This is for you."

32. During one meeting between Patient A and Respondent, Respondent removed Patient A's shirt and exposed her left breast and touched her breast with his hand. Respondent also touched Patient A's vagina through her clothes.

33. On or about October 2009 through approximately September 2010, Respondent sent intimate text messages, emails, and voicemail messages to Patient A, including statements such as: "I miss you;" "I'm thinking about you;" "I'm hungry for you;" "I am feeling warm, and wonderful, and alive, and aroused, and loving to hear and see your words;" "I can't go three days without speaking to you;" and to come to the office if she "really needs to be kissed." In one particular voicemail message Respondent left for Patient A, he stated that he purchased a pay-as-you-go cell phone for the specific purpose of communicating privately with Patient A because his wife discovered their relationship.

34. In September 2010, Patient A contacted Respondent in hopes of obtaining closure on their relationship. Patient A went to Respondent's medical office. Respondent told Patient A, "It's happening again. When you're sitting in the room with me I get an erection." Respondent and Patient A kissed during this meeting.

35. On multiple occasions, Respondent and Patient A met in the park across the street from Respondent's office. On one occasion, Respondent asked her to come back to his medical office. As they entered through the back door of the office, they began kissing and simulated sex on the office floor. Patient A felt Respondent's erect penis through his clothes and he showed her that he had ejaculated. As they stood up, Respondent unzipped his pants, he grabbed Patient A's

hand and placed it on his penis. Patient A immediately withdrew her hand and told him "no." Respondent repeatedly told Patient A they should have sex, but she continued to refuse.

36. On their last meeting in Respondent's office, Patient A and Respondent danced and kissed. Respondent again placed Patient A's hand on his penis and asked to have sex. Patient A again said no.

37. Respondent's records indicate that on April 5, 2010 and October 15, 2010, he issued electronic prescriptions to Patient A for Zoloft with two refills for each prescription. Respondent's records do not contain progress notes for either of these dates.

38. During Respondent's Medical Board interview, he admitted to kissing Patient A and having boundary issues in the therapeutic relationship. Respondent stated that he terminated the professional relationship with Patient A because "he knew he couldn't be appropriate anymore." Respondent admitted telling Patient A that he loved her.

FIRST CAUSE FOR DISCIPLINE

(Sexual Misconduct)

39. The allegations of Paragraphs 9 through 38, above, are herein incorporated by reference above as fully set forth.

40. Respondent's certificate to practice medicine is subject to disciplinary action for unprofessional conduct under section 726 of the Code in that Respondent engaged in sexual misconduct and/or relations with Patient A.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Gross Negligence)

41. The allegations of Paragraphs 9 through 38, above, are herein incorporated by reference above as fully set forth.

42. Respondent's certificate to practice medicine is subject to disciplinary action for unprofessional conduct under section 2234, subdivision (b), of the Code in that Respondent was grossly negligent in his care and treatment of Patient A, in that he engaged in boundary violations and sexual misconduct and/or relations with Patient A.

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THIRD CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

43. The allegations of Paragraphs 9 through 42, above, are herein incorporated by reference above as fully set forth.

44. Respondent's certificate to practice medicine is subject to disciplinary action for unprofessional conduct for repeated acts of negligence under section 2234, subdivision (c) of the Code for the conduct alleged in the First and Second Causes for Discipline, and for prescribing Ambien and Zoloft to Patient A after he terminated the therapeutic relationship with Patient A on October 15, 2009.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Keep Accurate Medical Records)

45. The allegations of Paragraphs 9 through 38, above, are herein incorporated by reference above as fully set forth.

46. Respondent's certificate to practice medicine is subject to disciplinary action for unprofessional conduct under section 2266 of the Code in that Respondent failed to maintain adequate and accurate medical records relating to his care and treatment of Patient A.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number G31836, issued to Respondent.

2 Prohibiting Respondent from supervising physician assistants pursuant to section 3527 of the Code;

3 Ordering Respondent, if placed on probation, to pay the Medical Board the costs of probation monitoring; and/or

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

DATED: August 3, 2012

LINDA K. WHITNEY
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
*Complainant*

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